

When Leases Go Bad: Gas Leases Raise Many Questions

by Sue Smith-Heavenrich

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As energy companies rush in to grab land leases, some Southern Tier landowners are finding out that what looked like a good deal a few months ago really wasn't so good. Within the past two years, lease offers have skyrocketed from \$5 to \$10/acre (2007) to \$200/acre (February 2008) to \$2000/acre (August 2008) in Candor, and more in other locations. Last week Exxon Mobil signed leases in Pennsylvania for up to \$5800/acre for the rights to drill on state land, while gas leases in Texas are going skywards of \$20,000/acre with royalties of 25 percent and more.

In the past, when landowners have complained about leases they haven't had much recourse. A lease is a contract and, like any other type of lease, in an oil and gas lease a landowner ("lessor") grants to a business (the "lessee") the right to extract oil and natural gas from beneath a landowner's property. The lease contract details the rights and obligations of both the landowner and the business.

"In most cases, landowners will be bound to the terms and conditions included for the duration of the lease," NY Attorney General Cuomo said in a press release last week. However, in the past months hundreds of landowners have complained about being pressured to sign leases by unscrupulous landmen.

The complaints have paid off because last week Cuomo stated that the attorney general's office is taking action. "The Attorney General's Office has become aware of potentially misleading or improper tactics used by certain exploration and development companies to obtain leases from landowners," Cuomo told the press. Now his office is investigating what he called a "significant number" of complaints.

Rudy Weber, who started the website www.cheapgaslease.com, said that on August 28 over 200 disgruntled lease-owners met with lawyers in Hancock to discuss possible action. One 82-year-old woman said that a landsman came to her home at 6pm and spent three hours talking until eventually she caved in and signed.

Weber said he signed a lease with Chesapeake for \$200/acre only to see the company offer \$750/acre less than a month later. When another energy company, XTO, offered \$2400/acre, Chesapeake then raised their offer to \$1750/acre. Weber feels ripped off – and angry.

"We need more disclosure," Weber said. He compared leases to selling homes. "If I were a realtor and sold you a house without disclosing the presence of termites, I'd lose my license." Weber pointed out that consumers are protected with a "lemon law" for used cars, but there are no protections for bad gas leases.

According to Weber, many of those at the Hancock meeting claimed landmen used high pressure tactics and fear to get them to sign. Landowners reported landmen saying such things as: "if you don't sign we'll take your gas anyway," and "don't tell your neighbors

I'm offering you \$50/acre because it is too much," implying they could get in trouble for offering such a "great" deal.

Weber noted that the attorneys present at the meeting feel there is merit to the complaints. "One of them said he'd like to get all those leases voided and come back to the negotiating table," Weber said. The attorneys have already arranged a second meeting with Hancock area residents to go over individual leases and may decide, at that time, what course of action to take.

It's not just folks who've recently signed that feel they've been cheated. Farmers who have leases signed years ago are feeling pressured by energy companies to sign top leases extending their exploration rights. One farmer said that he felt like if didn't sign, the gas company would begin exploration to extend the lease anyway.

Another farmer is furious about how the companies are exploiting landowners. A portion of her farm, about 400 acres, is leased. Last year 3/5 of an acre – a fraction of one percent of the leased acreage – was included in a drilling unit. According to the lease terms, the rest of the land remains tied up in the lease until the well stops producing.

Even worse, the energy company has told her that land in two tax parcels – land that was intentionally left out of the original lease – is now considered to be part of the leased tract due to the "Mother Hubbard" clause.

A "Mother Hubbard" clause gives the Lessee certain rights in lands adjacent or contiguous to the lands specifically described in the "description" portion of the lease. According to Elmira attorney Christopher Denton, the clause historically applied to strips of land that fell between fences and the actual boundary lines of a farmer's property.

"In my case, we never intended those particular parcels to be leased," said the farmer. "Now they claim to have it all."

"The interpretation advanced by the gas company ought to be reported to the Attorney General," Denton said. He urges landowners currently negotiating leases to strike the "Mother Hubbard" clause from their leases. Denton also advises landowners to lease each tax parcel separately and to incorporate language for a "Pugh" clause which releases any land not included in a drilling unit at the end of the primary term of the lease.

Attorney General Cuomo encourages landowners who feel they have been pressured by landmen to sign leases, or feels they have been defrauded by the companies, to contract the office of the attorney general at 800-771-7755.