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Learning Too Late of Perils in Gas Well Leases

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After Scott Ely and his father talked with salesmen from an energy company about signing the lease allowing gas drilling on their land in northeastern Pennsylvania, he said he felt certain it required the company to leave the property as good as new.

So Mr. Ely said he was surprised several years later when the drilling company, Cabot Oil and Gas, informed them that rather than draining and hauling away the toxic drilling sludge stored in large waste ponds on the property, it would leave the waste, cover it with dirt and seed the area with grass. He knew that waste pond liners can leak, seeping contaminated waste.

“I guess our terms should have been clearer” about requiring the company to remove the waste pits after drilling, said Mr. Ely, of Dimock, Pa., who sued Cabot after his drinking water from a separate property was contaminated. “We learned that the hard way.”

Americans have signed millions of leases allowing companies to drill for oil and natural gas on their land in recent years. But some of these landowners — often in rural areas, and eager for quick payouts — are finding out too late what is, and what is not, in the fine print.

Energy company officials say that standard leases include language that protects landowners. But a [review of more than 111,000 leases, addenda and related documents by The New York Times](#) suggests otherwise:

¶ Fewer than half the leases require companies to compensate landowners for water contamination after drilling begins. And only about half the documents have language that lawyers suggest should be included to [require payment for damages to livestock or crops.](#)

¶ Most leases grant gas companies broad rights to decide where they can cut down trees, store chemicals, build roads and drill. Companies are also permitted to operate generators and spotlights through the night near homes during drilling.

¶ In the leases, drilling companies rarely describe to landowners the potential environmental and other risks that federal laws require them to disclose in filings to investors.

¶ Most leases are for three or five years, but at least two-thirds of those reviewed by The Times **allow extensions** without additional approval from landowners. If landowners have second thoughts about drilling on their land or want to negotiate for more money, they may be out of luck.

The leases — obtained through open records requests — are mostly from gas-rich areas in **Texas**, but also in **Maryland, New York, Ohio, Pennsylvania and West Virginia**.

In Pennsylvania, Colorado and West Virginia, some landowners have had to spend hundreds of dollars a month to buy bottled water or maintain large tanks, known as water buffaloes, for drinking water in their front yards. They said they learned only after the fact that the leases did not require gas companies to pay for replacement drinking water if their wells were contaminated, and despite state regulations, not all costs were covered.

Thousands of landowners in Virginia, Pennsylvania and Texas have joined class action lawsuits claiming that they were paid less than they expected because **gas companies deducted costs** like hauling chemicals to the well site or transporting the gas to market.

Some industry officials say the criticism of their business practices is misguided. Asked about the waste pits on Mr. Ely's land in Pennsylvania, for example, George Stark, a Cabot spokesman, said the company's cleanup measures met or exceeded state requirements. And the door-to-door salesmen, commonly known as landmen, who pitch the leases on behalf of the drilling companies also dismiss similar complaints from landowners, and say they do not mislead anyone.

The Sales Pitch

“There are bad leases out there, and, as with any industry, there have also been some unscrupulous opportunists,” said Mike Knapp, president of Knapp Acquisitions and Production, a company in western Pennsylvania that brokers deals between landowners and drilling companies. “But everyone I know who does this work is on the up and up, and most of the bad actors that there may have been before are no longer in business.”

He said that his company's leases ensure that landowners will get replacement water. The company also encourages landowners to visit an existing drilling site before signing a lease to get an idea of the potential noise and truck traffic. Some of the complaints about leases, he

said, are just sour grapes from landowners who are envious about the amount of money they believe their neighbors are earning in bonuses and royalties.

To be sure, many landowners have earned small fortunes from drilling leases. Last year, natural gas companies paid more than \$1.6 billion in lease and bonus payments to Pennsylvania landowners, according to a report commissioned by the Marcellus Shale Coalition, an industry trade group. Chesapeake Energy, one of the largest natural gas companies, has paid more than \$183.8 million in royalties in Texas this year, [according to its Web site](#).

Much of the money has gone to residents in rural areas where jobs are scarce and farmers and ranchers have struggled to stay afloat. Mr. Ely once worked for a company owned by Cabot on drilling sites in his area, until he was fired shortly after publicly complaining about Cabot's drilling practices.

But many landowners and lawyers say that gas companies are intentionally vague in their contracts and use high-pressure sales tactics on landowners.

"If you've never seen a good lease, or any lease, how are you supposed to know what terms to try to get in yours?" said Ron Stamets, a drilling proponent and a Web site developer in Lakewood, Pa., who started a consumer protection Web site, [PAGasLeases.com](#), in 2008 so that he could swap advice with his neighbors as he prepared to sign a gas lease. Others have also taken steps to better inform landowners about the details in leases. In the past several years, the attorneys general in New York, Ohio and Pennsylvania have published advisories about the pitfalls of leasing land for drilling.

State regulations also provide protections to landowners above and beyond what is in their leases.

At least eight states specifically require companies to compensate landowners for damage to their properties or to negotiate with them about where wells will be drilled, even if the lease does not provide those protections.

Asked about the leases, officials from Exxon Mobil, the largest natural gas producer in the United States, declined to comment.

Protecting Landowners

Jim Gipson, a spokesman for Chesapeake Energy, said any claims of damage can be investigated by the state and federal authorities and, he added, noise or other disturbances that may come with drilling tend to be brief.

“The most frequently asked question we receive from our mineral owners is, ‘When are you going to drill my well?’ ” he said.

Mr. Gipson said that most leased properties do not end up having a well placed on them, so those leases do not need added protections. But some consumer advocates and lawyers say that protections are needed for all leased properties, even those without wells, because drilling may occur underneath them. These advocates also say that landowners’ eagerness to start earning royalties has made them vulnerable to deceptive tactics by landmen.

“We’re in town until tomorrow,” the landmen typically say, according to interviews with more than two dozen landowners in Ohio, Texas and Pennsylvania. “We have already signed up all your neighbors.”

The landmen then claim that if you do not sign right away you will miss out on easy income because other drillers will simply pull the gas from under your property using a well nearby.

Some landmen show up in poorer areas shortly before the holidays, offering cash on the spot for signing a lease. They might offer thousands of dollars per acre as a bonus to be paid shortly after the lease is signed. Royalties, which usually run between 12.5 percent and 20 percent of what the companies make for selling the gas, can mean tens of thousands of dollars per year for landowners.

Jack Richards, president of the [American Association of Professional Landmen](#), said his members follow a strict code of ethics. His organization also encourages landowners to ask questions before they sign leases, he said.

“We promote open and honest communication between the landman and landowner before signing the lease,” he said, adding that the standard lease forms are written with some protections for landowners.

Some leases, however, also include language that comes back to haunt landowners.

“I thought I knew what the sentence meant,” said Dave Beinlich, describing a section that said that “preparation” to drill was enough to allow Chief Oil and Gas to extend the duration of his lease.

In 2005, Mr. Beinlich and his wife, Karen, signed a lease for \$2 an acre per year for five years on 117 acres in Sullivan County in north-central Pennsylvania. They soon realized they had gotten far less money than their neighbors, so they planned on negotiating a new lease when theirs expired in 2010.

A day before their lease term ended, no well had been drilled on their land, but the gas company parked a bulldozer nearby and started to survey an access road. A company official informed them that by moving equipment to the site, Chief Oil and Gas was preparing to drill and was therefore allowed to extend the lease indefinitely.

The Beinlichs have sued. Kristi Gittins, a vice president at Chief Oil and Gas, says that the company does not comment on pending litigation, but that its goal is to produce gas and it makes an honest attempt to develop the land it leases.

“Lease contracts work both ways,” she added. “Chief honors the terms of its lease contracts, and we expect the landowners who have signed the lease contract to honor the terms of the contract as well.”

But lawyers say that drilling leases are not like other contracts.

“You’re not buying a refrigerator or signing a car note,” said David McMahon, a lease lawyer in Charleston, W.Va., and co-founder of the [West Virginia Surface Owners’ Rights Organization](#), adding that once a well is drilled, it can produce gas for decades, locking landowners into the lease terms.

“With a gas lease, you’re permitting industrial activity in your backyard, and you’re starting a relationship that will affect the quality of living for you and your grandchildren for decades,” he said.

Mr. McMahon and other lease lawyers say that unlike many contracts, oil and gas leases are covered by few consumer protection laws, in part because drilling has been most common in states with less regulation.

Clauses With Consequences

“When it comes to negotiation skills and understanding of lease terms, there is a gaping inequality between the average landman and the average citizen sitting across the table,” said [Chris Csikszentmihalyi](#), a researcher at the Massachusetts Institute of Technology who created a Web site last year called the [Landman Report Card](#) that allows landowners to review landmen’s professionalism and tactics.

Some lawyers also say that there are major differences between what drilling companies tell landowners and what they must disclose to investors.

Under federal law, oil and gas companies must offer investors and federal regulators detailed descriptions of the most serious environmental and other risks related to drilling. But leases typically lack any mention of such risks.

In New York, the duration of leases has been an especially contentious issue.

As leases near expiration, some gas companies try to extend them, often by invoking “force majeure,” a legal term referring to an unforeseen event that prevents the two sides from fulfilling an agreement.

In these instances, gas companies say the unforeseen event is the state’s repeated delays in releasing environmental regulations and issuing drilling permits.

Force majeure clauses appear in as many as half the roughly 3,200 New York leases reviewed by The Times.

Another important lease term is the **Pugh Clause**, said Lance Astrella, a lease lawyer in Denver. It is named after Lawrence Pugh, a Louisiana lawyer who started adding it to leases in 1947 to ensure that they would not be extended indefinitely without wells being drilled.

Fewer than 20 percent of the more than 100,000 Texas leasing documents reviewed by The Times include such a clause, and very few of the leases from Maryland, New York, Ohio, Pennsylvania and West Virginia include the language. While the leases collected by The Times represent a small fraction of the more than 8 million oil and gas leases in the United States, experts said they illustrated issues that landowners need to understand.

Mr. Astrella said that leases also typically lacked a **clause requiring drillers to pay for a test of the property’s well water** before drilling started, and landowners often do not think to do the tests themselves. If drilling leads to problems with drinking wells, landowners have few options if they want to prove that their water was fine before drilling started.

For some landowners, it can be a costly mistake.

“It’s been one expense after another since our water went bad, and the company only has to cover part of it,” said Ronald Carter, 72, of Montrose, Pa. Mr. Carter and his wife, Jean, said they signed a lease in 2006 for a one-time fee of \$25 per acre on their 75 acres and **annual royalty payments** of 12.5 percent.

The Carters live on \$3,500 a month, including the \$1,500 per month they average in gas royalties. But they had to spend \$7,000 to install a water purifier when their drinking supply became contaminated in 2009 after drilling near their property.

The Carters joined a lawsuit with about a dozen neighbors, including Mr. Ely, accusing Cabot Oil and Gas of contaminating their drinking water.

Mr. Stark, the Cabot spokesman, said that his company was not responsible for any water contamination in the area and that Cabot's studies showed that the gas seepage into the drinking water was occurring naturally.

"All the testing we have been able to conduct show the water meets federal safe drinking water standards," Mr. Stark said.

In 2009, Pennsylvania ordered Cabot to provide the affected residents with water. For the Carters, the company has paid for bottled water and for the installation of a water buffalo next to their trailer. Mr. Stark added that his company had offered to pay for treatment systems to remove gas if it leaked into their drinking water.

Mr. Carter said that even though Cabot had paid to provide him with bottled water and a water buffalo, he can barely afford his electricity bill, which doubled because he has to heat the water buffalo to make sure it does not freeze.

Those expenses may soon go up.

On Wednesday, Cabot stopped delivering water to the Carters, the Elys and others in Dimock after state regulators said the company had satisfied requirements of a settlement agreement with the state.

"It's a little late now," Mr. Carter said. "But there are a lot things I'd like to have done different with that lease."

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