

Don't Rush to Sign a Gas Lease

Attorney suggests ways to protect yourself and maximize your earnings

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There weren't many empty seats at the most recent Tioga County Landowner's Group meeting. On Tuesday, October 26 hundreds of people filed into the Candor High School auditorium to learn more about gas leases. Nick Schoonover opened the meeting with a slide showing output from the top ten producing wells in Pennsylvania.

"Those figures are billion cubic feet," Schoonover emphasized, reminding landowners that they deserve a fair and equitable deal in gas leases. Despite the 900-plus "Friends of Natural Gas" signs that members have displayed in their yards, some landowners are still stuck in old Chesapeake leases they signed for anywhere from \$5 to \$50/acre. He noted that Chesapeake flipped more than 1500 of those leases for \$5,000/acre.

"The ones making the money are the energy companies, at the expense of the landowners," Schoonover said. He warned landowners that some companies are currently going around Tioga County, trying to woo coalition members with below-market offers of \$2500/acre and 17 percent royalties. "Recent leases in PA are bringing in twice that and 20 percent royalties," Schoonover said, adding that company leases are written to protect the company, not the landowner.

Pipelines Present Economic Opportunities

Attorney Chris Denton spent the remainder of the meeting touching on emerging lease issues. One of these is establishing a value for pipeline right-of-ways (ROW). Denton mentioned the Laser pipeline project in Broome County. The 16-inch "gathering" line is proposed to transport gas from wells in PA to the Millennium pipeline. About 95 percent of the landowners across whose land the pipe would go are in favor of leasing a ROW, Denton said.

The problem with most leases is that they give away pipeline rights. Denton wanted to see how other entities negotiate ROW so he looked at how the U.S. Bureau of Land Management (BLM) and tribal nations deal with pipelines. Indian Nations and the BLM are sovereign entities, Denton noted. That means a pipeline company cannot use eminent domain to obtain a ROW. Furthermore, tribes negotiate specific term limits – about 10 years – for pipeline easements.

Denton explained that the landowners negotiating with Laser, incorporated some of these things into their easement negotiation. They also negotiated for a 40-foot width instead of 100 feet, using John Lacey's research on easements and pipeline mitigation, and added limitations that prevent Laser from subletting the ROW to other interests such as cable companies or other pipelines.

The idea, Denton said, is to reserve the economic opportunities for landowners. By refusing to sign a corporate lease, the landowners came out ahead. Instead of the usual \$3 to \$5/foot for pipeline ROW, they negotiated a fee close to ten times higher.

The New Normal

The primary reasons for forming a landowner coalition are to protect the land and to maximize the economic opportunities for landowners involved in gas leasing. Denton reminded people that the group's lease includes mandates for baseline water testing and monitoring before, during and after drilling; closed-loop drilling and waste fluid recycling, no pits or impoundments, and disposal of cuttings off-site.

"Two years ago we asked for these things and gas industry representatives rolled their eyes," Denton said. "But now in PA they are doing all those things because they are required to by regulations." What that means, Denton said, is that these lease provisions are not too tough.

Denton also noted that there is a lot of development in alternative fracturing technology. Companies are using gas to frack wells in Texas, and that might result in a decline in hydraulic fracturing, he said.

Hold Out for Long-term Benefits

Denton echoed the warning that companies are trying to break the solidarity of landowners in coalitions. "They're counting on the flashbulb effect," he said, referring to the flash of money that distracts landowners from the small print in the leases.

"Remember: the money is there," Denton said. He encouraged landowners to wait until they have a strong lease that protects their investment in their land and future use of the land. "The money will always be there because we have a stacked play," Denton added. While companies focus attention on Marcellus, Tioga landowners need to remember the Utica and other layers of gas-bearing strata beneath their feet.

There are many economic opportunities that come with surface rights, Denton reminded people. In addition to pipeline ROWs there's access for wind power, recreational uses and habitat. Some PA landowners have discovered to their dismay that leases granting ROW also allow the companies to erect temporary housing.

"They will take these economic opportunities from you if you don't read the language," Denton said. As you read a lease, constantly ask "why do you need this?" If it doesn't help them develop their pipeline (in a ROW easement) then don't grant it.

Denton also cautioned landowners that right now is a period of uncertainty, as the Department of Environmental Conservation (DEC) hasn't yet released their Supplemental Generic Environmental Impact Statement (SGEIS). He also pointed out that most of the Marcellus drilling in PA is right along the NY border – that's where the best production is right now – and large energy companies are beginning to move in. Shell recently bought up East Resources, Denton pointed out.

A combination of uncertainty and fear of losing out in the Marcellus play may bring small companies in now to try to lease up land before the larger corporations tender offers. Denton pointed to Inflection's below-market offer to Broome County, noting that leasing pressure on landowners will only increase over the short term.