

Gas Exploration and Leasing on Private Land: Tips and Guidance for New York Landowners

Summary: Natural gas exploration poses opportunities for rural economic development in New York and can provide a cleaner burning fossil fuel to meet future energy demands. However, gas development can create challenges for the relationship between private landowners and gas exploration companies. The most common first point of contact is during the gas leasing process. This information sheet is intended to help New York landowners understand the process of gas exploration and leasing. It outlines what the gas resource is, how and why landowners are likely to be contacted, how a gas lease works, and what to consider when making decisions about gas leasing. Landowners who understand the gas exploration and leasing process will make better decisions for their land and families. Assistance from public and private natural resource and legal professionals can prevent complex legal circumstances and unwanted impacts to natural resources.

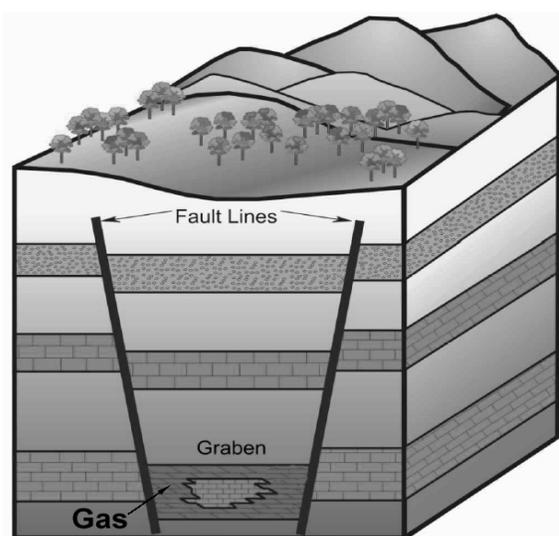
Although natural gas has been extracted from underground sources in New York since the early 1800's, new technology is making gas extraction from deep reserves more economically feasible. It is becoming more evident that the increasing demand for cleaner domestic energy will bring about continuing exploration. The gas industry is seeking points of access to potentially high volume reservoirs of natural gas (called "plays") located far below the hills and valleys of the Finger Lakes, Central New York, and the Southern Tier.

Natural gas exploration and extraction is a potentially valuable economic stimulus for rural communities in New York. As landowners are compensated for the use of the resource and as the gas industry develops the regional drilling infrastructure, the economic benefits can be significant. However, unwary private landowners can find themselves in a difficult legal situation or frustrated by gas development activity that seems erratic. Information about gas deposits and leasing is usually carefully guarded to prevent competing businesses from interfering with each other's gas development plans. Clear answers about gas exploration and leasing concerns have not been widely available. Additionally, the abrupt interest and pace of drilling have led to uncertainty and suspicion about the gas exploration process.

Property owners should understand the following key points about natural gas leasing:

- 1) Gas exploration and drilling are based on the realities of geology and speculation by gas

industry professionals. There are many gas-bearing formations throughout New York at various depths. The gas-bearing rock in the deeper Trenton-Black River formations follow detectable features from 3,500 to more than 10,000 feet underground. These features result in surface wells that usually follow discernable patterns across the Southern Tier, tracking the long and narrow depressions of ancient faults (called "graben trends"). Gas pockets in fractures or "joints" in Marcellus Shale are of interest for newer drilling technologies.



Deep underground, the shapes of rock fractures indicate potential gas deposits. Grabens are sunken depressions between faults. (Picture not to scale.)

2) Property owners generally have the right to explore and develop minerals under their property unless this right has been leased, sold, or otherwise transferred to another party. Property owners may lease the right to explore for gas to a company that has the equipment and expertise to recover or receive the gas for a period of time. Some leases pertain only to certain layers of rock or specific hydrocarbon compounds. The property owner may accept payment for the lease and royalties for the value of the gas. Public records, deeds, and real estate titles will indicate whether such rights have been leased, sold, or otherwise transferred.

3) Gas leases are legal and binding contracts. They represent an official written agreement between two parties - usually between the gas company and the landowner. Because the leases are binding contracts, it is strongly recommend that the landowner have the proposed lease reviewed by a lawyer before signing.

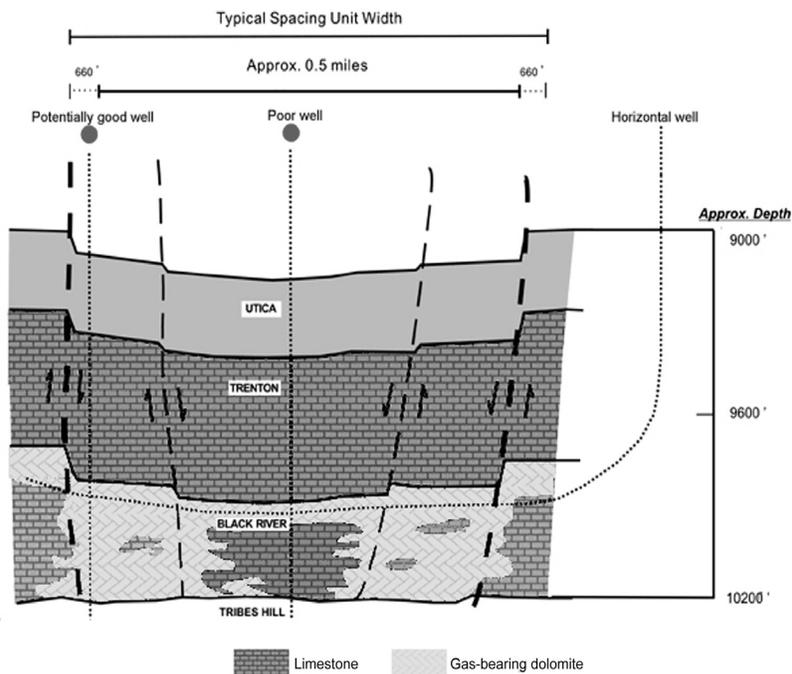
4) Gas leases are partly negotiable. To reduce the time and effort of gas leasing with many landowners, gas companies and their representatives may offer a pre-printed gas lease document. There are no standard leases, since each lease represents a unique agreement. The pre-printed version usually provided by gas company representatives can be fully accepted or rejected by the landowner, or serve as a starting point for a two-way negotiation.

Changes can often be made by including an addendum approved by both parties. It may be helpful to retain the ability to negotiate new terms when the primary term of the lease expires, so make sure you know the date it will expire.

5) New York's Environmental Conservation Law gives all property owners the opportunity to recover or receive the gas beneath their property. To protect these "correlative rights," the Department of Environmental Conservation may establish spacing units whenever necessary. Compulsory integration is required when any owner in a spacing unit does not voluntarily integrate their interests with those of the unit operator. Compensation to the compulsory integrated interests will be established by a DEC Commissioner's Order after a public hearing.

Where is the gas?

Natural gas is found trapped in rock layers such as sandstone, limestone, and shale. It was formed there millions of years ago in tiny spaces along fractures and natural pores in the rocks. During the mid 1990's, the deep geological layer of dolomite called the Trenton/Black River formation was identified as a potentially significant gas reservoir. It stretches from Kentucky and West Virginia northward to New York. Even though this layer is thousands of feet under the surface, drilling and seismic technology are advanced enough to make it



Gas well drilling and successful production depend on the surface location and direction of drilling. Many wells do not produce the expected gas.

economical for some gas companies to tap this resource. As of early 2008, the Marcellus shale layer is receiving unprecedented attention because geologists have announced potentially enormous gas reserves if the layer is drilled in a particular way. The gas extracted from wells in Upstate New York is conveyed through an interstate system of pipelines, often to terminals and utilities in the Northeast.

Who is involved in gas development?

Gas development is a mix of public and private interests. On the private side, gas companies are interested in securing rights to explore and extract natural gas as economically as possible. Gas transmission and storage companies may convey or store gas. Private landowners usually own the mineral exploration rights associated with the property. Contractors are hired to secure leases, clear drilling sites, construct and remove wellheads, build pipelines, and reclaim land impacted by these activities.

On the public side, the Department of Environmental Conservation's Division of Mineral Resources (DMN) enforces Article 23 of the Environmental Conservation Law, which regulates the identification of production units, drilling, site reclamation, and gas well safety, among other aspects in New York. The DMN oversees gas drilling techniques that could pose a hazard through brine contamination, pollution, or discharge of oil or gas into the environment. The Public Service Commission and its staff in the Department of Public Service oversee all gas pipeline safety; also, they oversee proposed routes and construction for pipelines operating at or above 125 psi. The Department of Agriculture and Markets provides technical assistance to agencies, farmland owners, and gas companies where gas pipelines affect agriculture resources. Upon request, Agriculture and Markets also provides technical assistance on well drilling pad development and mitigation on farmland. In some counties, the county Soil and Water Conservation District provides technical assistance on pipeline routing and restoration or land reclamation around well pads. Additionally, the NY Attorney General investigates complaints of gas lease violations and related legal matters.

Where is drilling taking place?

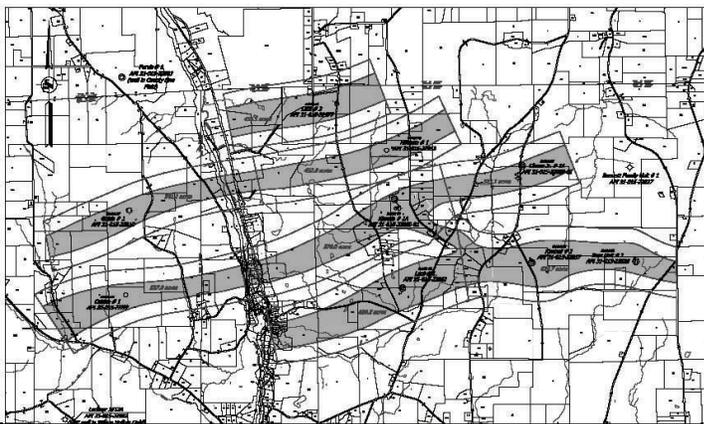
Gas wells are drilled in locations where the gas company has obtained the right, through lease, purchase, or other means, to explore for and develop natural gas. Geologic data are used to suggest a potential hydrocarbon (oil or gas) mineral trap; also, exploration companies must gain sufficient acreage

under lease to permit the drilling of a well. Wells are spaced according to mineral laws and regulations, striving to extract gas efficiently with as few wells as possible.

Geologists and geophysicists working for gas companies use seismic data to interpret the formations of rock layers underground. If seismic data suggests a reasonable possibility of efficient gas access, a well will be drilled in a specific location. Such a well is drilled using long sections of drill pipe. Depending on the geology, the drillers may drill vertically for several thousand feet, then use special joints to turn the shaft 90 degrees and continue drilling horizontally. A steel casing is cemented in place to stabilize the surface of the well bore and protect groundwater resources. A well may be evaluated to determine its productive potential by flare testing or metering. If the well is successful, a wellhead apparatus with valves and gauges will be installed to measure the flow of gas to a pipeline.

Are there environmental concerns with drilling?

One gas extraction technique, called "hydrofracturing" uses highly pressurized water to fracture rock formations deep underground. To improve performance, the water is usually mixed with lubricating chemicals. Though water quality problems with gas drilling have been uncommon due to modern regulations, monitoring, and enforcement, gas drilling waste water contamination is a possibility. The New York State Water Resources Institute at Cornell University cites wellpad and access road sediment runoff, groundwater pollution, and stream contamination as legitimate concerns, particularly with Marcellus Shale drilling.



Production units (in gray) cross many property lines, resulting in compulsory pooling and variability in how leases are structured from landowner to landowner.

How are landowners involved in the gas exploration process?

Landowners own the land and the rights to explore for gas on their property in most cases. We see signs of gas exploration in different forms — convoys of slow-moving seismic trucks, well rigs, and existing wellheads and brine tanks in a field.

Gas exploration starts with obtaining a rough “two dimensional” picture of subsurface rock patterns based on computerized seismic data. In some areas, the “three dimensional” system of seismic testing is used to clarify gas deposit geology. Extensive grids of cabling, small explosives, and geophones create and record new seismic data. The access for and temporary installation of the grid is secured with permission from the landowner. All proposed work should be clearly described in writing, including compensation for damages, before this type of work begins.

Following the two- or three-dimensional exploration process, some landowners have found themselves intimately involved in gas exploration because their property is thought to be situated near or directly above a potentially valuable pool or production unit. Gas companies must declare to the NYS Department of Environmental Conservation exactly where they have determined the surface boundaries of an underground gas deposit lie after a well is successful. Based on geologic, reservoir engineering, and production data obtained, Trenton-Black River and potentially Marcellus wells usually drain 400—600 acres. The DEC may approve smaller or larger units. Depending on the seismic data and the other factors described in this bulletin, nearly adjacent landowners may receive considerably different attention by the gas industry.

Gas leasing process and terms

Natural gas has little or no value to landowners when it is encased in underground formations. Unlike surface resources like forests, landowners are usually unable to extract the gas themselves and sell it. Natural gas becomes a valuable resource only when companies with the proper equipment and technical ability begin to extract the gas from deep underground. Users of natural gas throughout the Northeast then pay transmission companies for the gas and its dependable supply. Consequently, the owner of the land from which the gas came is compensated for its value. Part of the process of determining value and compensating the landowner for the gas is the leasing of gas rights on private land.

Leasing is necessary for companies to drill wells. Gas companies must have sufficient acreage under lease, usually 60 percent or more of a potential production unit, before a well can be drilled. If a significant percentage of properties are not leased in a prospect area, then a producer may decline to or not be able to drill the prospect.

As gas companies and geologists understand where gas drilling might be worthwhile in Upstate New York, they send contractors, called landmen, out to private homes and farms to secure the mineral exploration rights for a period of time as gas development begins. This practice helps prevent another company from tying up the mineral exploration rights and making exploration more complicated and expensive. Landmen will usually visit owners of large parcels first, to lock up as much land as possible in a short time. For landowners, this visit is often the first experience they have had with natural gas exploration.

Not all landmen are part of a gas company. Some are independent brokers, others are speculators, and still others are part of gas leasing companies. Each of these businesses will have a different motivation for securing a lease on a parcel of privately-owned land.

Depending on where seismic data suggests possible gas deposits, different landowners will receive different offers regarding drilling, exploration, surface access and payments. The following sections describe several considerations that landowners might face. In any scenario, if the pre-printed lease is to be used as the basis of negotiation, the landowner should consider using a lawyer experienced in mineral rights to review the document.

Compulsory pooling

Natural gas production units are shaped geologically, without regard to private property lines. Inevitably, gas will be extracted from underneath the property of someone who has decided not to sign a private gas lease. In this situation, the parcel will be compulsorily pooled to protect that parcel owner’s correlative rights. The NYS DEC approves the spacing unit that is proposed by a company, based on seismic, geologic, and reservoir engineering data provided to the Department. The property owner will receive a notification to participate in the public hearing process in which the spacing unit is reviewed. A gas company may then extend an offer to lease to parcels that are about to be integrated in a spacing unit. If the landowner declines a lease, then compulsory integration may occur after a notice

and hearing. Sometimes, the well has already begun production in the spacing unit, and if so, correlative rights are protected through escrow and other requirements. Landowners should pay close attention to and participate in public hearings related to gas exploration in their area.

In August 2005, New York law changed to require a landowner to choose among three options if their property becomes a compulsory part of a production unit. The three options are:

- 1) Integration as a royalty owner - You receive royalties if the unit actually produces marketable gas. This is the default option for unleased land.
- 2) Integration as a non-participating owner - the well operator first recovers 300% of your share of costs then you are treated as a participating owner.
- 3) Integration as a participating owner - you pay your proportion of well costs (nonrefundable) and receive your share of production.

Important expense and compensation details regarding each of these options are available from the NYS DEC Division of Mineral Resources.

A LOOK INSIDE A PRIVATE GAS LEASE

1) Gas lease payments

Nearly everyone who is offered a gas lease is drawn first to the payments. The original offer might include payments as a signing bonus, land rental fees, and / or royalty payments. A **bonus** payment is a one-time payment for signing the lease. **Rental** payments are made monthly or annually, depending on what is in writing. Sometimes, the bonus and rental are made in one payment for the stated term of the lease. A gas lease may also specify a delay rental, in addition to the base rental. A **delay rental** is made to compensate the landowner for delays in gas production or drilling.

TIP: When you compare payment offers between neighbors or competing gas companies, be sure you are using equal units for comparison. One good unit to compare is how many dollars per acre per year for rental, independent of a bonus payment. You may hear of rentals over \$1,000 per acre, but that figure may include both the bonus and several year's worth of payments per acre. Remember, compare equal units.

There are no "going rates" or standard rental payments for gas leases in New York. The amount offered will depend on how large the parcel is and how close or far the property is from the anticipated gas deposit. Higher bonus and rental payments are usually offered closer to optimal drilling locations. Unfortunately, the information about where the gas deposits are located is usually restricted and can be confusing for a non-scientist anyway. Landowners looking for truly "fair" compensation have little information to go on, other than discussing facts with other landowners in the neighborhood. It depends on how active gas drilling is expected to be in the vicinity. They must either trust the landman's statements or research the location of gas deposits themselves. Some landowners have been able to negotiate a bonus or rental payment upwards, but that is often because the landman had some negotiation room built in above their first offer. Property owner groups can potentially increase the market value of your lease by combining thousands of acres into collective negotiations.

Factors that may increase the potential bonus or rental payments:

- **Property occupies a large portion of a potential natural gas play**
- **Property relatively near an anticipated play or existing gas pipelines**
- **Property owner willing to allow unrestricted exploration or drilling**

Factors that may decrease the potential bonus or rental payments:

- **Property comprises a small portion of a potential gas field**
- **Property unlikely to be near a gas field**
- **Lease restricts surface operations**



Gas exploration crews may use wheeled or tracked equipment on private property to conduct seismic tests. A gas lease should contain language to ensure property damage is minimized and repaired.

Before settling on a lease, the landowner should consider what home or farm expenses might relate directly to the lease. Legal fees, property tax increases, and other expenses may be necessary to enter into a lease for the designated term. These expenses should be deducted from the offer to see the net economic gain.

The timing and method of rental and bonus payments should be clearly stated in the gas lease. Failure to make payments may cancel the lease, but only if it is so stated in the lease.

Royalties are payments that recognize the landowner's right to a portion of the value of the gas, resulting from the lease of exploration rights. The landowner is entitled to receive compensation for some of the value of their gas even without paying any portion of the cost of exploring, drilling, or operating a gas well.

Royalty payments are made to landowners based on the terms agreed to in the lease. Some leases will state the royalty as a percentage of net revenue rather than gross revenue. Landowners should understand exactly which method of royalty determination they are agreeing to. A royalty based on gross revenues will yield more money. If no lease is signed and the parcel undergoes compulsory integration, compensation, including royalty payments, is decided through the hearing process and development of an integration order.

Regardless of whether gas exploration rights are leased or not, all property owners who have gas extracted from under their property are entitled to a royalty payment, usually one-eighth. In other states and regions, gas companies may provide both higher or lower royalty payment rates for gas and oil leases. The one-eighth rate in New York has been a customary minimum and is negotiable to some extent in a private gas lease.

TIP: Only about 1 out of 10 parcels will ever see actual gas production activity, but all leased parcels typically receive rental payments. You can waste a lot of time negotiating royalties that will likely never be utilized, unless the long odds of production are in your favor. Put at least as much effort into non-royalty payment negotiations.

Leases are usually written to stop the rental payments when royalty payments begin. If the production unit only occupies a portion of the

property, the lease should be clear whether the royalty and rental terms apply to the entire parcel, or just the portion in the unit. A royalty may only apply to the producing portion of the property, yet stop rental payments on the rest of the property. If applicable, landowners should determine how a royalty payment on a portion of the property might affect their overall rental payment expectations.

A **shut-in royalty** is paid for where one or more wells are fully developed, but not producing marketable gas. This may be due to lack of pipeline connections, market timing to increase wellhead revenue, or other production and transmission circumstances. A private gas lease may state a period of time, such as six months, that the landowner would have to wait before the shut-in royalty starts. During that time, the gas company may reserve the right to change the well, drill a different well, or otherwise adjust their production activities. Very few landowners ever see shut-in royalties.

Careful reading and understanding of the lease is necessary to track what payments would come, how they are made, and when they would stop. Royalties from gas and mineral properties are taxable as ordinary income. Landowners generally report royalties in Part I of Schedule E (Form 1040), Supplemental Income and Loss.

2) Surface or Non-surface exploration

A landowner considering gas leasing should decide what level of use of the property they will allow for gas exploration and drilling. Surface exploration may include the use of tracked or wheeled equipment in fields and forests to record geologic data, the use of small explosives to create sound waves that record seismic data, movement or construction of drilling rigs, land grading of up to several acres for the construction of a drilling pad and access road, equipment storage, and parking or work site activity for personnel. Additional surface operations may

...from the Leasehold, using methods and techniques which are not restricted to geophysical and other exploratory tests; to drill, maintain, operate, cease to use, electric power and telephone facilities, and to construct pipelines with collection facilities for use in the production and transportation of oil, gas and other hydrocarbons; to lease for so long thereafter as required by Lessee, acting reasonably; to use any gas of any kind underground, regardless of the source thereof, including gas stored underground; to protect stored gas; and to operate, maintain, repair, and remove material and equipment located, all or in part, in the Town of Erin, New York, and in the State of New York.

Few landowners can read through every sentence in the pre-printed lease and understand its meaning and implication for their property.

include rigging up a drilling rig, constructing temporary pits and buildings, or wellhead placement on a successful well. Some leases also allow access to water needed to increase well productivity through hydrofracturing. This can require enormous amounts of water, which often cannot be returned to the environment, and should be given due compensation in writing. Look specifically for mention of access to water.

Some landowners restrict any surface activity for gas exploration on their land. In many of these cases, the parcel will be too small anyway to conduct worthwhile surface explorations. The gas company will often offer the landowner a gas lease that requires permission for surface access if necessary. If a lease is signed, it should be clear about what kinds of surface access and work is permitted. It should also state whether the exploration crews have permission to cut or remove trees or disturb cropland and pastures. If agriculture land is disturbed, it should be restored to full productivity and monitored for at least two years.

3) Storage of gas

In certain cases, natural gas can be pumped back into a gas well after being extracted elsewhere. Gas storage fields can be developed in depleted natural gas reservoirs, and only with a permit from the DEC (ECL Sect. 23-1301). Gas is stored to take advantage of seasonal market changes. Gas is in higher demand in the winter, so gas extracted during the summer can be pumped down into the gas formations under pressure, anticipating release closer to winter. Gas storage poses little hazard to the landowner; it makes use of depleted reservoirs.

Although gas storage can increase wellhead revenue, it can also complicate the private gas lease. It is appropriate to consider gas storage separately from the original exploration and drilling lease, and develop a separate gas storage lease, possibly for added income. Gas storage leases are often arranged with a completely different company, so if gas storage is proposed in the exploration lease, it can often be easily negotiated out.

Landowners should be alert to the ways in which gas storage will affect their lease payments. For example, a well might be shut-in and not producing marketable gas. If that well is converted for storage, a storage fee similar to a rental payment would continue, but with no royalties. These payment changes should be clearly described in the lease.

4) The other party in the agreement

When a landowner agrees to and signs a gas lease, they are entering into a binding legal relationship with a business that may continue for many years. Before signing the lease, the landowner should know exactly with whom they are making the agreement. The other party (“the Lessee”) may or may not be a gas company, but rather a speculator, a broker, or an independent landman who will sell the lease or take partial ownership of the royalty. Landowners who intend to sign a gas lease should be ready to negotiate a clause making lease assignments or sales subject to their approval.

Entering a gas lease is complicated enough, so it is appropriate to inquire about the affiliation of the landman, with such questions as:

- Can you verify your registration as an operator with the DEC?
- Has your company drilled any wells in New York?
- Does your company have any violations on record elsewhere?
- Which company do you represent and how can I contact them or your supervisor?

5) Leasing considerations for site-specific factors

Many landowners are not sure what is worth negotiating and what is not, particularly when there is little information given about the potential for drilling. Landowners who wish to control surface activity on their property can stipulate such details as road construction, repair or compensation for timber stand damage, effective restoration of impacted farmland, and other site-specific factors in a private lease. If a lease agreement allows for any surface access, the landowner should ensure that their interests are protected in writing, including:

- Distance of surface operations from structures or water resources may need to be 350 - 500 feet, rather than the regulatory requirement of 100 feet from private residences or 50 feet from a water body.
- Extent to which water may be used - such as from a farm pond or a creek during the drilling process. Some drilling techniques require thousands to millions of gallons of water.
- Fairly assessed value of, and compensation for, damage to crops, timber, or water resources.
- Implementation of effective conservation and land restoration, such as:
 - Protection of agriculture soils during exploration and well operations, so farmland is restored to full productivity afterwards.
 - Protection or replacement of farm

infrastructure, such as roadways, livestock travel lanes, drainage features, and fences.

- Road location and construction review by landowner and a qualified engineer or forester.
- Site of well relative to other property uses.
- Possible timing of surface operations to allow for livestock pasturing, hunting, or other rural land activities that have restricted seasons.
- Separate written agreement on location of pipelines in the property.

MAKING DECISIONS ABOUT GAS LEASING

Thousands of New York landowners have faced or will face a common situation: sitting at the kitchen table, holding a pre-printed gas lease contract, wondering whether to sign it. The decision to sign it rests entirely with the parties named in the lease document. There is no legal requirement that would force a landowner into signing a lease with a gas company. Public authorities cannot use the power of eminent domain in the natural gas exploration process. It tends to be a private affair, with regulation and oversight by the public authorities noted above. The following sections provide some considerations regarding gas leasing, but are not intended to represent legal advice. Consult an attorney before making legally binding decisions.

Benefits of signing a gas lease

An effectively formulated gas lease can benefit people who desire a clear, private agreement in place during the gas exploration process. It should spell out the rights and responsibilities of each party in the agreement, how problems are to be handled, and how long the agreement lasts.

Many signed gas leases are accompanied by bonus and rental payments that last through the primary term of the lease - usually a 5 year period. Gas production in the vicinity may lead to a secondary term that lasts as long as production is active, as defined in the lease. Only a small number of leased parcels eventually become part of an active production unit, in which royalties are paid on the value of the gas recovered.

Real estate with a favorable gas lease can be more attractive when put up for sale. A final benefit is having a set timeframe under which the lease will operate, such as for five years. This is called the primary term. However, to preserve access to potential gas deposits once production has begun, gas companies will often insist on a continuation

clause or secondary term, extending the lease until gas production ceases. The landowner should clearly interpret the wording of every clause in the lease to understand exactly how the lease may continue into a secondary term.

TIP: Many landowners overlook terms regarding lease expiration. Review all clauses carefully so you know when the lease is completed. If the actual duration of the lease is uncertain, use legal counsel to clarify this matter. It is important for your real estate plans.

Since landowners are not obligated to sign a gas lease, the decision to sign one is based on personal circumstances. Financial issues play a large part in the decision, but land use and mineral rights are an equal part of the picture. A landowner may sign a gas lease if they are comfortable and familiar with the terms and conditions of every clause in the lease. On the other hand, if part of the agreement is unclear or seems unfair, the landowner can negotiate such clauses until they feel their interests are tended to. An attorney can assist with this process and should be consulted if the discussion goes beyond the capacity of the landowner.

Drawbacks of signing a gas lease

A gas lease is either a temporary or long term commitment of some of the land's resources to a gas company in return for a defined level of compensation. The landowner, heirs, or estate may be locked in to the original agreement until they take prescribed steps or wait out the life of the lease. The lease might represent a lien on the property, requiring additional legal arrangements during a property transfer, mortgage refinancing, or attempts to borrow against the value of the property. After signing a lease that was not fully reviewed or was poorly formulated, some landowners find that problems are unexpectedly difficult to resolve due to the provisions of the lease. There may be additional farm and home expenses related to the development of a lease as noted above.

Gas lease language

The language on a gas lease contract is difficult for most non-lawyers to understand. Sentences tend to be long and tedious, full of commas and legal terms landowners do not see very often (judicial determination, leasehold, lessee, cash equivalency, etc.). Few landowners can read through every sentence in the pre-printed lease and understand its meaning and implication for their property. Gas company representatives may interpret the wording,

but anything they say out loud is not what will bind the parties in the contract. The wording in the printed contract will bind the landowner to the gas exploration process, for better or worse. The pre-printed lease gas companies provide is usually as favorable or more favorable to them than to the landowner.

The role of legal counsel

A qualified attorney can interpret a gas lease document and assist a landowner. If the attorney is legally representing the landowner, they can suggest changes, amend the document, and add the specific terms the landowner may be seeking. Finally, an attorney can represent the landowner if trouble arises. For example, if royalty payments are not made in the manner agreed to in the lease, an attorney can employ their knowledge and influence to resolve the matter. Many lawyers in New York are able to help with gas lease contracts; however, some attorneys have additional experience in mineral rights to work out special arrangements. It is fair to ask a lawyer if they have experience with gas lease contracts and what compensation will be required for their assistance.

Gas leasing and property tax assessment

Gas and oil producing properties are assessed differently by the NYS Office of Real Property Services than properties with no gas development activity. The structures and agreements used in gas exploration on private property are collectively called an "Economic Unit." According to ORPS, an "Economic Unit" is defined as real property, subject to taxation and assessment, including the oil and gas, and any and all equipment and fixtures necessary to extract and collect the oil and gas available for commercial sale. Section 39 of the General Construction Law indicates that "rights" are real property for tax purposes. This provision means that the oil and gas rights, not the lease, are assessed. If gas rights are transferred in a lease from the landowner to the gas company, the rights are assessable to the owner/operator of the well. Whether or not a landowner will face a higher assessment on their property due to gas exploration and drilling varies with individual circumstances. Questions and concerns about the effect of gas leasing on your property taxes should be directed to the town assessor where the property is located.

Private access to a gas well

In the past, New York's more shallow gas wells were conducive to private home and farm supply. Once the well was drilled, a supply line and regulator

diverted an unmetered portion of the well's production right into a home or farm sharing the property. The deep wells currently being drilled are providing gas under too high a pressure to allow for private use. Rather than setting up "free gas" arrangements, gas companies are compensating landowners for the economic value of the gas. This is part of the gas leasing process, only on properties on which a well is drilled.

For more information . . .

Cornell Cooperative Extension offices in New York State provide education resources for landowners concerned about the natural gas leasing and exploration process. County Extension offices may host an educational workshop, discuss leasing arrangements, or refer you to regulatory or legal specialists to help landowners. Extension educators cannot provide legal advice, but will provide additional insights about gas leasing and the questions to ask.

The NYS DEC regulates oil and gas well drilling in New York State. Questions regarding drilling and potential environmental impacts, permitting, requirements for plugging, and site reclamation should be referred to the DEC. Questions regarding well spacing, compulsory unitization, and related hearings should be referred to DEC's Central Office staff.

New York Farm Bureau, the leading agriculture issues organization in the state, is helping landowners by providing insights from individuals experienced in gas leasing as well as lawyer referrals. Each county has a local volunteer Board that develops public policy ideas and other initiatives from Farm Bureau members.

Additional reading on the Internet

Tips for Landowners from the NYS Department of Environmental Conservation

<http://www.dec.ny.gov/energy/1532.html>

NYS DEC Guide to Landowner Compulsory Integration Options

<http://www.dec.ny.gov/energy/1590.html>

New York State Water Resources Institute at Cornell University

<http://wri.eas.cornell.edu/>

Pipeline Right-Of-Way Construction Project Guidelines — Agricultural Mitigation. NYS Department of Agriculture and Markets.

Available online at <http://www.agmkt.state.ny.us/AP/agservices/WEBAPConstrGuides.pdf>

Who to call about what:

Gas drilling regulations in DEC Regions 6, 7, and 8

NYS DEC Division of Mineral Resources, 6274 East Avon-Lima Road, Avon, NY 14414
(585) 226-2466 - Ask to speak with Division of Mineral Resources, Oil and Gas Regulation staff.

Gas well spacing and compulsory unitization

New York State DEC Division of Mineral Resources, 625 Broadway, Third Floor, Albany, NY 12233-6500
(518) 402-8056

Gas lease contract provisions

Qualified private attorney (personal referral or use telephone book) or Cornell Cooperative Extension (non-legal advice)

Gas pipeline routing or safety concerns

NYS Department of Public Service Consumer Services Division — 1-800-342-3377

Mitigation planning for pipeline crossing or well site location affecting agriculture property

NYS Dept Ag & Markets, 10B Airline Drive, Albany, NY 12235 (518) 457-7076

Land resource and conservation management

County Soil and Water Conservation District (Use telephone book in your county)

Concern about violation of environmental conservation law – (e.g. discharge of pollution)

NYS DEC Division of Mineral Resources – Regions 6, 7, and 8
6274 East Avon-Lima Road, Avon, NY 14414
(585) 226-2466 - Ask to speak with Division of Mineral Resources, Oil and Gas Regulation staff.
or
NYS Environmental Conservation Officer in an emergency or after hours (Use telephone book in your county)

Complaint about gas lease violation

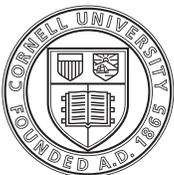
Qualified private attorney (personal referral or use telephone book)
or
Office of New York State Attorney General Consumer Helpline: 1-800-771-7755

Gas storage

NYS DEC Division of Mineral Resources – Regions 6, 7, and 8
6274 East Avon-Lima Road, Avon, NY 14414
(585) 226-2466 - Ask to speak with Division of Mineral Resources, Oil and Gas Regulation staff.

The information contained in this publication is intended solely for the education of individuals who are interested in the subject of gas exploration and leasing on private land. Neither the Cornell Cooperative Extension system nor the authors or contributors to this publication are making recommendations either for or against the leasing of private lands for purposes of gas exploration.

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