ORIGINAL

# IN THE SUPREME COURT OF OHIO

| | | |
|---|---|---|
| **REGIS F. LUTZ, et al.,** | : | **Supreme Court Case No. 15-0545** |
| | : | |
| ***Plaintiffs-Respondents,*** | : | **On Review of Certified Question** |
| **v.** | : | **From the United States District** |
| | : | **Court, Northern District of Ohio,** |
| **CHESAPEAKE APPALACHIA, L.L.C.,** | : | **Eastern Division** |
| | : | |
| ***Defendant-Petitioner.*** | : | **Case No. 4:09-cv-2256** |

## BRIEF OF THE AMERICAN PETROLEUM INSTITUTE *AMICUS CURIAE* IN SUPPORT OF PETITIONER


L. BRADFIELD HUGHES (0070997)
(COUNSEL OF RECORD)
CHRISTOPHER J. BARONZZI (0078109)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Tel: (614) 227-1915
Fax: (614) 227-2100
bhughes@porterwright.com
cbaronzzi@porterwright.com

MATTHEW A. HAYNIE (PHV-7475-2015)
AMERICAN PETROLEUM INSTITUTE
1220 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 682-8000
HaynieM@api.org

*Counsel for Amicus Curiae*
*The American Petroleum Institute*

DANIEL T. DONOVAN (0067833)
(COUNSEL OF RECORD)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200
ddonovan@kirkland.com

JOHN K. KELLER (0019957)
VORYS SATER SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
Tel: (614) 464-6400
Fax: (614) 464-6350
jkeller@vorys.com

KEVIN C. ABBOTT (0091504)
NICOLLE R. SNYDER BAGNELL (0091442)
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Tel: (412) 288-3804
Fax: (412) 288-3063
kabbott@reedsmith.com
nbagnell@reedsmith.com

*Counsel for Petitioner*
*Chesapeake Appalachia, LLC*

JAMES A. LOWE (0002495)
(COUNSEL OF RECORD)
LOWE EKLUND & WAKEFIELD CO., LPA
1660 West Second Street
610 Skylight Office Tower
Cleveland, Ohio 44113-1454
Tel: (216) 781-2600
Fax: (216) 781-2610
jlowe@lewlaw.com

*Counsel for Respondents Regis F. Lutz et al.*

O. JUDSON SCHEAF III (0040285)
(COUNSEL OF RECORD)
BEN L. PFEFFERLE III (0024297)
MCDONALD HOPKINS LLC
250 West Street, Suite 550
Columbus, Ohio 43215
Tel: (614) 458-0025
jscheaf@McDonaldHopkins.com
bpfefferle@McDonaldHopkins.com

MICHAEL W. WISE (0046694)
ADAM C. SMITH (0087720)
MCDONALD HOPKINS LLC
600 Superior Ave., East, Suite 2100
Cleveland, Ohio 44114
Tel: (216) 348-5400
Fax: (216) 348-5474
mwise@McDonaldHopkins.com
acsmith@McDonaldHopkins.com

*Counsel for Amici Curiae*
*Gulfport Energy Corp.*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases:**



**Rules and Regulations:**



**Other:**

## **INTERESTS OF *AMICUS CURIAE***

*Amicus Curiae* American Petroleum Institute ("API") is a national trade association that represents all segments of America's technology-driven oil and natural gas industry. API traces its origins to World War I, when Congress and the domestic oil and natural gas industry worked together to promote the war effort. API was chartered in 1919 to afford a means of cooperation between the industry and the government in all matters of national concern; to foster foreign and domestic trade in American petroleum products; to promote the interests of all segments of the petroleum industry; to promote the mutual improvement of API's members; and to study the arts and sciences connected with the oil and natural gas industry.

Today, API's 640 members – including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide much of the nation's energy. API is also the worldwide leading standards-making body for the oil and natural gas industry. Accredited by the American National Standards Institute ("ANSI"), API has issued more than 500 consensus standards governing all segments of the industry, including well construction and hydraulic fracturing, as well as standards and recommended practices incorporated or referenced in numerous state and federal regulations.

The oil and natural gas industry represented by API supports 9.8 million U.S. jobs and 8 percent of the U.S. economy, and, since 2000, has invested over $2 trillion in U.S. capital projects to advance all forms of energy. The Ohio-specific impact of the oil and natural gas industry is equally staggering. Over 250,000 Statewide jobs are provided or supported by the industry, which also provides a greater than $12 billion contribution to

Ohio's labor income and more than $28 billion in value added to the Ohio economy.[1] And according to the Bureau of Labor Statistics, over 13,000 shale-related business establishments call Ohio home.[2]

API speaks for the oil and natural gas industry to the public, Congress, the Executive Branch of the federal government, state governments, and to the media. API negotiates with regulatory agencies, represents the industry in legal proceedings, participates in coalitions, and works in partnership with other associations to achieve its members' public-policy goals. In this Court, for example, API recently joined several other key stakeholders in submitting an *amicus* brief in Ohio Supreme Court Case No. 2013-0465, *State ex rel. Morrison v. Beck Energy Corp.* In that brief, API focused on the legislative history of Ohio Revised Code Chapter 1509, which establishes a uniform and exclusive statewide system for the regulation of oil and natural gas activities in the State of Ohio. For the reasons that follow, the royalty-calculation question certified here by U.S. District Judge Lioi is an equally compelling issue for API's members.

API's members have made substantial financial investments in the State of Ohio in order to develop the State's oil and natural gas resources. Such development often occurs pursuant to lease agreements with landowner/lessors like those at issue in the underlying breach-of-lease action. And such development often necessarily requires the expenditure of costs beyond those incurred for simply extracting the resources from the well – it includes costs incurred to prepare the resources for sale and to physically move those resources to the point of sale (*e.g.*, costs of gathering, compressing, processing, and

---

[1] PWC, *Economic Impacts of the Oil and Natural Gas Industry on the U.S. Economy in 2011* (July 2013).

[2] Ohio Shale, *Quarterly Economic Trends for Ohio Oil and Gas Industries* (April 2015).

transporting natural gas through intrastate or interstate pipeline systems), where they can be sold for the best market price. Stakeholders in the oil and natural gas industry can continue to play a key role in Ohio's recovery from the 2008 economic downturn by providing sustained opportunities for economic growth and new jobs, but only in a legal environment that honors the express and intended meaning of the many lease agreements entered over the years, as those agreements pertain to the calculation of royalties.

The question certified here by the U.S. District Court for the Northern District of Ohio – a question that the parties agree has not yet been resolved by this Court – leaves this Court with a stark choice. On the one hand, the Court can adopt the majority approach advocated here by Petitioner Chesapeake Appalachia, L.L.C. ("Chesapeake"), API, and other *amici curiae* supporting Chesapeake by interpreting the leases in question to permit the shared, *pro rata* allocation of reasonable post-production costs. This approach reflects not only the clear nationwide majority position, it is also the position adopted by several of Ohio's neighboring states – Pennsylvania, Michigan, and Kentucky. This approach has emerged as the majority rule because it is most consistent with the plain language of leases that require gas to be valued "at the well," and because it aligns the economic interests of the lessor and lessee, thereby fairly and efficiently allocating the costs of converting extracted resources into the most valuable products.

On the other hand, the Court can align itself with the outlier approach advocated here by Plaintiffs-Respondents Regis Lutz *et al.* ("Plaintiffs"), and require those who extract and develop oil and natural gas to inequitably shoulder <u>all</u> post-production costs, even though those post-production efforts enhance the value of the extracted resource to the benefit of <u>both</u> parties to the leases in question. This outlier position is inconsistent with the plain language of the leases at issue because it would value the gas at higher downstream prices rather than its "value at the well," as the leases require.

If this Court adopts the minority approach and requires royalties under the subject leases to be calculated without any shared, *pro rata* allocation of post-production costs, API submits that such a result will significantly discourage additional investments, hiring, and other economic activity that oil and gas development brings to the State of Ohio. Such a result, after all, would signal to industry participants that, instead of faithfully abiding by principles of contract interpretation that it has espoused for more than a century, this Court is instead willing to re-write oil and gas leases to provide a windfall to individual lessors such as Plaintiffs and their putative class members, who seek all the benefits of the downstream sale of oil and gas without bearing any reasonable, *pro rata* share of the associated post-production costs. Moreover, a decision from this Court that forces producers to bear all post-production costs would fundamentally change the economics of all Ohio oil and gas wells that provide for valuation of production "at the well."

As the foregoing demonstrates, API and its members have a direct and compelling interest in how this Court answers the question certified. API respectfully urges this Court to answer the question certified by the U.S. District Court for the Northern District of Ohio to confirm that Ohio follows the "value at the well" rule applied in the majority of States, which permits oil and gas lessees to allocate to their lessors a *pro rata* share of post-production costs proportionate to the royalty due under the lease, unless the parties to the lease have expressly agreed that no such allocation is permissible. Adopting the minority rule advocated by Plaintiffs, in contrast, would not only align Ohio with a distinct minority of states, but also inhibit Ohio's ability to attract continued investment from API's members, and would discourage the most efficient recovery of the State's subsurface resources. If Ohio adds this additional cost burden on the operators, it will only make other states more favorable than Ohio when those companies decide where to make capital investments.

## STATEMENT OF THE FACTS

API adopts the Statement of Facts set forth by Chesapeake as if fully set forth herein. API also emphasizes the following points by way of additional background.

First, although the Class Action Complaint in the underlying federal case was filed against just three industry participants (two of whom have since been dismissed), the outcome of the litigation (which will be determined by this Court's resolution of the certified question, pursuant to S.Ct.Prac.R. 9.01(A)) will impact a far larger number of other lessees and downstream industry participants. It is impossible to state with certainty how much natural gas is currently being extracted pursuant to "value at the well" leases, and those extraction volumes continuously ebb and flow with the market, but it is certainly a significant quantity, making the royalty-calculation issue presented here a pressing one for API's membership.

Second, it is a well-recognized industry practice to allocate reasonable post-production costs such as those at issue here on a *pro rata* basis. As Chesapeake and its *amici* will demonstrate, the practice that Plaintiffs unfairly characterize as "deceitful" in their Class Action Complaint (Compl., Doc. # 1, ¶ 21)[3] is a practice that oil and gas industry experts acknowledge in their hornbooks as being permitted by the majority rule

[3] Docket citations herein refer to filings in the lawsuit pending before the certifying court, *Lutz et al. v. Chesapeake Appalachia, L.L.C.*, N.D. Ohio Case No. 4:09-cv-02256-SL.

nationwide, where legal disputes have from time to time arisen under specific lease language. It is also a practice that the federal government acknowledges is permissible for federal coal and natural gas leases.

Third, this Court should be mindful that what is at issue in this case is allocation of post-production costs. Chesapeake and its *amici* are not advocating for allocation of any portion of the significant exploration and production costs, which can range from tens of thousands to millions of dollars per well, and which are incurred by the lessee alone as part of the necessary investment of capital to produce the well. What is at issue in this case are the costs lessees often incur to obtain the best available price for the produced gas by making additional, voluntary expenditures for downstream transportation, compression, and processing. Those costs are incurred solely to achieve the lessee and lessor's mutual goal of selling the gas for the best available price.

Fourth, API would also note the questionable timing of the underlying Class Action Complaint, which reflects Plaintiffs' preference for opportunism over meritorious arguments. Plaintiffs' allegations, according to their own Complaint, relate to allocations of post-production costs that began back in 1993. (Compl., Doc. #1, ¶¶ 20-21.) But Plaintiffs did not seek relief in a court of law until 2009, after the West Virginia Supreme Court adopted the minority position that Plaintiffs now advance here, in *Estate of Tawney v. Columbia Natural Res., L.L.C.*, 633 S.E.2d 22, 24 (W.Va. 2006). As Chesapeake noted in its dispositive motion below, in the time since *Tawney* was decided, royalty owners such as Plaintiffs seeking to benefit from that outlier decision have consistently tried to import that minority rule into other states, but they have failed every time. (Chesapeake Mem. in Supp. of MPSJ, Doc. # 114-1, at 12) (internal citations omitted). For the reasons described more fully below, this Court should answer the certified question presented here to prevent Plaintiffs from opportunistically importing their proposed minority rule, which is at odds with generally accepted industry practice, into the substantive law of Ohio.

## LAW AND ARGUMENT

**Proposition of Law No. 1: When an oil and gas lease provides that the royalty is to be calculated based on value "at the well," Ohio allows the lessee to transport, process, and sell the gas downstream, and to allocate to the lessor his or her *pro rata* share of those post-production costs, unless such allocation of costs is expressly prohibited in the lease.**

### A. This Court's precedent concerning the interpretation of contracts leads inexorably to the conclusion that Ohio should adopt the majority approach permitting *pro rata* allocation of post-production costs in order to achieve the parties' intent of valuing gas at the well.

In the underlying federal action, Chesapeake sought partial summary judgment, arguing (as it does here) that leases providing for royalties to be paid on the "value at the well" of the gas allow use of the netback method to allocate post-production costs. (Mem. in Supp. of MPSJ, Doc. # 114-1, at 7-16.) In the accompanying briefing, Chesapeake explained cogently why bedrock principles of Ohio contract law would lead Ohio courts to the same conclusion reached by the majority of other State courts, as well as the Sixth Circuit – that the use of the netback method gives meaning to the "value at the well" language in the subject leases. (*Id.* at 13-16; *see also* Reply in Supp. of MPSJ, Doc. # 120, at 4-20.) Chesapeake alluded to the same principles in its Preliminary Memorandum, and will surely brief them again on the merits. As Chesapeake noted, even Black's Law Dictionary defines "market value at the well" as "[t]he value of oil or gas at the place where it is sold, *minus the reasonable cost of transporting it and processing it* *** [.]" (Reply, Doc. # 120, at 6, citing *Black's Law Dictionary* 1058 (9th Ed. 2009) (Emphasis added).)

Instead of re-hashing the same arguments here, API would call the Court's attention to a 1978 decision from this Court that bears some notable parallels to this case, *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978). In *Alexander*, as here, individual landowners wrongly complained that oil & gas industry participants were running roughshod over agreements executed many years before. Specifically, the plaintiffs in *Alexander* asserted that the successors to a 1911 right-of-way agreement for an "oil and gas" pipeline were exceeding the bounds of that agreement by transporting more than just crude oil through the pipelines – they were also transporting gasoline, two grades of fuel oil, gas oil, propane, and butane. The *Alexander* plaintiffs claimed that this allegedly improper expansion of the right-of-way agreement infringed their property rights, caused irreparable damage, constituted a wrongful taking, and reduced the value of their property. The trial court, court of appeals, and this Court all disagreed. This Court explained:

> The court does not find the terms "oil" and "gas" ambiguous. The terms are descriptive in nature and have <u>traditionally represented</u> a specific class of products that may be transported. The <u>popular meaning</u> of the word "oil" appeared in Webster's New International Dictionary (1 Ed. 1927) as "*** any of a large class of unctuous combustible substances which are liquid, or at least easily liquefiable on warming and soluble in ether, but not in water." The term "gas" was defined as "*** any gas or gaseous mixture, with the exception of atmospheric air; specif.: *** b. Any combustible gaseous mixture used for illuminating or as a fuel. ***"
>
> It is clear that at the time of the execution of the 1911 right-of-way agreement, the words "oil" and "gas" included products in both the refined and natural states. <u>A restriction of these terms could easily have been achieved by use of a qualifying adjective such as "crude" or "natural." Because the parties executing this agreement did not choose to qualify the terms of "oil" and "gas," we must therefore assume that they intended no restrictive meaning</u>.

*Alexander*, 53 Ohio St.2d at 247-48 (emphasis added). This Court's *Alexander* decision, while not directly controlling on the question certified, is instructive because it reflects the Court properly declining to insert new, un-bargained for restrictions into an agreement where the contracting parties did not do so themselves, and where doing so would have resulted in a provision inconsistent with its widely accepted and traditional meaning in the oil and gas context – here, a meaning even reflected in *Black's Law Dictionary*.

Answering the Certified Question to permit the allocation of post-production costs for "value at the well" leases would be entirely consistent with *Alexander*, because it would align Ohio's interpretation of "value at the well" lease language with the most widely accepted and plain-language interpretation of that phrase. Only by netting back from the sale price the lessor's *pro rata* share of the costs the lessee incurred to procure that sale at a distant market can the parties determine the "value at the well" of the gas, as the parties bargained for in the lease. Indeed, failing to allow a *pro rata* allocation of post-production costs would transform the leases from valuing the gas "at the well" to valuing it "at the point of sale." This would be a provision for which the parties never bargained, and an interpretation that is inconsistent with the traditional and plain meaning of "at the well" in the oil and gas industry.[4]

[4] The federal government also permits lessees of coal and natural gas to deduct certain post-production costs, such as allowable processing and transportation costs. *See, e.g.*, 30 C.F.R. 1206.152; 1206.153; 1206.257; & 1206.258. Pennsylvania has also recognized the principle in a manual to educate the public about oil and gas leases. *See* Pennsylvania Department of Agriculture, *Negotiating Oil and Gas Leases on Pennsylvania Farmland* (2008) ("[i]n the case of natural gas, the value of the proceeds may be taken at a point remote from the land to which the lease is applicable. In short, processing and transportation or pipeline costs may be subtracted in arriving at the 'value of production'"), *available at*: http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_

### B. There are tangible economic benefits realized by both the lessee and the lessor in transporting natural gas from the wellhead to a downstream point of sale, and the majority approach advocated here by Chesapeake equitably allocates the post-production costs incurred to realize those benefits on a *pro rata* basis.

There are real benefits for both the lessee and the lessor in transporting gas from the wellhead to another point of sale, and State policy should encourage – rather than impair – the realization of such benefits pursuant to existing oil and natural gas leases. The reality of the modern natural gas market is that to obtain the best price, producers often sell gas at various points downstream from the wellhead and, generally, the further downstream the sale, the higher the price. As this Court can readily imagine, for example, expenditures for transporting gas from the wellhead to the high-demand markets of the east coast cities could earn much higher sales prices than in the fields of eastern Ohio. Energy Information Agency ("EIA") data indicates that from 2000 to 2012, the average price for natural gas on the interstate pipeline grid was 36 cents higher per thousand cubic feet than the value at the wellhead.[5] Interpreting "value at the well" leases to permit the *pro rata* allocation of reasonable post-production costs encourages lessees to undertake the significant costs, risks, and effort required to transport gas from the wellhead to the most efficient sales point, where a higher price for the commodity will benefit both parties to the leases proportionately (in the form of greater royalties for lessors/landowners, and a better return on investment for lessees/producers). *See Indep. Petroleum Assn. of Am. v.*

---

24476_10297_0_43/AgWebsite/Files/Publications/Negotiating%20Oil%20and%20Gas%20Leases%20on%20Pennsylvania%20Farmland%202-10.pdf (last visited July 31, 2015).

[5] This difference is based on a comparison of EIA data for natural gas wellhead prices and natural gas pipeline imports prices, *available at*: http://www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_a.htm (last visited July 31, 2015). The latter serves as a reasonable proxy for the average price of gas on the interstate pipeline grid.

*Armstrong*, 91 F. Supp. 2d 117, 120 (D.D.C. 2000) ("from an economic standpoint, the higher sale prices obtained in a downstream market are, in part, a reflection of the costs and risks involved"), *aff'd in part, rev'd in part sub nom. Indep. Petroleum Assn. of Am. v. DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002).

On the other hand, burdening the producers with all costs and risks, as Plaintiffs demand, will break the mutuality of interest between lessor and lessee and give an inequitable windfall – one certainly not foreseen by the contracting parties when the leases were first executed – to lessors at the expense of lessees. Such a shift would also fundamentally change the economics of Ohio oil and gas wells operated under "value at the well" leases. Forcing lessees to bear all post-production costs will directly reduce lessees' return on investment in an amount proportionate to the royalty percentage stated in the lease (because that would otherwise be the *pro rata* share of the costs passed along to the lessor). This cost increase to lessees will result in lower rates of return to lessees on their significant capital investments and force lessees to bear all the risks incurred to try to obtain a higher sales price downstream. API respectfully submits that such a dramatic rebalancing of the risk/reward equation for these kinds of wells will discourage new investment in the countless wells operated under "value at the well" leases all across the State. It would also make other states more favorable than Ohio when operators decide where to make investments.

For all these reasons, this Court properly avoids construing oil and gas lease agreements to impose new risks and obligations that the parties did not bargain for, and which would create adverse economic consequences for producers currently operating oil and gas wells under "value at the well" leases.

### C. This Court has previously implemented the certified-question process to align Ohio's jurisprudence with the majority of courts nationwide, and to preclude Ohio from becoming an outlier State.

This Court has had a procedure in place to answer questions certified from federal courts since 1988. The Court's certified-question procedure has many benefits, including placing state-law questions before state-court judges with greater competence in state law; avoiding federal court speculation or prediction about novel state-law questions; promoting judicial efficiency by avoiding the delays of *Pullman* abstention; and promoting federalism by allocating shared judicial power between the state and federal court systems. The first time this Court answered a certified question, it expressly recognized such benefits, and overruled its own precedent in order to place Ohio within the mainstream of "the overwhelming majority of states" to recognize the enforceability of spendthrift trusts. *Scott v. Bank One Trust Co., N.A.*, 62 Ohio St.3d 39, 42-48, 577 N.E.2d 1077 (1991). And in the last nearly three decades, this Court has frequently utilized the certified-question process to place Ohio jurisprudence within the mainstream of national jurisprudence on issues of Statewide significance.

For example, in *Metrohealth Med. Ctr. v. Hoffman-Larouche, Inc.*, 80 Ohio St.3d 212, 1997-Ohio-345, 685 N.E.2d 529, in answering another question certified by the Northern District of Ohio, this Court concluded that a contribution plaintiff's claim should not be compromised merely because the underlying claimant failed to comply with a statute of limitations as to the contribution defendant – a position that had been adopted by an "'overwhelming majority of jurisdictions.'" *Id.* at 533 (internal citation omitted). More recently, in another certified-question case arising from the Northern District of Ohio, this Court upheld the constitutionality of Ohio's intentional tort statute, noting that the statute being challenged actually harmonized Ohio law with similar law governing a "'clear majority of jurisdictions.'" *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 73.

The instant case presents this Court with yet another opportunity to answer a question certified from federal court to harmonize Ohio law with the clear, overwhelming majority of jurisdictions cited in the briefs of Chesapeake and its *amici*. The Court should reject Plaintiffs' (belated) invitation to re-write the underlying lease agreements to preclude *pro rata* allocation of post-production costs – an outcome that would have just the opposite effect.

## CONCLUSION

For the foregoing reasons, and for the reasons stated by Petitioner and its other *amici curiae*, this Court should answer the question certified by the Northern District of Ohio to confirm that Ohio follows the "value at the well" rule applied in the majority of States, which permits oil & gas lessees to allocate to their lessors a *pro rata* share of post-production costs (such as compression, processing, gathering, and transportation costs) before paying the royalty due under the lease, unless the parties to the lease have expressly agreed that no allocation of post-production costs is permissible. Such an interpretation is most faithful to the terms of the agreements at issue, will bring certainty to numerous other lessors and industry participants bound by similar lease language, will encourage the continued and most efficient extraction of resources by API's members, and will be dispositive in the underlying federal action.

Respectfully submitted,

L. Bradfield Hughes

L. BRADFIELD HUGHES (0070997)
(COUNSEL OF RECORD)
CHRISTOPHER J. BARONZZI (0078109)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Tel: (614) 227-1915
Fax: (614) 227-2100
bhughes@porterwright.com
cbaronzzi@porterwright.com

MATTHEW A. HAYNIE (PHV-7475-2015)
AMERICAN PETROLEUM INSTITUTE
1220 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 682-8000
HaynieM@api.org

*Counsel for Amicus Curiae*
*The American Petroleum Institute*

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that a copy of the foregoing Brief of *Amicus Curiae*, The American Petroleum Institute, was served by First-Class U.S. Mail, postage pre-paid on the following counsel of record this 3rd day of August, 2015:

DANIEL T. DONOVAN
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

JOHN K. KELLER
Vorys Sater Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

KEVIN C. ABBOTT
NICOLLE R. SNYDER BAGNELL
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222

JAMES A. LOWE
Lowe Eklund & Wakefield Co., LPA
1660 West Second Street
610 Skylight Office Tower
Cleveland, Ohio 44113-1454

O. JUDSON SCHEAF III
BEN L. PFEFFERLE III
McDonald Hopkins LLC
250 West Street, Suite 550
Columbus, Ohio 43215

MICHAEL W. WISE
ADAM C. SMITH
McDonald Hopkins LLC
600 Superior Ave., East, Suite 2100
Cleveland, Ohio 44114

J. Bradfield Hughes
Counsel for *Amicus Curiae*
The American Petroleum Institute

COLUMBUS/1773869v.9