

NYS Attorney General's Office Advises Dryden Residents on Gas Leases
Warns Landowners to be Cautious
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The Department of Environmental Conservation (DEC) expects to publish the draft Supplement to the Generic Environmental Impact Statement (dSGEIS) sometime next month. The long-awaited document will specifically address horizontal drilling and high-volume hydraulic fracturing that will be used in extracting natural gas from Marcellus shale.

As the deadline for the dSGEIS approaches many expect leasing activity, and the attendant pressure tactics used by landmen, to ramp up. Recently a caller informed *Broader View Weekly* that a landman, trying to get an elderly couple to sign a lease, told them that if they didn't sign "the government will take your land away from you".

The NY State Office of the Attorney General continues to receive complaints, and last Thursday they held a meeting at the Dryden Fire Station to advise landowners on how they can protect themselves when negotiating oil and gas leases.

"There's good news and bad news," said attorney Michael J. Danaher, from the Binghamton regional office of the OAG. The good news: that some landowners in the region have seen higher bonus payments and royalty offers. The bad news?

"There continue to be stories about misleading, abusive and fraudulent leasing tactics," Danaher said. He added that there are also a number of environmental concerns, including the amount of water needed to drill Marcellus wells, the chemicals that will be used in the fracking process, and how the wastewater will be treated or disposed.

While the OAG does not address environmental concerns, they do address consumer protection and leasing issues. The first thing all landowners need to understand is that a lease is a contract, Danaher said. Before signing a lease, it is important that you understand every term and every clause contained in the document.

"I cannot stress this enough: consult an attorney who understands gas leases before you sign," Danaher said. Once signed, a lease is a binding contract. It not only gives rights to the gas company to explore, drill and produce gas on your property, but it may also give them the rights to put in pipelines, storage facilities and more.

"Therefore it has an impact on your title, should you want to sell," Danaher said. A gas lease is a lien on your property.

Force Majeure

Many leases have a "force majeure" clause. This clause excuses the gas company from fulfilling its contractual obligations due to unforeseen events beyond its control, such as floods, hurricanes, and other "acts of God" as well as terrorist attacks, civil unrest and acts of war.

Due to the year-long DEC study for the SGEIS, a number of gas companies are arguing that they have not been allowed to drill, Danaher said. Gas companies argue that because there is no SGEIS, they cannot drill.

“I’m not saying their interpretation is correct,” Danaher said. “In fact, I have a gentleman’s disagreement with it.” He explained that gas companies claim they have been told by DEC to not bother applying for a site-specific Environmental Impact Statement (EIS) because it will take longer.

In response to questions, Danaher conceded that leases did not limit the gas companies to drilling only in the Marcellus, so they could be drilling and extracting gas from other layers. In addition, many of these leases were signed well before Marcellus became the hot target for exploration.

“This is a battle that will be brought to the courts in the not-too-distant future,” Danaher said. He added that the OAG will be holding discussions with the gas companies “soon”, but he could not talk about any details at this time.

A Question of Ethics

In addition to using the “force majeure” clause, gas companies seem to be using a number of other tactics to extend their leases.

One landowner asked Danaher to clarify what “activity” means. “I have a lease that is about to expire,” he said. “But the gas company said that if I didn’t renew, all they have to do is send a steam shovel out to dig up a bit of land to show that they are actively exploring.”

“It will take more than that,” Danaher said. “There is good faith in a lease and they have to do more than put a piece of equipment on your land.”

Another person said that just as his lease was set to expire, he received a check in the mail. “If I don’t cash that check, does it mean I reject the contract?” Danaher said that simply not cashing the check is not enough. He encouraged landowners in this situation to seek legal advice and make sure their lease was not extended simply by the act of the gas company tendering the check.

“Can’t the Office of the Attorney General require gas companies to sign the same Code of Conduct as the wind energy companies?” asked one landowner. Danaher explained that the OAG drafted a code of conduct for gas companies and invited them to the table.

“They rejected it,” Danaher said, noting that the companies wouldn’t even discuss the issue. Danaher declined to elaborate on specifics about the gas company code of conduct except to say that it was similar to that signed by the wind energy companies on July 29.

Danaher reminded people that while the OAG cannot take on individual cases, they represent the “people of New York” as a whole. “We need to be able to show a repeated, persistent problem,” he said, and reminded landowners to contact the Office of Attorney General if they experience leasing problems.

You may contact the State OAG at 800-771-7755 or the Binghamton regional office at 607-721-8771. To learn more about gas leasing go to www.oag.state.ny.us/bureaus/consumer_frauds/oil_gas.html

Sidebar: (LUCAS – “sidebars” get boxed and put near the article. The word “sidebar” gets stripped away)

Code of Ethics for Wind Companies

On July 29 all 17 wind energy companies signed onto the “Wind Industry Ethics Code”. This code prohibits conflicts of interest between municipal officials and wind companies and establishes public disclosure requirements.

The code bans wind companies from hiring municipal employees or their relatives and prohibits giving gifts of more than \$10 during a one-year period or providing any other form of compensation that is contingent on any action before a municipal agency.

The code prohibits wind companies from soliciting, using, or knowingly receiving confidential information acquired by a municipal officer in the course of his or her official duties.

The code requires wind companies to establish and maintain a public web site to disclose the names of all municipal officers or their relatives who have a financial stake in wind farm development. It also requires wind companies to submit in writing to the municipal clerk for public inspection, and to publish in the local newspaper, the nature and scope of the municipal officer’s financial interest.

To read the entire Code of Ethics go to www.oag.state.ny.us/media_center/2009/july/pdfs/July%202009%20Code%20of%20Conduct.pdf