



OIL & GAS NEWSLETTER

Issue Date: March, 2013

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This newsletter is intended for landowners and other members of the public with interest in the oil and gas industry. Each newsletter is also posted on our website at http://msue.anr.msu.edu/program/info/oil_and_gas. If you would like to be added to the e-mail list to receive this newsletter, please contact the editor. You can also contact your local MSU Extension Office to obtain copies of the newsletter and other free oil and gas leasing information.

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3. New MSUE fact sheet: Compulsory Pooling and the Landowner That Has Not Signed an Oil and Gas Lease

Upcoming Landowner Educational Meetings:

Oil and Gas Leasing and Regulation of the Oil and Gas Industry in Michigan

Thursday, April 4, 2013

7:00 pm to 9:00 pm

4-H Activity Center on the Monroe County fairgrounds

3775 S Custer Rd, Monroe, MI 48161

No admission charge

Michigan State University Extension and partner organizations will continue to sponsor educational workshops during 2013 to help Michigan residents understand oil and gas leasing and other issues. Additional information is available on the [MSU Extension oil and gas information web page](#).

If you would like an educational meeting that discusses oil and gas leasing and the regulation of the Michigan oil and gas industry please contact your local extension educator, or the editor.

HOW DO YOU REMOVE AN INVALID OR EXPIRED LEASE FROM THE REGISTER OF DEEDS RECORDS?

(Editor's note: MSU Extension frequently receives questions from mineral owners that have signed an oil and gas lease in the past that has expired, but it is still of record at the Register of Records office. The lessee (oil and gas company) may be out of business or will not communicate with the landowner. What are the tools available to the landowner to solve this problem?)

By Attorney Henry L. Knier, Jr., Smith Martin Powers & Knier, P.C.

Oil and gas companies are somewhat notorious for failing to file releases of oil and gas leases. Without some action on the landowner's part, the lease remains part of the public records, recorded at the County Register of Deeds Office. The reason that it remains part of the records is that the lease could continue for many years if the tenant commences oil and gas operations (drills a well).

So, if the lease term has expired and no action has been taken by the tenant, the landowner can request a release of the lease from the tenant, and can record that release at the Register of Deeds. Unfortunately, it is often difficult to locate the tenant, so this process is often not practical.

The alternate process is for the landowner, or someone familiar with the property, to sign and record an affidavit stating:

- a. the source of the signer's personal knowledge,
- b. the details of the lease that has expired (including its recording information at the Register of Deeds),
- c. the expiration date of the lease,
- d. what, if anything, was ever done on the property by the tenant (and when any production or operations ended),
- e. that there are no operations by the tenant ongoing at this time, and
- f. that there are no shut-in wells on the land.

The basic purpose of this affidavit is to show that the lease is no longer in effect. In most cases, title companies and purchasers will be satisfied that the lease is over once an affidavit is recorded with the Register of Deeds. This process will not always satisfy the purchaser, and clearing up the title could require additional steps or legal action in some uncommon situations.

Recording of documents with the Register of Deeds can be a bit tricky due to several general requirements for recording documents. Some of these are:

- a. there must be a two and one-half inch margin of open space at the top of the document,
- b. the document must be notarized, and
- c. the document must indicate who prepared it and where to return it after recording.

Of course, the Register of Deeds will have a fee.

Henry Knier is a shareholder of Smith Martin Powers & Knier, P.C., located in Bay City, MI. Henry has a long history of representing agricultural businesses and can be reached at 989-892-4574 or hknier@smpklaw.com.

ATTENTION FARMLAND OWNERS: OIL AND GAS LEASES CAN AFFECT YOUR PURCHASE OF DEVELOPMENT RIGHTS

By: Kendra Wills, MSU Extension Educator, Greening Michigan Institute; willsk@anr.msu.edu

If you own farmland in West Michigan, chances are you have been approached by an oil and gas company in the last few years to sign a new oil and gas lease. Michigan State University Extension has been working hard to provide property owners information to help them determine if signing a lease is right for them.

In addition to evaluating the terms of the lease, Kendra Wills, MSU Extension Educator and former staff person for the Kent County Purchase of Development Rights Program, encourages property owners who would like to preserve their farmland through a [Purchase of Development Rights](#) (PDR) Program to talk with their local PDR Program manager before signing an oil and gas lease.

A Purchase of Development Rights (PDR) Program compensates property owners who voluntarily apply to permanently preserve their farmland. PDR Programs are governed by state law and are administered by a board appointed by a county or township elected body or a land conservation organization. Preserving farmland through a PDR Program is usually a competitive process and can take several years to accomplish. If a property is selected for preservation through PDR, the property owner must agree to the terms of an agricultural conservation easement. PDR is not available statewide, only in areas with an active program.

Purchase of Development Rights Programs, including those supported by grant funding through the [USDA's Farm and Ranchland Protection Program](#), must have a clear title with no exceptions before an agricultural conservation easement (aka PDR easement) can be recorded to preserve the property. If a current (not expired) oil and gas lease exists on the property to be preserved, the oil and gas company must be willing to sign a [subordination agreement](#) to the agricultural conservation easement.

This can be a challenge for many reasons. One common challenge is getting a hold of the proper person at the oil and gas company that can sign subordination agreements. Many times the oil and gas company representative that works with property owners to sign oil and gas leases is not the person who signs subordination agreements. The USDA Farm and Ranchlands Protection Program Manager for Michigan says he has yet to see an oil and gas company sign and record a subordination agreement to an agricultural conservation easement in all the years he has been managing this program.

Another common challenge is the oil and gas company would have to agree not to install extraction equipment on the farmland being preserved. Extraction equipment would have to be installed on non-preserved farmland. These are the terms of almost every agricultural conservation easement recorded since the primary goal of the easement is to protect the agricultural use of the land.

The oil and gas company may not want to agree to this because this may limit the rights they have leased.

Stacy Byers, Purchase of Development Rights Program Manager for [Ingham](#) and [Kent Counties](#), says that the PDR Program application form in both of these counties asks property owners if they own all of their mineral rights. “If funding is tight, and usually it is, we probably won’t select a farm for preservation if the mineral rights are being leased. It takes too much staff time to secure subordination agreements.”

Michigan State University Extension’s oil and gas resources are available [here](#). Next month we will post an article for property owners who have already signed an oil and gas lease and still want to preserve their land.

NEW MICHIGAN STATE UNIVERSITY EXTENSION FACT SHEET:
“Compulsory Pooling and the Landowner That Has Not Signed an Oil and Gas Lease”

How does Compulsory Pooling Occur and How is the Un-Leased Landowner Paid?

Curtis Talley Jr. Michigan State University Extension Educator

When a mineral owner is evaluating an oil and gas lease, the topic of forced pooling is frequently mentioned by the company’s land man. MSU Extension receives more questions regarding compulsory pooling than any of the other terms related to the oil and gas lease.

The fact sheet is titled “Compulsory Pooling and the Landowner that has not Signed an Oil and Gas Lease”. It discusses this subject in depth and includes an example oil well and the calculations that would be utilized to determine the un-leased mineral owner’s compensation if the compulsory pooling option is chosen instead of signing the standard oil and gas lease.

I want to thank attorney Philip Rosi, of Rosi & Gardner in Traverse City for reviewing and editing this publication.

This document will be placed on the MSUE oil and gas web page under the Fact Sheets and Publications from MSU Extension section at http://msue.anr.msu.edu/program/info/oil_and_gas

Landowners: I am very interested in learning about your oil and gas leasing experiences. All information I receive is kept confidential. I use this information to help other landowners by informing them of the changes that are being negotiated in leases, not the names of the people negotiating them. If you have positive or negative experiences dealing with oil and gas drilling, the payment of surface damages, post production cost deductions, working out access agreements and well site locations, please contact editor Curtis Talley Jr.