



# DECEMBER 2024 THE ENERGY DISPATCH

### A PUBLICATION OF THE IEL YOUNG ENERGY PROFESSIONALS COMMITTEE



*The Energy Dispatch*, the IEL's Young Energy Professional newsletter, contains substantive articles on trending legal issues in the energy industry, interviews, and professional development.



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### Young Energy Professionals Highlight – Emily Rohles, Baker Botts L.L.P.

Interview by Katherine Raunikar, Jordan Lynch & Cancienne PLLC



## KR: What was your path to becoming a lawyer?

**ER:** I first started exploring a career in the law during my time in undergrad at UT Austin, during which I was a Clark Scholar at the Center for Australian and New Zealand Studies, worked part-time

for an immigration attorney, and enrolled in a mentorship program to be matched with a current UT Law student. My bosses and mentors in these positions helped guide me and answer questions about what law school and a legal career might look like. I connected with a UT alumna who was working at Morgan Lewis in DC as a paralegal, and she helped me get an interview to replace her as she was leaving the firm to start law school herself. The attorneys with whom I worked at Morgan Lewis were incredibly encouraging and helped confirm the path I was on. After two years working in DC, I moved to Los Angeles for law school at USC and returned home to Houston during my 1L summer to intern in the Southern District of Texas with Judge Bennett and Judge Atlas. That summer solidified my interest in litigation and, after finishing my time in LA, I moved to Houston fulltime to join the litigation department of Baker Botts.

#### KR: How would you describe your practice?

**ER:** I have a broad practice representing clients in a variety of complex civil litigation matters in state and federal court, including commercial disputes, energy, and personal injury and property damage claims. Because I work in Houston, a lot of this work is naturally related to the energy sector.

# KR: What do you enjoy most about your practice as a litigator?

**ER:** I enjoy working to solve complex problems every day. The issues we deal with are rarely simple or clear-cut, so it takes everyone on my team putting our minds together to evaluate the facts and the law to arrive at the best arguments for our clients.

# KR: How has your experience been with IEL thus far, particularly regarding your interaction with the Young Energy Professionals programming?

**ER:** I've had a great experience with IEL thus far! My favorite IEL experience has been attending the YEP conference in New Orleans this year and getting the opportunity to connect with so many wonderful people working in the industry.

# KR: Have you had any mentors in your career that helped you reach where you are today?

**ER:** As I explained above, mentors played an active role in every step along the way towards my career in the law. Today, I am grateful for the partners and senior associates with whom I work at Baker Botts, who play an active role in my career development and inform me about different opportunities to grow and challenge myself.

## KR: Do you have any tips or advice for other young lawyers seeking a career in litigation or the energy space?

**ER:** My advice would be to actively seek out people working in fields that interest you. Don't be afraid to send someone a cold email asking to get coffee. Most people are going to be willing to speak with you, and you never know what will come out of informal connections you form.

#### KR: What do you like to do when you are not working?

**ER**: When I'm not working, I love checking out all the food and arts Houston has to offer. I always have a few dinner reservations on the calendar and concert dates booked! This year I've also challenged myself to get out of my comfort zone and try new things, including a few months of pottery lessons and some golf lessons. It's been a lot of fun to try things that require a different part of my brain and meet new people in the process.

#### Expert Interview with Michael W. Welch, Managing Director, Integra Realty Resources - Houston

Interview by Elly Austin Vecchio, Phelps Dunbar LLP



Michael Welch is the Managing Director for Integra Realty Resources in Houston, Texas. Mr. Welch has been involved in the real estate appraisal and consulting field for more than thirty years and is known nationally for his expertise involving large-scale infrastructure

projects. Mike has conducted initial route studies, cost analysis, impact studies, and real estate valuations for more than 2,500 miles of linear projects such as pipelines, electrical transmission lines, rail corridors, drainage facilities, and major transportation roadways. Mr. Welch has been involved in real estate appraisal matters, consulting, and project management in all fifty states and in more than 150 Texas counties. He has provided litigation services and expert witness testimony with respect to properties in both state and federal courts.

#### EAV: What does your work as an expert typically entail?

**MW**: The majority of work that I focus on is in the area of eminent domain where private land is required for public infrastructure. Thankfully, the Takings Clause in the Fifth Amendment of the U.S. Constitution says, "nor shall private property be taken for public use, without just compensation." Due to continual and rapid expansion of infrastructure facilities in the United States, there is always a need to ensure that private citizens are adequately compensated for the acquisition and use of their land for a public use.

## EAV: That sounds pretty specialized. How did you get started?

**MW:** In 1988, I hit three home runs in a real estate appraiser softball league game. The league was very competitive. The opposition coach approached me about playing for his team which included a job offer. The new firm, significantly larger and well established, had an entire group focused on valuation of land for infrastructure and rights of way. I started as a trainee in that department and have been involved in that subject matter for thirty years.

#### EAV: What is your favorite part of your job?

**MW:** No two properties are exactly alike, and no two neighborhoods, cities, or states are exactly alike either. By virtue of the work we do, we have the opportunity to see properties across the United States and value improvements that may have been built in the 1800's on the East Coast, tribal lands in the Midwest, casinos in Las Vegas, or cutting-edge research and development space in the Bay Area. The diversity of the properties we value continually challenges our abilities.

## EAV: What advice would you give an attorney or client you are working with for the first time?

**MW:** After testifying in condemnation hearings and trials for a few decades, I have noticed a distinct difference between younger attorneys and seasoned veterans. Often, younger attorneys will hesitate to probe into an issue where they do not feel comfortable because of a lack of understanding or the fear they will look unqualified. More seasoned litigators tend to delve into the areas where they are not subject matter experts in order to gain an understanding and increase effectiveness. One of the best questions I ever had came from an attorney in his 70's. After I gave a long, convoluted answer filled with industry specific jargon, he sat back and said, "Thank you for that, now explain it to me like I'm in junior high." He wanted to understand the material and didn't view his lack of knowledge as a weakness – it was a chance to learn.

# EAV: Condemnation proceedings can occasionally evoke intense emotions or hostility from landowners. As an expert, how do you deal with those situations?

**MW**: It is important to understand that landowners have a vested interest in their property and, in the condemnation context, the land is being taken against their will. I also understand that attorneys are advocates for their clients and therefore, share in their zeal for achieving a specific result. Appraisers, on the other hand, are not advocates for a position, cannot be paid a contingent fee, and do not represent either party in the litigation. Although hired by one side in the dispute, it's important that appraisers maintain their objectivity and independence. When the room becomes heated and emotions enter the conversation, I remind myself that my only job is to provide the fact finder with an honest, objective, well-supported opinion of value.

## EAV: Do you have a project or a case that you thought was especially interesting?

MW: "Planes, Trains and Automobiles" wasn't just a great movie with Steve Martin and John Candy. These modes of transportation have been the dominant way we move people and goods throughout the world. It is very rare to be on the potential cusp of a new mode of transportation. I was approached by an innovative company to explore the valuation characteristics of deep subterranean tunnels that would facilitate the movement of people and/or materials quickly while avoiding traffic issues present on modern day roadways. During my initial conversations, these conceptual plans sounded a bit like science fiction. After spending a few years working with this company on several projects, I have learned that innovation and tenacity can bring visionary concepts to life. The next time you are in Las Vegas, head over to the Vegas Loop and hop in a Tesla and you can experience a George Jetson glimpse of a potential transportation game changer.

### EAV: Without naming names, what is your favorite war story to tell?

**MW**: I was testifying in a fairly heated hearing pertaining to the acquisition of a strip of land along a rancher's property. His wife and daughter attended the hearing with him, and he berated me regarding the removal of a mature oak tree near the road frontage. I indicated that the oak tree did not contribute value to the ranch land, in excess of the overall land value. He went on to tell me how his daughter was proposed to under that tree, and later married under that tree and that its sentimental value was priceless. I told him that I understood he had a special attachment to that tree and said I couldn't help but notice "your daughter is not wearing a wedding ring." He immediately fired back "Well, we got rid of that no-good SOB." I said, "Well, I'll get rid of that tree, so you don't think about that SOB anymore!"

#### EAV: Give us a fun or unusual fact about yourself.

# The Arctic Shipping Frontier: Regulatory and Operational Challenges to Consider

Vanessa C. DiDomenico, Blank Rome LLP

Heavy Fuel Oil ("HFO"), commonly known as bunker fuel or residual fuel oil, has been widely used by vessels as fuel for decades due to its low cost and ready availability worldwide. However, due to its high sulfur and heavy metal content, the International Maritime Organization ("IMO") has steadily enacted regulations to limit the sulfur content in fuels, and the ability to burn or carry HFO in sensitive areas, such as the Arctic.

Recently, on July 1, 2024, an international ban on the use of HFO in the Arctic went into effect. This ban, implemented by resolution MEPC.329(76), was adopted on June 17, 2021, by the IMO's Marine Environmental Protection Committee. The resolution amended Annex 1 of the International Convention for the Prevention of Pollution from Ships ("MARPOL"), adding Regulation 43A, "Special requirements for the use and carriage of oils as fuel in Arctic waters." Regulation 43A prohibits the use and carriage for use as fuel of oils having a density at 15°C higher than 900 kg/m3 or a kinematic viscosity at 50°C higher than 180 mm2/s in Arctic waters. (Arctic waters are defined in MARPOL Annex 1 Regulation 46.2.). However, there are several exemptions and waivers to the HFO ban. First, ships engaged in securing the safety of ships, or in search and rescue operations, and ships dedicated to oil spill preparedness and response are exempt. Additionally, ships that meet certain construction

standards for fuel oil tank protection, must comply on or after July 1, 2029. See MARPOL Annex I, Regulation 12A; or Polar Code Chapter 1, part II-A, Regulation 1.2.1. Lastly, a party to MARPOL with a coastline bordering Arctic waters may temporarily waive the requirements for ships flying its flag while operating in waters subject to that party's sovereignty or jurisdiction through July 1, 2029.

With increasing geopolitical tensions affecting shipping lanes in the Middle East, the possibility exists that more ships may consider using the Northern Sea Route through Arctic waters to avoid risks near areas in conflict. In fact, according to the Arctic Council Working Group on the Protection of the Arctic Marine Environment ("PAME"), the number of unique ships entering the Arctic Polar Code area from 2013 to 2023 increased by 37%, [to] around 500 ships." PAME. Arctic Shipping Update: 37% Increase in Ships in the Arctic Over 10 Years, (Jan. 31, 2024), available at: https://arctic-council.org/news/increase-in-arctic-shipping/. The Northern Sea Route, most commonly used in September between the western part of Eurasia and the Asia-Pacific region, is shorter than the journey through the Suez Canal, or detour around Africa's Cape of Good Hope. Yet that route presents its own regulatory and operational considerations. In particular, as discussed above, ship owners and operators must ensure their vessels meet the construction standard requirements of Regulation 43A to use HFO or use alternative fuel to remain compliant. Additionally, the sensitive Arctic environment imposes more stringent requirements in other MARPOL Annexes, such as Annex II, control of pollution by noxious liquid substances in bulk; Annex IV, sewage; and Annex V, garbage. Vessel owners and operators should also ensure compliance with the operational and structural requirements of the Polar Code when operating in this region. Notably, due to the harsh weather conditions, and limited aid in the region, operating in the Arctic requires specific compulsory vessel documentation and certificates, training and manning, and life-saving appliances, among other prerequisites. As political forces shift maritime trading patterns, vessel owners and operators should exercise added due diligence in evaluating their vessels' ability to meet the regulatory and operational requirements for transiting the Northern Sea Route, which, while now open, at times remains an unforgiving realm.

### EPA Issues Much-Anticipated Final Rule Establishing National Standards of Performance for Vessel Incidental Discharges

Greg Johnson, Claire Bienvenu, Emily von Qualen, Nicolette Kraska, & Colin North, Liskow

On October 9, 2024, the Environmental Protection Agency ("EPA") published the final rule, Vessel Incidental

Discharge National Standards of Performance ("VID-NSP"), establishing national performance standards under the Vessel Incidental Discharge Act ("VIDA"). See 89 Fed. Reg. 82074 (Oct. 9, 2024). Once made effective and enforceable through corresponding United States Coast Guard ("USCG") regulations addressing implementation, compliance, and enforcement, the VID-NSP rule will control the discharge of pollutants into waters of the United States and waters of the contiguous zone from non-recreational, non-Armed Forces vessels 79 feet in length and above, as well as ballast water only from fishing vessels of any size and nonrecreational, non-Armed Forces vessels less than 79 feet in length. Additionally, the VID-NSP rule, once effective and enforceable, will repeal certain existing vessel discharge requirements, including those set forth in the 2013 Vessel General Permit ("VGP").

The VID-NSP rule establishes both general and specific discharge standards of performance. The general discharge standards apply to all covered vessels and incidental discharges and require best management practices ("BMPs") to minimize the introduction of pollutants from discharges. The general discharge standards are organized into three categories: General Operation and Maintenance, Biofouling Management, and Oil Management. The specific discharge standards establish requirements for incidental discharges from 20 distinct vessel pieces of equipment and systems.

Overall, the VID-NSP rule's discharge standards are generally at least as stringent as the VGP, but the rule does not incorporate the VGP requirements verbatim. Rather, the rule changes some of the VGP requirements "to transition the permit requirements into regulations that reflect national-technology-based standards of performance, to improve clarity, enhance enforceability and implementation, and incorporate new information and technology." The similarities and differences between the VID-NSP rule's requirements and the VGP requirements can be sorted into three distinct groups.

- First Group: 13 discharge standards that are substantially the same as the requirements of the VGP: boilers, cathodic protection, chain lockers, decks, elevator pits, fire protection equipment, gas turbines, inert gas systems, motor gasoline and compensating systems, non-oily machinery, pools and spas, refrigeration and air conditioning, and sonar domes.
- Second Group: Two discharge standards that are consistent but slightly modified from the VGP to moderately increase stringency or provide language clarifications: bilges and desalination and purification systems.
- Third Group: Five discharge standards that contain the most significant modifications from the VGP: ballast tanks, exhaust gas emission control systems, graywater systems, hulls and associated niche areas, and seawater piping.

The VID-NSP rule also incorporates the heavily contested "New Laker" requirements, which were first proposed in the supplemental notice of proposed rulemaking. In particular, the VID-NSP rule requires New Lakers, or vessels built after January 1, 2009, that are 3,000 GT and above and operate exclusively on the Great Lakes, to install, maintain, and operate USCG-approved ballast water management systems. Previously, New Lakers were subcategorized and completely exempted from the VGP's numeric standard but required to implement certain BMPs.

The USCG has two years from EPA's publication of the VID-NSP rule to develop corresponding regulations regarding the implementation, compliance, and enforcement of the final standards of performance. Thus, vessels remain subject to existing discharge requirements included in the VGP, as well as any other applicable federal, state, or local authorities, until the USCG regulations are final, effective, and enforceable.

# Recent EPA Developments Related to PFAS Regulation

W. Dixon Snukals, Samuel L. Tarry, Jr., Mark E. Anderson, Andrew F. Gann, Jr., Shannon M. Kasley, Adam G. Sowatzka, McGuireWoods LLP

As the U.S. Environmental Protection Agency ("EPA") continues to focus on the regulation of per- and polyfluoroalkyl substances ("PFAS"), this article summarizes recent developments that may affect energy companies around the U.S.

#### EPA Proposes Addition of 16 Individual PFAS and 15 PFAS Categories to Toxics Release Inventory

On Oct. 1, 2024, the EPA issued a proposed rule that would add 16 individual PFAS as well as 15 PFAS categories, representing over 100 PFAS, to the Toxics Release Inventory (TRI).

Under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain facilities that manufacture, process or otherwise use listed toxic chemicals in amounts above reporting thresholds are required to report environmental releases and other waste management quantities of those chemicals annually to the TRI. For most chemicals, the default threshold that triggers reporting is 25,000 or 10,000 pounds per year. However, chemicals that the EPA has designated as "chemicals of special concern" have lower reporting thresholds and the de minimis exemption is unavailable for them. The January 2024 edition of McGuireWoods' Contaminants Compass discussed the EPA's October 2023 rulemaking that classified PFAS as chemicals of special concern. The proposed rule would expand the list of reportable PFAS to approximately 300 different PFAS. Like the PFAS currently on the TRI list, the additional PFAS would be subject to a 100-pound reporting threshold.

In addition to increasing the number of PFAS subject to TRI reporting, the proposed rule would also expand the number of PFAS subject to supplier notification requirements under EPCRA. Under 40 C.F.R. § 372.45, suppliers who manufacture, process, sell or otherwise distribute a mixture or product containing a TRI-listed chemical must compile and provide their customers with written notices identifying the name and percent by weight of each toxic chemical in their product. Because PFAS have been designated as chemicals of special concern, the de minimis exemption for supplier notifications also does not apply.

# EPA Delays Deadline for PFAS Reporting Requirement Under TSCA

The EPA issued a direct final rule on Sept 5, 2024, delaying the reporting period by eight months for the PFAS data reporting and recordkeeping requirements under the Toxic Substances Control Act (TSCA). As the January 2024 edition of McGuireWoods' Contaminants Compass covered, in October 2023, the EPA promulgated a rule requiring manufacturers (including importers) of PFAS in any year between 2011-2022 to report certain data to the EPA related to exposure and environmental and health effects. The rule established a reporting period for manufacturers to submit their reports to EPA, which was set to begin on Nov. 12, 2024, and end on May 8, 2025 (a later deadline applies to small manufacturers). EPA's direct final rule amends its October 2023 rulemaking by pushing back the start date for the reporting period from Nov. 12, 2024, to July 11, 2025, with a corresponding change to the end of the submission period. The new reporting deadline is now Jan. 22, 2026, or July 11, 2026, for small manufacturers. The EPA determined it was necessary to amend the reporting period because of "constraints on the timely development and testing of the software being developed to collect information pursuant to this reporting rule" and budget limitations.

#### EPA's PFAS Disposal Guidance Provides Best Practices, But Uncertainty Remains

Earlier this year, the EPA updated its Interim Guidance on the Destruction and Disposal of PFAS and PFAS-containing Materials. The interim guidance identifies three technologies that may be effective to destroy PFAS or significantly minimize or eliminate PFAS releases into the environment: thermal treatment, landfills and underground injection.

For each of the identified disposal methods, the EPA outlined certain minimum specifications in order to minimize the risk of future PFAS releases associated with its wastes. A thermal treatment technology should be capable of

achieving temperatures at or above 1,100° C, ensure the waste is well-mixed so it is evenly exposed to heat and have a long residence time for waste during treatment. Research reviewed by the EPA showed that insufficient temperatures, time and mixing can result in incomplete destruction of the target PFAS or even promote the formation of different PFAS distinct from the original PFAS targeted for destruction.

For landfilling, the EPA determined that both hazardous waste landfills and municipal solid waste (MSW) landfills may be effective disposal options for wastes containing PFAS, depending on the type and quantity of PFAS in the waste. As between the two, the EPA recommends disposal in hazardous waste landfills, especially when the PFAS levels in waste are relatively high, because hazardous waste landfills have the most protective landfill engineering controls and practices. However, the EPA indicates that MSW landfills may be the preferrable option for disposing wastes containing fluoropolymers, especially if the PFAS are contained in or comingled with biodegradable waste.

Regarding underground injection, the EPA recommends using Class I nonhazardous industrial waste and hazardous waste wells for high concentration liquid wastes that contain PFAS. Compared to thermal treatment and landfilling, the EPA determined that underground injection has a lower potential for environmental release because Class I wells are designed to isolate liquid wastes deep below the land surface and ensure protection of underground sources of drinking water. While underground injection is effective, the EPA identifies several practical limitations that may inhibit the widespread adoption of this disposal technology. The EPA observes that there are only a few wells that are currently receiving PFAS, which is due, in part, to the fact that Class I wells can only be constructed in certain geographic locations. Additionally, the EPA acknowledges that there are significant logistical challenges associated with transporting liquid wastes.

The interim guidance represents the EPA's current understanding of science for these technologies. The EPA cautions that significant uncertainties remain about their effectiveness and long-term risks, and that ongoing research and data may change its understanding of each technology's ability to control PFAS.

The EPA further notes that the interim guidance is not a regulation and following the guidance does not necessarily assure compliance with all regulatory requirements. Therefore, every facility that manages PFAS wastes should consider the nature of the waste, location, potential for environmental release and other factors to determine the most appropriate destruction, disposal or storage method.

### **Tips for Developing Strong Mentorship Relationships**

Hilary Soileau, K&L Gates LLP

Whether you are looking to elevate someone you respect and admire to mentor status or have had the honor having someone reach out for your mentorship recently, here are four tips to develop a more powerful mentor-mentee relationship:

- 1. **Consistency.** Even if you do not meet at regular intervals, it is important to keep in touch. Check in to find out what is going on in the other person's life. When someone goes dark, that does not necessarily equate to a lack of care. Maybe your mentor is busy with something that you are interested in learning more about afterward, or maybe your mentee is overwhelmed and needs support.
- 2. Respect. Remember both parties are investing their time in this relationship. Be considerate of that and give it active effort. As a mentor, it would be easy to blow off mentorship because it is not for your personal benefit (although most people who have ever served as a mentor can probably tell you many ways it has helped them grow and enriched their lives), but your mentee has committed their time to you. And as a mentee, that does not mean you can be passive in the relationship. Ask questions and share your goals.
- 3. Honesty. The role of a mentor, in contrast to a boss or a sponsor, is to provide guidance. This means mentees need to be able to trust their mentors enough to be honest about their situations, and mentors need to be honest (but kind!) about their feedback and experiences.
- 4. **Expectations.** Set your expectations and guidelines early on. Tell your mentor why you are seeking their guidance and what you are hoping for help with. Tell your mentee what they need to do to get something out of your mentorship or how much you can personally give to the relationship.

Good luck to all those seeking mentorship and remember to give back if someone reaches out for your support one day. Thank you to all the mentors who invest time in others; may those efforts be rewarded.

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1/23 produced water, other brines, and the substances in them—who has the right?

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