

# GET THE ANSWERS BEFORE SIGNING A LEASE

*The answers to many of these questions should be written into your lease. Verbal assurances offer no legal protection for you. Have the Landman number and initial every page. Make photocopies of the lease. If the lease returned to you has any missing pages, cancel it immediately via certified mail, and notify the NYS Attorney General's Office.*

## **LEGAL** — WHAT ARE THE LEGAL RAMIFICATIONS OF SIGNING A LEASE?

- If I lease my "minerals", what does that include? Would I be leasing more than just natural gas? Can I lease *only* my natural gas? Only in certain formations, say *excluding* Marcellus?
  - Once I sign a lease, when do the terms of my lease expire? Isn't a 5-year lease that can automatically extended by the gas company, really a ten-year lease?
  - If the gas company chooses not to produce the gas in this well for market reasons, or any other, will that automatically extend the term of the lease?
  - Does the lease specify which layer or formation, or does it give access to all underground layers?
  - Can the gas company drill wells into *each* of the geologic formations beneath my property?
  - Don't the terms of the lease mean that the lease can be held in perpetuity, so long as *any* company leasing any one of the layers is searching for or producing gas, or storing it on my property?
  - Can the gas company drill a second well on my property before the original one plays out, and thereby extend the lease indefinitely?
  - If the company is out of compliance with the terms of the lease, how will I enforce it? Has the company put money in escrow? Will they pay for my legal expenses or will I pay for theirs?
  - If a spill occurs, and the company is sued but evades liability, will I become liable? Do I have an adequate insurance policy in place?
  - Signing a lease now may mean the lease will be active for generations. How do my children feel about my leasing the land?
  - Do I have a plan for how I will monitor the company and how I will enforce the lease? If I don't have the time and expertise, will I have to hire a consultant? If the gas company goes bankrupt, will its insurance clean up open pits, partially drilled wells, land in development or partial reclamation? Has my local governments been bonded against that eventuality?
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- If the production of this well ceases for a period of time, will the well be capped and the pad site restored? What period of non-production will trigger capping and restoration?
- As the mineral owner, am I protected from legal action in case of an accident?
- Is there a “hold harmless” clause in my contract? How do I enforce it?
- Would I be responsible for the loss of my neighbors’ water wells? Do my neighbors have the right to sue me, the landowner, for the loss of their water?
- Will my leasing affect my neighbors who choose not to lease? Can you give me a copy of the DEC Program Policy DMN-1: Public Hearing Processes for Oil and Gas Well Spacing and Compulsory Integration?
- Doesn’t ECL § 23-1303 (Authority to acquire property) mean that if gas is stored on my property, that the company can use Eminent Domain to put a pipeline through my land?

## **TAXES** — *WHAT ARE MY TAX OBLIGATIONS IF I LEASE MY MINERALS?*

- Is it true that any signing bonus and royalty checks would subject to regular federal income and state income taxes, and not the lower capital gains tax?
- If I become a non-participating operator, will I also have to pay both the employer’s and employee’s share of the Self-Employment Tax (15.3%) on any bonuses and royalties?
- Would I be taxed annually on the potential value of my minerals, through property and school taxes?
- Would I be obligated to pay this tax even if the gas company decides to curtail production from a well on my property?
- If my Town taxes gas infrastructure/equipment on my property the same as any other “improvement”, will the gas company reimburse me for those higher assessments?

## **FINANCIAL** — *WHAT ABOUT MY HOME VALUE, INSURANCE COSTS AND OTHER COSTS?*

- In Franklin and Clinton counties, mechanics liens totaling more than \$10 million have recently been filed against property owners who hosted industrial wind turbines, when the operator, Noble Environmental Power, defaulted on payments. How will my gas lease protect me from such an outcome?
- I may be responsible for fees associated with my mortgage in the event I sign a lease. Is the gas company willing to negotiate subrogation fees with my mortgage company?
- Would I be responsible for paying additionally for a title search?
- Would the gaswell’s production costs (legal, transportation, advertising, insurance and other business-related costs) be taken from the top before I receive my royalty payment? How about payments to shareholders, and corporate bonuses?
- Are there studies that report the impact on the market value of my home if I am party to a gas lease? Or if there is a wellpad near my house on a neighbor’s leased property?
- I expect a rise in homeowner’s insurance if my home is near a gas pad site. Is the gas company willing to defray that increased cost?

## **SITE** — *HOW WILL THE PAD SITE AFFECT MY HOME AND MY NEIGHBORHOOD?*

- Where will the pad site be?
  - How big will the pad site be?
  - Is there potential for additional pad sites on my property?
  - Will the company agree to limit the # of pads on my property to the spacings allowed by law at the time the lease is signed?
  - Have I seen drilling operations similar to the *largest* ones allowed by my lease, or only those shown by the gas company?
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- Will the gas company grant more than the 100' set-back from homes required by current law?
- Besides the "Christmas tree," what other equipment will be permanently installed on the pad site?
- Will there be a compression station associated with this pad site? Will there be a compression station within one mile of my home?
- Is there an existing pipeline associated with this pad site? Will the Right-of-Way be over 66' wide? Can I put limits on the pipeline company's access to my surface property?
- Is the anticipated life term for pad sites in the Marcellus shale really 30-50 years?
- When will the pad site be restored to its original condition?
- Fresh (potable) water be trucked in and wastewater trucked out from this pad site. How many trucks will access the pad site during the drilling and the fracking each day, and for how many days?

## **ENVIRONMENT — HOW DOES GAS DRILLING AFFECT MY ENVIRONMENT?**

### **WATER**

- Does the lease offered include water-supply pre-testing done by an agreed-upon third party, and paid for by the driller? Will they be required to pay for a retest by the same company if I think my water is polluted?
- Where can I find a reliable report that illustrates how much water is used during drilling and fracking?
- Where can I find a third-party report that estimates the number of times, and how often, the gas wells on my property will require fracturing?
- Does drilling production stop during drought conditions?
- Is the gas company willing to exempt water withdrawals on my property from the lease?
- Do energy companies pay for water usage?
- How is water usage metered when it is taken directly from rivers, ponds, and wetlands?
- Are drill sites exempt from the storm water run-off ordinance in my town?
- How are watercourses protected from storm water runoff on sites with reserve pits?
- Will the company agree to more than the 50' setback from watercourses required by current regulations?
- Is wastewater regulated as a toxic by-product?
- Can I get a lease to require that drilling muds and "produced" fluids coming up from the boreholes be removed from my property?
- Will the lease guarantee that deep well injection of wastewater will not be carried out on my property?

### **AIR QUALITY**

- Where can I find a government report that shows the effects of gas drilling on quality of air?
- Does my town have air quality standards for ozone that gasdrillers are required to meet?
- Who monitors drill sites for air pollution violations?
- What is flaring and how does it affect air quality in my neighborhood?
- Has there been a study to gauge how the impact of increased truck traffic will affect my air quality?

### **INFRASTRUCTURE**

- Is there a county infrastructure impact study for the gas drilling planned by the company?
- How will the county and town measure the impacts on infrastructure?
- Who bears the financial burden of road repair? Wastewater treatment plant expansions and maintenance? Increased use of emergency services?

## **SOIL / FARMLAND**

- How is soil surrounding the drill pad site protected from contaminants used during drilling? From herbicides used to keep pads weedfree?
- Who monitors reserve pits at a drill pad site? How?
- How is the soil protected from reserve pit run-off, leaks or spills?
- How are reserve pits cleaned up?
- Are companies required to submit a soil remediation plan for a drill site in the event of soil contamination?
- How is contaminated soil disposed of?
- Will there be a reserve pit associated with this pad site?
- How many gas wells are planned for this pad?

## **SAFETY — HOW IS MY NEIGHBORHOOD PROTECTED?**

- Have you talked to your neighbors? How do they feel about gas development in your community? On your property? On theirs?
- How has the [village, town, city, county] prepared for a drilling accident?
- Is there an evacuation plan available for the neighborhood in case of accident?
- Has my [village, town, city, county] fire and police departments trained for disasters related to gas drilling, possibly in an urban environment?
- What is a typical blast radius for a gas well explosion?
- What training, protocols and resources are in place to protect medical first responders, as well as secondary responders such as ER staffs, from the drilling/fracking chemicals that the gas company will not reveal?
- Does my town have a fully-functioning, quickly-responsive ambulance service?
- Who is responsible for damage to my property in case of an accident involving gas wells?
- How do neighbors contact the company with complaints of excessive noise, obtrusive lights and dangerous truck activity?
- What are my legal rights to preserve a reasonable quality of life during the life of the well?

## **SOLIDARITY — CONTACT YOUR LOCAL CITIZEN'S GROUP FOR MORE INFORMATION**

<a href="http://www.un-naturalgas.org/">http://www.un-naturalgas.org/</a>	CDOG — Chenango / Delaware / Otsego Counties
<a href="http://www.binghamtonsustainability.org/">http://www.binghamtonsustainability.org/</a>	Broome County
<a href="http://www.catskillcitizens.org/">http://www.catskillcitizens.org/</a>	Sullivan County
<a href="http://www.chenangogreens.org/">http://www.chenangogreens.org/</a>	Chenango County
<a href="http://www.damascuscitizens.org/">http://www.damascuscitizens.org/</a>	Delaware Basin NY / PA
<a href="http://www.catskillmountainkeeper.org/">http://www.catskillmountainkeeper.org/</a>	Catskill Mountains
<a href="http://www.shaleshock.org/">http://www.shaleshock.org/</a>	Shaleshock — Tompkins / Tioga Counties
<a href="http://www.schoharievalleywatch.org/">http://www.schoharievalleywatch.org/</a>	Schoharie County
<a href="http://steubengreens.org/index.html">http://steubengreens.org/index.html</a>	Steuben County

These sites are available with live links at <http://www.un-naturalgas.org/>