

LEGAL/LEASE QUESTIONS ATTORNEY TOM WAGNER

1. What would a “bonus” in a lease encompass? Just a sign on bonus?

A "bonus" is a payment to induce the landowner to enter into a lease. Usually it is in the form of an advanced payment of delay rentals. A "delay rental" is a payment made, usually annually by the Lessee to hold the lease even though the Lessee is not drilling. By paying a delay rental, the Lessee is not obligated to begin exploration and drilling. In Pennsylvania delay rentals generally only apply to the primary term of the lease, though the wording of the lease must be carefully scrutinized for language that might permit a lessee to extend the term of the lease with little or no payment.

2. What seems to be the going rate per acre for a gas lease?

There are two primary financial issues with a lease. The first is the bonus payment described above. This payment can vary depending on the circumstances. I have seen \$850 to \$4,500 per acre in our area. Generally, the bonus payment is tied to delay rentals for the primary term. For example, the delay rental might be \$500 per acre per year for a lease having a 5 year primary term. This computes to \$2,500 per acre as a bonus payment. Another lease might provide for \$3,000 per acre but a primary term of 7 years. This computes to an annual delay rental of \$428.50 per acre (not as good a deal). It is important to read the lease carefully and thoroughly.

3. Is there only a lease if you are both the surface owner and the mineral rights owner, or is it also for the surface owner?

There are a multitude of circumstances under which a driller may want a written agreement with a property owner. When the driller is dealing with the owner of the mineral rights (whether or not the same owner owns the surface), the agreement is usually characterized as a lease. If the driller is seeking some agreement with the owner of the surface only, such as permission to cross the surface owner's property or to pump water from a stream on the property, the agreement may be called a "lease", a "license", or sometimes just an "agreement".

4. What are the regulations with regards to access roads? How far should they be from shallow wells, building, and existing pipelines?

So far as I know, there are no regulations regarding the location of access roads with respect to any buildings or facilities on the land. The Pennsylvania Oil and Gas Act prohibits the drilling of a well within two hundred (200) feet of an occupied dwelling and requires water testing for gas wells located within one thousand feet of a public or private water source. That is why it is important to negotiate these issues before signing a lease.

5. Can municipalities, townships, or counties pass laws on gas and oil drilling? (restrict or ban)

Cities, boroughs and townships can, as a part of their zoning ordinances, impose some restrictions on the location of gas wells and perhaps exclude them from certain zoning districts within the municipality. However, the regulation of oil and gas drilling has otherwise been preempted by state statutes and regulations. In other words, because the state is regulating these activities, municipalities cannot.

6. What amount of payout per acre would a landowner expect to receive?

The owner of mineral rights can negotiate a variety of types of payments relating to development of his property. The most well-known forms of payment are the bonus payment and royalties. As noted above, bonus payments depend very much on the circumstances and negotiating powers of the parties. Royalty rates also vary. The Oil and Gas Act requires a minimum royalty of 12.5 percent, but higher rates can be negotiated. It is impossible to tell in advance what amount of royalties a land owner is likely to receive from a particular well. I am advised that the royalties from a Marcellus Shale Gas Well will generally exceed the amount of any bonus payment. That is why it is important to negotiate the royalty rate.

Landowners may also negotiate additional payments for the placement of wells on their property and the construction of roads and pipe lines. If a property has marketable timber, the landowner should be careful to negotiate language that will protect the value of any timber that is removed in order to maximize its market value.