pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Landowners and Oil and Gas Leases in Pennsylvania

Frequently asked questions by landowners about oil and gas leases and drilling

What is a lease?

A mineral lease is a contractual agreement between the owner of a mineral tract (the lessor) who grants the right to develop deposits of the mineral to a producer (the lessee). Oil and gas can be sold or leased separately to different parties. Different deposits of the same minerals in different formations can also be leased or sold separately. Usually, a lessee will insist on the right to sell or reassign a mineral lease to another party. Because a mineral lease gives the lessee a property interest in the mineral, leases should be recorded at the Recorder of Deeds office of the county where the leased tract is located. A lease is usually secured by annual rental payments, or a royalty on production paid to the lessor.

I am considering leasing oil and gas property to a producer. What should I do?

- Promptly consult an attorney who knows oil and gas law. Contact the local county bar association for assistance.
- Negotiate lease payments. Typically, a lease payment holds the lease on the oil and gas property until drilling and production occur, and thereafter, the lease is held by production until production stops. Depending on the mineral resource, annual rentals can range from a few dollars to hundreds of dollars per acre.
- Negotiate the royalty amount. The minimum royalty on production paid to oil and gas lessors in Pennsylvania is set by law at 1/8 of the value of the produced oil or gas. Although the lessor may seek greater royalty amounts, the lessee is not required by law to pay more. (Oil and Gas Leases, *58 P.S. § 33 and § 34*).
- Be mindful of lease terms for expiration should production cease, or if the lessor fails to produce oil or gas within a specified period. Questions about ownership of wells and equipment may remain if a lease expires and wells are not plugged.
- Write into the lease agreement protections necessary for crops, livestock, buildings and personal property.

I own the surface, someone else owns the gas or oil, and a driller is looking over my land. What should I do?

- Promptly consult an attorney who knows oil and gas law. Contact the local county bar association for assistance.
- Pennsylvania recognizes the rights of a mineral owner to develop the resource. If a resident does not own the oil and gas under their land, they cannot prevent the mineral owner's reasonable access for development and production.
- Try to work with the driller on the location of the facilities—well site, access road, gathering pipeline, etc.
- Negotiate a reasonable price for damage to crops, cropland, timber, etc., before clearing work begins at the well site.
- Request that the well operator hire a certified lab to analyze any source of water used as a water supply for people, animals or crops before drilling begins. This is to document the pre-drill conditions in case the water supply would be adversely affected by drilling the oil or gas well. If the oil and gas operator declines to perform this pre-drilling survey of the water supply, consider hiring a laboratory approved by the Department of Environmental Protection (DEP) to collect and analyze samples at your expense. Commercial laboratories certified by DEP to sample and analyze drinking water are listed on the DEP's website at https://www.dep.pa.gov/Citizens/My-Water/PrivateWells/Pages/Water-Testing.aspx. Required documentation for a pre-drilling survey of a water supply is described in DEP regulations; see 25 Pa. Code §§ 78.52 (conventional wells) and 78a.52 (unconventional wells). If DEP determines that a water supply was polluted or diminished by an oil or gas well, the law requires the well operator to restore or replace the water supply. (See the Oil and Gas Act, Section 3218, 58 Pa.C.S. § 3218; and 25 Pa. Code §§ 78.51 (conventional wells) and 78a.51 (unconventional wells)). For more information about pre-drill surveys, read DEP's fact sheet titled "Recommended Basic Oil and Gas Pre-Drill Parameters" (8000-FS-DEP-4300).
- Pay attention to the notice of the well permit application. A resident may file an objection with DEP to the proposed location, based on location restrictions described in Section 3215 of the Oil and Gas Act. If a resident files an objection, be prepared to present the facts and reasons for objection to DEP. Retaining an attorney for a permit objection is not required, though an attorney may be helpful. (See the Oil and Gas Act, Section 3212, 58 Pa.C.S. § 3212).
- For a more detailed explanation of landowner or water supply owner rights, read Notification of Surface Landowner/Water Purveyor of Well Drilling Operation or Alteration. This form (8000-FM-OOGM0052) is available on DEP's Oil and Gas Web page, or call any DEP Oil and Gas Management office to request a copy. An applicant for a permit to drill a conventional well must notify the surface owners, water supply owners, and parties with coal interests within 1,000 feet of the proposed location. An applicant for a permit to drill an unconventional well must notify the surface owners, water supply owners, and parties with coal interests within 3,000 feet of the proposed location. (See the Oil and Gas Act, Section 3211(b), 58 Pa.C.S. § 3211(b)).

I own the oil and gas on a small tract surrounded by others and I don't want to lease it, but the neighboring owners are developing or leasing theirs. Can I lose my oil or gas or be forced to lease it?

The oil or gas could be produced or captured from a well outside of the property tract boundaries. In fact, the only protection is if the oil or gas producing formation is subject to the Oil and Gas Conservation Law (58 P.S. §§401-409) ("OGCL"). If so, the property could be included in a voluntary unit or pool, or included in a unitization or pooling order issued by the state at the behest of a producer on a neighboring tract. That well operator would then have to pay a production royalty based on the prorated share of the production from the well, depending on the percentage of the tract of the unit. This law applies to oil or gas wells that penetrate the Onondaga horizon and are more than 3,800 feet deep.

Other than spacing for wells in coal areas, Pennsylvania places no restrictions on well location in proximity to tract boundaries for development of oil or gas that is not subject to the OGCL; the Rule of Capture applies instead. This means that the operator of such a non-conservation well cannot be compelled by law to pay rents or royalties to owners of neighboring oil or gas tracts. Of course, the Rule of Capture applies on the resident's side of the property line if they drill a well. So, to protect their investments in wells to be drilled, most operators are willing to enter into voluntary pooling or unitization agreements for wells to be placed close to neighboring tracts.

What is the role of the state in resolving conflicts involving mineral owners or lessees and surface property owners?

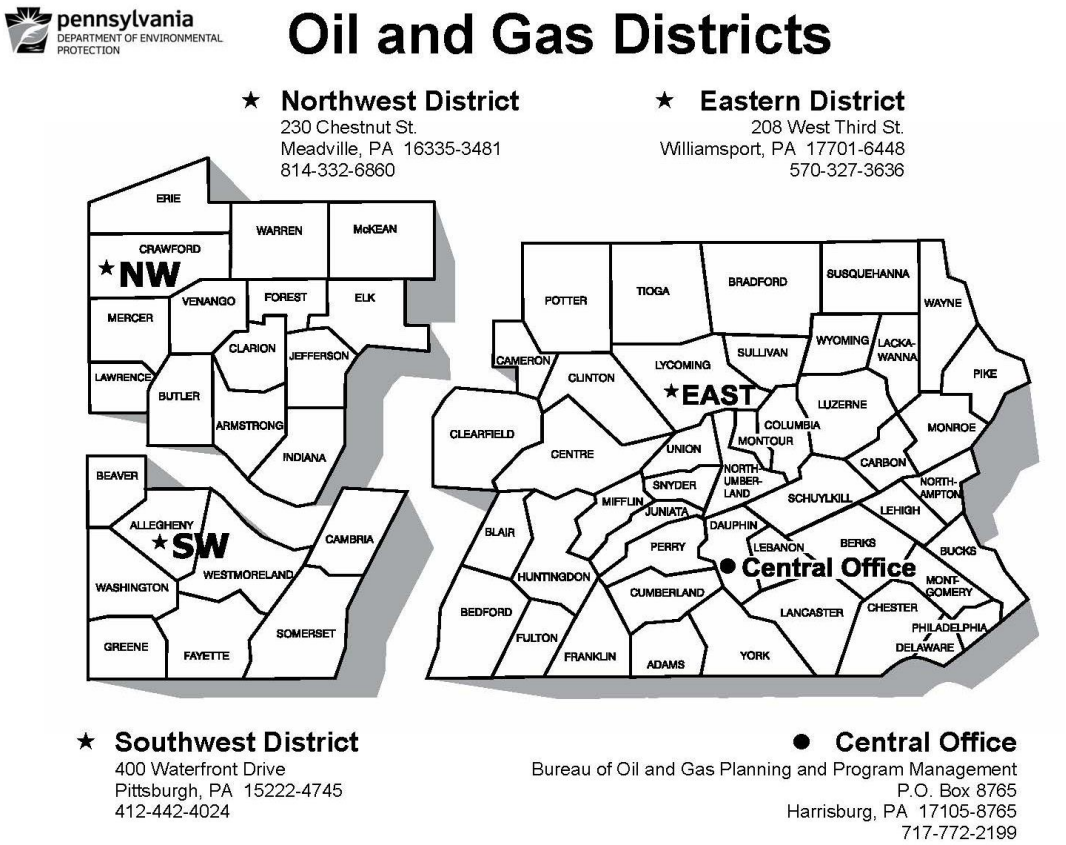
DEP is the agency charged with hearing objections to well permit applications, based on location restrictions or conflicts with other resource interests (e.g., coal owners). County courts hear suits for property damage or disputed lease matters, including royalty payments. Remember, a lease is a contract generally subject to contracts law, and not regulated by a government agency. Persons who believe they have been harmed by a decision by DEP—for example, to approve a well permit application, or issue a spacing or pooling order—may appeal that decision to the Environmental Hearing Board. Instructions for filing an appeal can be found on the website: http://ehb.courtapps.com/content/citizensGuide.htm.

Leasing oil and gas properties from the Commonwealth of Pennsylvania.

Through various state agencies and commissions, the state owns property that is available to lease for oil and gas development—for example, state forests, parks, and state game lands. There are even a few gas wells on the campuses and lands of state universities. If you are interested in leasing oil and gas rights on land owned by the state, contact Department of Conservation and Natural Resources (DCNR) Bureau of Forestry, Minerals Section at 717-787-4835. For information on mineral properties controlled by other state agencies or commissions, contact them directly. For contact information for all state agencies and commissions, visit www.pa.gov.

Who can I contact for more information?

For more information, contact any of the DEP Oil and Gas offices shown on the following map. For information about production, see the Oil and Gas website. For information on history, geology, and for data on potential well locations or producing formations, please contact Pennsylvania's Topographic and Geologic Survey at DCNR, Bureau of Topographic and Geologic Survey, Subsurface Geology Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone: 412-442-4235. For complaints or questions about a particular well, please contact the regional office according to the counties shown in this map.



For more information, visit www.dep.pa.gov.