

Are You Considering Leasing Your Gas for Marcellus Shale Extraction?

Here's Some Food for Thought...

If the words GRANT or CONVEY are used in your lease, you may be selling the rights to your land permanently.

There may be MORE THAN ONE type of gas or field of gas under your property. Make sure you lease only the types/fields you want to lease. If you decide to lease multiple fields be sure that you are compensated appropriately. Include in the lease that you are not allowing the right to produce coal bed methane.

If you are asked to lease for a pipeline only, make sure you are only leasing for the pipeline and not for compressor stations, meter pits, dehydrating facilities, or other uses.

Do you want disposal of wastes under your property? You may be asked to allow disposal of carbon or brine under your land. Be aware of this.

If you lease 40 acres but only 10 are used for extraction, you may want to be able to lease the other 30 to a different company. Make sure your lease allows you to do that. (This is called a Pugh clause.)

Leases DO NOT have to be five years. You can negotiate shorter terms, like three years.

If activities on your property depend on "paying quantities," make sure this is defined in the lease so you know what the company means.

When do the well activities start? This may seem self-evident, but do they start when the actual well drilling begins or when the company starts cutting roads across your property?

Royalty amounts are negotiable. You can also determine in what part of the month your payments are made.

Be sure to understand what costs will be deducted from your payments by the gas producer. Some leases state that they will deduct any tax imposed by government bodies. There may also be a tax associated with assessment of your property. Some townships may want to impose a tax to help pay for road maintenance or damaged water supplies; your lease should require the company to pay 100% of such taxes.

You should be paid based on the highest field market price, not the lowest field market price since the company can sell gas to another company in which it has an interest causing the price to be artificially less.

Generally, shallow gas wells can be tapped for house use. Often people think they can negotiate the same deal with regard to Marcellus shale gas, however, Marcellus shale is much more pressurized and may create a safety issue. Consider taking the "house" portion as a cash payment instead.

Many gas companies want to utilize your land along with other nearby land. This could mean the lease will cover not only your land but adjacent properties (sometimes several). Make sure all of your land is included in the unit or include a Pugh clause so that you can lease the parts not in the first lease to another company. Your royalty payment should be based on your land and not dependent on the size of the unit so that adding more acreage to the unit will not dilute your royalty payment.

Consider prohibiting the company from using any water from your springs, wells, or ponds. Remember that each well can use between 1 and 5 million gallons of water each time it is fractured.

Marcellus shale wells generate a large quantity of polluted water. Be wary of agreeing to allow construction of a pond on your property for treatment and disposal of this water, and also be wary of land disposal. You may want them to haul this water away. You may want to control the location of any ponds. **KNOW HOW BIG THEY WILL BE.** Include a section in the lease stating that the ponds will be removed after well development.

Include in your lease how wide you want the roads to be across your property pre-drilling, during drilling, and post-drilling. Consider asking that gates be installed to prevent access to the roads on your property.

Any pipelines on your property should be buried to at least 36 inches after the ground settles.

If you have timber on your property, you should decide whether to have the timber removed yourself before earth moving starts.

Require that your private water supplies (wells and springs) and surface water supplies (streams and ponds) be tested as to quality and quantity where applicable by the company PRIOR TO ANY ACTIVITY. If your private water supplies are within 1000' of the well the company may be required to test your water. If you are outside 1000' you should put in your lease that the company must conduct these tests. Baseline data on water supplies is crucial in proving any future contamination.

Your lease should state that any damage to your water supplies or springs caused by the company's operations must be fixed or corrected. If drilling causes the quality or quantity of your private water supply to deteriorate, the company must replace the water supply. If surface waters on your property are affected, the company must also correct this. Your lease can specify the time frame in which you want this done.

Establish distances from your home and outbuildings where drilling and other activities may take place. Typically 300 feet from any structure is what is specified. You can restrict proximity to your home and barn. Distances and locations can be negotiated.

Include in your lease a time period for removal of all pipes, well casing machinery, equipment and fixtures after completion of extraction, and a time period for restoration of the surface of your land. Do you want a field or trees as part of the restoration? You have the right to participate in these decisions.

Include a process for you to file a complaint if you feel the company is not complying with the terms of your lease. A thirty day period after receipt of a written notice from you setting forth what you think they have failed to do is reasonable. If the company does not get a written excuse from you or fix the problem within 30 days, this can be cause for termination of the lease.

Sometimes the lease will have a sentence stating "Lessor (you) further agrees to sign additional documents as may be requested by the company to show you have title to the gas they want to lease." This means you are warranting the title to your land and/or gas. You should not do this. The company should do property and mineral searches to establish ownership. You should never sign additional documents that could potentially change the terms of the lease.

You should not be responsible for damages or problems caused by the company, including resulting nuisance or air, water, solid waste pollution unless you have contributed to the problem.

You have the right to see and copy the company's records including costs as to wells on either your property or in any unit that includes your property. You should have a written process in your lease as to how to exercise this right. For example, you could make this request in writing and then give the company fifteen days to produce the records at their office.

Ensure the company cannot lease your property to another entity and divest themselves of liability for the terms and conditions of the lease. You will want them to remain jointly liable with the new lessee.

Know what a shut-in well is. If a well is drilled but not used, it may be capped. Since the well is considered active, the lease continues indefinitely under what is called a shut-in. No royalties are paid, although a minimal fee per acre may be paid. If you are concerned about this, consider putting an expiration limit in your lease for shut-in wells.

Finally, remember that the property is still yours and you should have the right to use it and enjoy it in a way that does not interfere with the gas extraction. You should have in your lease where you do not want wells and roads, pipes and electric lines, ponds and meter sites. Otherwise, the company gets to decide.

For further questions, we recommend contacting an attorney that deals in oil and gas law. For recommendations, please contact our office at (724) 455-4200 or visit our website at www.mtwatershed.com.