



Maryland Attorney General's Office
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Leasing Your Land for Natural Gas Drilling - Tips for the Landowner

The discovery of Marcellus shale deposits in Maryland offers the potential for landowners to earn income by entering into leases for the right to drill for Marcellus shale gas on their property. This drilling process is known as hydraulic fracturing or “fracking,” where a well is drilled and then a high pressure fluid is injected to break the rock, and release the liquid or gas trapped within. However, Maryland landowners need to beware of high-pressure sales tactics and ensure they are not being taken advantage of when entering into leases. Before entering into any lease, the landowner needs to evaluate the impact that the lease will have on the landowner’s use of the land, whether the payment represents the true value of the rights that the landowner is signing away, and the potential environmental damage that could occur to the land and surrounding community.



As with any contract, do not sign unless you fully understand the terms of the agreement. If possible, have the lease reviewed by a land use attorney before entering into the leasing contract. You should also consider consulting with your neighbors to find out whether they have entered into leases and what their experiences have been. The following are some of the items you should be aware of when entering into a lease for drilling on your property:

- Investigate what leasing rights are going for in your area – do not rely upon what the company is telling you the rights are worth.
- Make sure the lease and royalty payments are only for the gas extracted from the Marcellus shale – if other minerals or shale formations are located, separate leases should be written and signed for those rights.
- Are there deductions? There have been reports of drilling companies deducting the cost of bringing the gas to market from royalty payments. A fair contract should not allow for deductions.

- If trees have to be removed as part of the drilling process, you, as the landowner, should receive any proceeds resulting from timber sales. If more than 40,000 square feet is to be cleared, the landowner needs to be aware of his or her obligations under the Forest Conservation Act.
- What is the actual term length for the lease? Although there may be a set term in place, look out for any provisions extending the lease for as long as actual drilling takes place or automatic renewal provisions.
- Be clear that the contract states the company, not the landowner, should be held responsible for any environmental or other problems that occur from the drilling.
- Review the lease to be sure the lease is very specific about what activity can take place on your land.
- Beware of mandatory arbitration clauses in the lease – they can prevent you from taking the company to court in the event problems arise.
- Consider the potential that the drilling and gas extraction process may cause damage to the surface of the land or underground water supplies that may serve as a source of drinking water for you or your neighbors. Additionally, the process will result in increased truck traffic in the community.
- If you have an agricultural or other land preservation easement, or any other property restriction that limits the use of some or all of your property, you should consult with the holder of that restriction before entering into a lease agreement. If you do not know whether your property is restricted or the extent of any restrictions, you should seek competent legal counsel.
- Make certain that the lease provides that the company will record a termination of the lease upon expiration of its term.
- Check to see if the lease provides that the landowner will be notified in writing of the assignment of the lease and will be provided contact information for any assignee. The landowner should know who has rights under the lease and how to contact them.

Governor O'Malley issued an Executive Order on June 6, 2011 establishing an Advisory Commission and requiring a study of drilling for natural gas in the Marcellus Shale in Western Maryland. The purpose of the study is to make sure public health, safety, the environment and natural resources are protected in Maryland. The study has three parts –

- Recommendations for revenue sources and standards for liability for damages, due December 31, 2011.
- Recommendations for best practices for all aspects of natural gas exploration and production in the Marcellus Shale in Maryland, due August 1, 2012.
- A Final Report including environmental, natural resources, safety and economic impacts, due August 1, 2014.

For more information regarding Executive Order 01.01.2011.11 The Marcellus Shale Safe Drilling Initiative, see <http://www.mde.state.md.us/programs/PressRoom/Pages/060611.aspx> and <http://www.governor.maryland.gov/executiveorders/01.01.2011.11.pdf> for the Executive Order.

For more information regarding Marcellus shale drilling, please visit the Maryland Geological Survey website at <http://www.mgs.md.gov/geo/pub/MarcellusShaleGeology.pdf>.

