

Attorney General's Office Educates Landowners on Gas Leases

by Sue Smith-Heavenrich

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With the recent flurry of leasing activity across the state, the NYS Office of the Attorney General (OAG) is receiving an increasing number of calls about questionable leases and problems with landmen. In an effort to help landowners understand their rights in negotiating a lease, the OAG has been holding forums across the state. Over 400 people showed up for the most recent Landowner Rights Forum held at Broome Community College on Tuesday, September 16.

Before tackling the problems with leases, assistant attorney general Mike Danaher, from the Binghamton AG's office, opened with an explanation of what's been happening with the price of gas in the past few years. In the past six years the price of natural gas has more than doubled, rising from \$7.89/thousand cubic feet (mcf) in 2002 to \$13/mcf in 2007. As of June 2008 the price was \$18.31/mcf.

The increasing price reflects the increase in consumption, and all of this is driving the interest in increased drilling in our area. In addition to increased demand for gas there have been advances in the technology used in testing and drilling for gas. Horizontal drilling and 3-D seismic testing are two technologies that make extracting gas from unconventional sources, such as shale, more economical for energy companies.

The good news, Danaher said, is that the increased interest in gas exploration in this area means additional revenues for landowners and gas companies. It allows for more use of US-based resources and a decreasing dependence on foreign oil and gas.

The bad news, said Danaher, is that some landowners have been victimized by misleading, abusive, and fraudulent leasing tactics. "The landman's job is to obtain leases on as large an area as possible," Danaher said. "Many of these landmen are honest, hardworking people. But there is a small percentage that may not be honest."

Danaher explained some lease basics: a lease is a binding contract that details the rights of a company to explore, drill, extract, and carry out other activities on your land. "If you walk away with only one thing from tonight's talk, it should be this: you should and must consult your own attorney before you sign a lease," Danaher told the landowners.

After reviewing key terms in a lease, Danaher went through the top five misleading or misunderstood statements made by landmen during lease negotiations:

1. *Your land will (or won't) be included in a drilling unit.* "Neither the landman nor the gas operator can guarantee that you'll be part of a drilling unit," Danaher said. "DEC determines the unit."

2. *This is a standard lease and it's not negotiable.* “There is no such thing as a standard lease,” Danaher emphasized throughout the evening.

3. *All your neighbors have signed and you're holding things up by not signing.* It's rare that a single landowner's reluctance to sign a lease is holding up the exploration and drilling, Danaher pointed out. This is just a pressure tactic.

4. *Don't you want to receive \$(fill in the blank) every month?* A landman cannot tell you how much you will receive in royalties if you sign a lease. He might offer some examples to demonstrate how royalties are calculated. “Disregard the money and follow the formula,” Danaher said.

5. *If you don't sign we'll take the gas from your property anyway.* Not true, stressed Danaher. If your property is included in a drilling unit you will receive your share of the royalties.

Landowners often feel pressured to sign a lease. “Understand that it is your property and do not be bullied into signing a lease,” Danaher said. Landowners who are feeling pressured should write down the name, address, and phone number of the landman as well as the business he represents.

A landowner has the right to request that the landman leave the property and not return or make further contact. If the landmen persist, a landowner should write a letter to both the landman and the business he represents, re-stating the request. If this doesn't work, then consider contacting local law enforcement for help.

As for problems with leases, the attorney general's office cautions landowners to make sure that everything they agree on is put into writing. “Then make sure you have a copy of your signed lease before the landman takes it to the office,” Danaher said. “Also, demand that they mail you a fully executed copy with the gas company signatures. Negotiate into the lease that it will be effective only after you receive a fully executed copy,” Danaher added.

As he listed other problems landowners have had with gas leases, Danaher said, “You need to become informed and be responsible in undertaking this [gas leasing].” His best advice? Consult with an attorney, ask lots of questions of the landman or gas company, and obtain in writing everything promised and agreed upon.

In the event that you notice something after signing, landowners have three business days to cancel the lease.

Contact information for landowners:

Office of the Attorney General
800-771-7755
www.oag.state.ny.us

New York State Farm Bureau
518- 436-8495
www.nyfb.org

NY State DEC division of mineral resources
518-402-8056
www.dec.ny.gov