



# Fact Sheet

Commonwealth of Pennsylvania • Department of Environmental Protection

## Landowners and Oil and Gas Leases in Pennsylvania

*Answers to questions frequently asked by landowners about oil and gas leases and drilling*

### Who owns the oil or gas on my property?

In Pennsylvania, the mineral estate may be separate from the surface (real) estate. Ownership of minerals on the same tract may be separated from each other – oil, gas, coal, hard rock minerals, etc. All surface and mineral owners have property rights under the law. The Commonwealth recognizes the mineral owner's right to recover the mineral, and the landowner's right to protection from unreasonable encroachment or damage. The Commonwealth does not maintain ownership records of surface or mineral properties; county governments have these records. Surface deeds are almost always recorded in the county's Recorder of Deeds office. An older mineral deed may or may not be recorded in any government office. In modern times real estate transfers are usually taxed, and thus should be recorded in the deeds office of the county where the property is located.

If you own property, your deed may state ownership is "fee simple;" that means you own the entire property (the surface and mineral deposits). Otherwise, someone else may own mineral properties on the tract. A thorough title search may discover different ownership rights to the mineral property. If you can't be sure from current documents, searching your property's historical deeds back to the 1860s might reveal that oil and gas has been separated from the surface estate. A phrase in an old deed such as "oil and gas excepted and reserved" means that the surface was sold separately from the oil and gas property at that time. If you find such a statement in an old deed, the oil and gas would now probably not be yours to lease or develop.

### Is there any oil or gas on my property?

It is not the Commonwealth's responsibility to know or determine whether oil or gas exists in any particular tract. You may contact the Bureau of Topographic and Geologic Survey in the Department of Conservation & Natural Resources (DCNR) for general information about oil and gas

fields throughout the state (see DCNR's Map #10, [Oil and Gas Fields of Pennsylvania](#)). If you have identified wells near your property, past production information may also be available through that Bureau (telephone no. 412-442-4235). For an evaluation of the hydrocarbon potential of your property, you should contact a private oil and gas geologist. The Bureau of Topographic and Geologic Survey can provide a list of qualified consultants.

### 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.

### How does coal property relate to oil and gas property?

The interests of coal owners, mine operators, and oil and gas drillers and producers frequently conflict insofar as one party is required to give up the right to extract some of its resources to preserve the interests of the other party. In an area underlain by a coal seam that can reasonably be expected to be mined by underground methods, gas well operators may not place wells closer than 1,000 feet apart. Where mining advances toward and around a gas well, the mine operator must leave an undisturbed block of coal around the gas well adequate to protect both the integrity of the well and public health and safety.

**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. If you don't know one, contact the local 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. If you don't know one, contact the local bar association for assistance.
- As stated above, the Commonwealth recognizes the rights of a mineral owner to develop the resource. If you do not own the oil and gas under your land, you 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 your water supply, consider hiring a laboratory approved by DEP to collect and analyze samples at your expense. Commercial laboratories certified by DEP to sample and analyze drinking water are listed on the department's web site at: <http://www.depweb.state.pa.us/labs/cwp/view.asp?a=3&Q=486034&labsNav>. Required documentation for a pre-drilling survey of a water supply is described in DEP regulations; see 25 Pa. Code § 78.52. 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 208, 58 P.S. § 601.208; and 25 Pa. Code § 78.51).

- Pay attention to the notice you receive of the well permit application. You may file an objection with DEP to the proposed location, based on location restrictions described in Section 205 of the Oil and Gas Act. If you file 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 202, 58 P.S. § 601.202).
- For a more detailed explanation of your rights as a landowner or water supply owner, read Landowner Notification of Well Drilling or Alterations. This form is available on DEP's Oil and Gas web page, or you may call any DEP Oil and Gas Management office to request a copy. An applicant for a permit to drill a well must notify the surface owners, and water supply owners and parties with coal interests within 1,000 feet of the proposed location. (See the Oil and Gas Act, Section 201 (b), 58 P.S. § 601.201(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?**

Your oil or gas could be produced or captured from a well outside your property tract boundaries.

In fact, your only protection is if your oil or gas producing formation is subject to the **Oil and Gas Conservation Law**, 58 P.S. § 401.1 et seq. If so, your property could be included in a voluntary unit or pool, or included in an unitization or pooling order issued by the Commonwealth at the behest of a producer on a neighboring tract. That well operator would then have to pay you a production royalty based on your prorated share of the production from the well, depending on the percentage of your 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 which is not subject to the Conservation Law; 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 your side of the property line if you 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 DEP's role in regulating the oil and gas industry?**

DEP enforces Pennsylvania's oil and gas laws relating to resource management, well construction, drilling safety and waste management practices.

An operator must secure a bond before applying for a well permit. DEP approves bonds and well permits, inspects wells and environmental controls, and permits and inspects waste disposal facilities and waste management activities. Operators must submit reports on well completion, waste management, annual production, and well plugging. DEP has the authority to take action to enforce compliance with applicable laws and to seek penalties for violations of these laws.

The Commonwealth of Pennsylvania is not involved in regulating lease agreements between mineral property owners and producers, except that minimum royalty payment is prescribed by law. Lease agreements are contractual matters between private parties. DEP does not audit payments, read or calibrate meters or tanks, or otherwise get involved in lease matters.

Well operators are required to report production annually, and state agencies must keep this information confidential for five years, as provided in Section 212 of the Oil and Gas Act, 58 P.S. § 601.212

### **What is the role of the Commonwealth 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 (for example, 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 Web site: <http://ehb.cpcourt.com/>.

### **Leasing oil and gas properties from the Commonwealth of Pennsylvania.**

Through various state agencies the Commonwealth 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 Commonwealth, contact DCNR's Bureau of Forestry, Minerals Section at 717-787-4835. For information on mineral properties controlled by other state agencies, contact that agency directly. For contact information for all state agencies, visit [www.state.pa.us](http://www.state.pa.us).

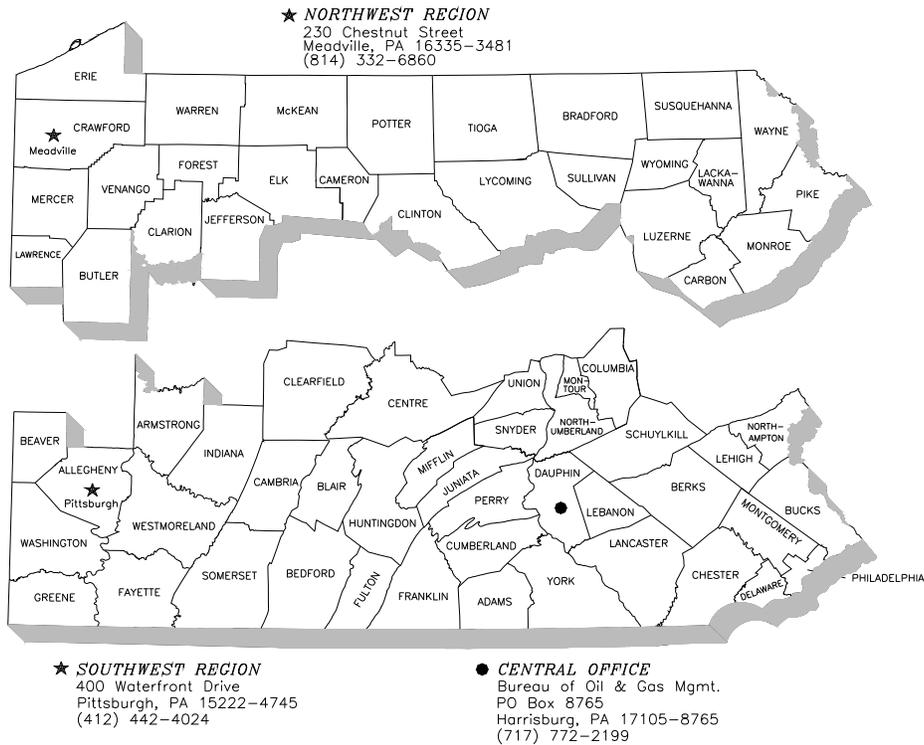
### **Who can I contact for more information?**

For more information, you may contact any of the DEP Oil and Gas offices shown on the following map. For information about production history, geology and for data on potential well locations or producing formations, please contact Pennsylvania's Topographic and Geologic Survey at:

Dept of Conservation and Natural Resources  
Bureau of Topographic and Geologic Survey  
Subsurface Geology Section  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
Phone: 412-442-4235  
<http://www.dcnr.state.pa.us/topogeo/loc.htm>

Contact any of the DEP offices shown on the map below for more information about oil and gas well drilling and production in Pennsylvania. If you have a complaint or question about a particular well, please contact the regional office (Northwest or Southwest) according to the counties shown in this map. Production information reported by well operators is held confidential for five years, as required by the Oil and Gas Act.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OIL & GAS OFFICES**



For more information, visit DEP's Web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us), Keyword: "Oil and Gas."