



# Frank L. Merrill

Partner



Frank Merrill is a partner and former chair of Bricker & Eckler's Energy, Public Utilities & Environmental law group. His practice focuses on all aspects of environmental law, including impacts on real estate transactions, environmental litigation and regulatory and permitting assistance. He is also the environmental counsel for the Ohio Manufacturers' Association.

Frank has successfully obtained and defended through the administrative and judicial process permits issued under the Clean Water Act, Clean Air Act, and RCRA and their Ohio-delegated programs. He routinely counsels facilities on compliance with RCRA, TSCA, Clean Water Act and Clean Air Act. In addition, he counsels real estate developers and private property owners on wetlands issues and regulatory takings claims.

## Bar Admissions & Activities

- Member, American Bar Association; Ohio State Bar Association; Columbus Bar Association

## Education

- University of Cincinnati College of Law (J.D., 1987)
- Dartmouth College (B.A., 1981)

## Awards & Recognition

- Listed, *Best Lawyers in America* (Litigation - Environmental), 2005–2021
- Recognized, *ChambersUSA*, Natural Resources & Environment with a Band 2 ranking, 2012–2020; Band 3 ranking, 2008–2011
- Columbus Lawyer of the Year, *Best Lawyers in America* (Litigation - Environmental), 2014

## Presentations & Published Works

- Presenter, "Environmental Permitting Appeals and Pipeline Construction: Are the Circuit Courts the New Environmental Review Courts?," Institute for Energy Law, June 2020
- Speaker, "Ohio Pipeline Litigation: Is the 6th Circuit the New ERAC?" Ohio State Bar Association (OSBA), 34th Annual Ohio Environment, Energy and Resources Law Seminar, March 2019

### CONTACT INFORMATION

614.227.8871  
fmerrill@bricker.com

### COLUMBUS OFFICE

Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291

614.227.2300 main  
614.227.2390 fax

### INDUSTRIES & PRACTICES

Manufacturing  
Oil & Gas  
Environmental Law  
Energy

*Frank Merrill is a highly regarded environmental lawyer whose broad expertise encompasses CWA and CAA matters, hazardous waste issues, Superfunds and the environmental aspects of business transactions.*

*As quoted in Chambers USA, 2018*



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## Professional & Community Activities

- Member, Bricker & Eckler's Southeast Ohio team
- Past President and Advisor to the Board of Directors, Ohio Alliance for the Environment
- Member, Ducks Unlimited
- Member, Pheasants Forever

## Experience

### Immediate access to construct interstate gas pipeline

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Served as appellate counsel in an appeal from a federal district court order granting a natural gas pipeline company immediate access to property in order to construct the pipeline. This was a case of first impression for the Sixth Circuit, as it considered whether to adopt the *Sage* approach. The *Sage* decision is the seminal case that outlines the process for obtaining injunctive relief to begin construction of a FERC-approved pipeline while the underlying condemnation/valuation case proceeds.

### International manufacturing facility in central Ohio

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Retained by an Italian-based company to provide all legal services in the construction and development of a 1.4 million-square-foot manufacturing facility in central Ohio. One of the main aspects of the site selection involved the environmental conditions of the site and environmental permitting issues in the project's development. In this engagement, the firm assisted with various real estate, environmental and tax matters, including the negotiation of a variety of easements. The PUCO has approved energy efficiency rebates for the company's combined heat and power systems which will result in significant cost savings and operational benefits.

### CERCLA litigation

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Served as trial counsel in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) litigation representing a current owner against various potentially responsible parties. Successfully obtained a dismissal of the original case on a statute of limitations grounds, which was upheld by the Sixth Circuit on appeal.

### Injunctive relief to obtain survey access to construct natural gas pipeline

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Obtained injunctive relief in federal court permitting our client to access landowners' property to conduct survey activities during the FERC pre-application process in conjunction with its construction of a \$450 million, 75-mile natural gas pipeline.



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## Multiple lawsuits filed in Ohio Courts of Common Pleas to obtain survey

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Obtained injunctive relief for pipeline company client as trial counsel in 11 Ohio courts of common pleas in proceedings against landowners and organized opposition, allowing client access to property to conduct civil, cultural, environmental and cultural survey activities required for FERC application process in conjunction with the client's construction of a \$2 billion, 256-mile interstate natural gas pipeline originating in Ohio. The complexity of issues in these matters required sophisticated organization, detailed planning, and fine-tuned litigation management skills.

Cases:

*NEXUS Gas Transmission, LLC v. Haubert*, Columbiana C.P. No. 2015CV275 (June 2, 2015)  
*NEXUS Gas Transmission, LLC v. Sprague*, Erie C.P. No. 2015 CV 0349 (Oct. 29, 2015)  
*NEXUS Gas Transmission, LLC v. Sean S. Shinaberry Trust*, Fulton C.P. No. 15CV000154 (July 17, 2015)  
*NEXUS Gas Transmission, LLC v. Snyder*, Fulton C.P. No. 16CV128 (July 7, 2016)  
*NEXUS Gas Transmission, LLC v. Patricia A. Wolf, Trustee*, Huron C.P. No. CVH20150491 (July 21, 2015)  
*NEXUS Gas Transmission, LLC v. Karen M. Fridenstein & Kristin H. McDonough, Trustees*, Lorain C.P. No. 15CV186926 (July 15, 2015)  
*NEXUS Gas Transmission, LLC v. Pandey Farm, LLC*, Lorain C.P. No. 15CV186926 (Sept. 4, 2015)  
*NEXUS Gas Transmission, LLC v. Hozakski*, Lorain C.P. No. 16 CV 189911 (July 5, 2016)  
*NEXUS Gas Transmission, LLC v. Lonnie Perry Farms Ltd.*, Lucas C.P. No. CI201503111 (June 25, 2015)  
*NEXUS Gas Transmission, LLC v. Houston*, Medina C.P. No. 15CIV0636 (Oct. 6, 2015)  
*NEXUS Gas Transmission, LLC v. Ohms Acres LLC*, Sandusky C.P. No. 15CV535 (June 15, 2015)  
*NEXUS Gas Transmission, LLC v. Scott L. Rathfelder, Trustee*, Sandusky C.P. No. 15CV908 (Sept. 17, 2015)  
*NEXUS Gas Transmission, LLC v. Scott L. Rathfelder, Trustee*, Sandusky C.P. No. 15CV908 (Sept. 29, 2015)  
*NEXUS Gas Transmission, LLC v. Destefano*, Stark C.P. No. 2015CV01586 (July 31, 2015)  
*NEXUS Gas Transmission, LLC v. Camelback, Ltd.*, Stark C.P. No. 2015CV01586 (Sept. 2, 2015)  
*NEXUS Gas Transmission, LLC v. Linhart*, Stark C.P. 2015CV02073 (Oct. 7, 2015)  
*NEXUS Gas Transmission, LLC v. Srock*, Wayne C.P. No. CVC-H 000304 (Aug. 10, 2015)  
*NEXUS Gas Transmission, LLC v. Adkins*, Wayne C.P. No. CVC-H 000304 (Oct. 14, 2015)  
*NEXUS Gas Transmission, LLC v. North*, Wayne C.P. No. 2016 CVC-H 000327 (July 6, 2016)  
*NEXUS Gas Transmission, LLC v. Griffith*, Wood C.P. No. 15 CV 330 (July 14, 2015)  
*NEXUS Gas Transmission, LLC v. Sprague*, 6th Dist. Erie No. E-15-069, 2016-Ohio-4901 (July 7, 2016)



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## **Secured access under eminent domain authority of the Natural Gas Act to**

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Obtained summary judgment for natural gas companies in eminent domain actions filed under the Natural Gas Act in Ohio federal district courts. Also obtained temporary restraining orders and preliminary injunctions on an expedited timeline authorizing natural gas pipeline companies to access property subject to acquisition by eminent domain to conduct tree clearing activities in advance of moratoriums imposed on such activities in order to protect migratory birds and endangered bat species; contempt orders against property owners refusing to honor the order permitting access for tree clearing activities; and immediate injunctive relief against landowners refusing to permit access to their property via eminent domain for construction of a 75-mile natural gas pipeline in eastern Ohio and a 256-mile natural gas pipeline across northern Ohio. Also, negotiated settlements with landowners who permitted access and complex, technical settlements with public utilities to resolve overlapping easement situations.

## **API government affairs and lobbying activities**

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Represent API-Ohio, a state affiliate office of the American Petroleum Institute in governmental affairs and policy work before the Ohio General Assembly, the Governor's Office and related statewide executive agencies. The firm has participated in high-profile and successful lobbying efforts regarding proposed legislative changes to the oil and gas severance tax and other oil and gas statutes in Ohio. In addition, we played an active role in numerous rule-makings before the Ohio Department of Natural Resources, including the horizontal well-site construction rules and emergency/incident notification rules. The firm has also been involved in negotiating various rule packages before Ohio EPA, the Ohio Department of Commerce and the Public Utilities Commission of Ohio relating to incident notifications, air emissions from compressors and other facilities, and call before you dig procedures.

## **Electric generation plant**

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Assisted in closing in excess of \$500 million of debt and equity financing for the construction of an Ohio-based 800 MW electric generation plant on behalf of an energy company. This transaction involved dozens of parties including lenders, equity investors, land sellers, railroads, gas pipeline companies, governmental entities, a title insurer and others.