

http://www.nytimes.com/2011/09/23/nyregion/hydrofracking-leases-subject-of-regrets-in-new-york.html?_r=1&scp=1&sq=Signing%20Leases%20for%20Drilling,%20and%20Now%20Having%20Regrets&st=cse

New York Times

Signing Drilling Leases, and Now Having Regrets

By MIREYA NAVARRO

Published: September 22, 2011

DRYDEN, N.Y. — Four years ago a man and a woman knocked on Katharine D. Dewart's door, offering easy money for the use of her land.

Handing her a brochure that included serene before-and-after pictures, they explained that a [natural gas](#) company was seeking to drill somewhere on her 35 acres of wildflower fields surrounded by hemlock woods in this Tompkins County town near Ithaca.



Guy Solimano for The New York Times

Richard Canfield, a farmer in Otisco, N.Y., wants to cancel a lease that would allow hydraulic fracturing on his land.

Ms. Dewart, 68, served lemonade and signed, accepting \$1,909 upfront and royalty payments of 12.5 percent of any sales of gas extracted from her property. “I assumed it’d be noisy for a couple of months, and I’d have a little extra cash and wouldn’t that be great,” Ms. Dewart, a writer, said.

Now, she said, she is stricken with remorse. And she is not alone. Hundreds of other state residents who signed leases allowing gas companies to drill deep into their properties with a method known as horizontal hydraulic fracturing have changed their minds and are trying to break or renegotiate their contracts. Millions of acres in upstate New York are under lease, awaiting permits for the drilling, which has yet to begin, delayed by a state environmental review.



Guy Solimano for The New York Times

David Lee, center, of Skaneateles, N.Y., on Monday in Lafayette, where landowners heard how to fight hydraulic fracturing leases they had signed

Some landowners who have soured on the gas companies say they are not opposed to the drilling itself, also called hydrofracking. But, they say, they regret not having bargained harder and are seeking better deals. Then there are residents like Ms. Dewart, who said she did not realize what the lease would mean until the regional debate over the potential environmental risks of the process heated up in recent years.



Guy Solimano for The New York Times

Katharine D. Dewart, of Dryden, N.Y., said she regretted agreeing to allow the drilling process on her land.

Horizontal hydraulic fracturing involves shooting chemicals and high volumes of water into rock formations under enormous pressure to release natural gas. Environmentalists argue that it poses the risk of contaminating groundwater and deep aquifers and presents other hazards like air pollution from heavy truck traffic.

The gas companies counter that the drilling will bypass drinking water supplies completely and that it will be governed by strict state environmental regulations.

Among those who regret signing a lease is Ellen Harrison, a retired environmental scientist in Caroline, an adjacent town, who said she should have known better than to cede control of her

33 acres. She has formed [a group called Fleased](#) to fight the gas companies and help property owners get out of their leases.

“There’s a feeling of shame,” said Ms. Harrison, a former director of the [Cornell Waste Management Institute](#) in Ithaca. “How could I have been so stupid?”

Anxiety among some landowners has been growing as many five-year leases reach their expiration dates and some gas companies automatically extend them without the owners’ assent. The companies invoked force majeure, a legal term referring to an unforeseen event that prevents the two sides from fulfilling an agreement.

In this case, the unforeseen event was the state’s repeated delays in releasing the environmental regulations and permitting the work, the companies’ lawyers say. The state is now in the process of receiving public comments and finalizing the rules and expects to begin issuing drilling permits next year.

So far, at least 400 leaseholders have filed lawsuits against the gas companies. Other drilling opponents are holding “lease termination” meetings, banding together to seek help from state officials and campaigning for the passage of drilling bans like one approved by [Dryden’s town board](#) in August. (Dryden is in turn being sued by [Anschutz Exploration Corporation](#), a Colorado driller with 22,200 acres under lease in the town.)

The New York attorney general’s office is working on an agreement involving one of the largest companies, Chesapeake Energy, and leaseholders numbering “in the hundreds” over letters invoking force majeure, said Dennis C. McCabe, the assistant state attorney general in charge of the Binghamton regional office.

Chesapeake’s general counsel and senior vice-president, Henry J. Hood, said the company is trying to work out a compromise that would allow it to keep the leases.

New York State itself felt the sting of force majeure when Chesapeake Energy notified the [Department of Environmental Conservation](#), which oversees drilling, that it would extend leases on more than 15,000 acres of state land. A department spokeswoman said the agency was weighing a response.

Some property owners argue they were misled by representatives of gas companies who never uttered the words “hydraulic fracturing.” They worry that they could be held liable should a neighbor’s water be contaminated by the drilling, or that their property will become worthless or unsellable, or that the drilling industry could end their peaceful way of life.

Others want market value for their leases. Scott R. Kurkoski, a lawyer in Broome County who has filed 200 suits against Chesapeake Energy, said his clients were paid as little as \$3 per acre with 12.5 percent royalty payments when they signed the original lease. Most of them are seeking to sign new deals at \$5,000 to \$6,000 an acre with 20 percent royalties, he said, which he said had been the going rate in states like Pennsylvania where hydrofracking is already taking place.

Mr. Hood said that at this point “there’s no way to value what these leases are worth.”

But many other landowners just want out.

“Most of the cases I deal with is people wanting to terminate the lease because they are against this type of drilling,” said Guy K. Krogh, a lawyer in Ithaca.

Thomas S. West, a lawyer who filed the lawsuit against Dryden’s town board on behalf of Anschutz, which has paid \$4.7 million for its leases in the town, said that the discontent with the gas companies was confined to pockets of the state and that drilling was supported elsewhere. He also argues that state law pre-empts local governments from regulating natural gas exploration, with some exceptions.

As for landowners’ claims that they were deceived, Mr. West said a standard lease would not specify the type of drilling technique to be used, particularly in the case of hydrofracking, which became a viable extraction method only a few years ago.

“There was no duping,” he said. “They just don’t like the present-day circumstances, primarily because they’ve heard so much misinformation.”

At a meeting last week in Lafayette, near Syracuse, about 50 grim-faced leaseholders showed up with copies of their leases to seek advice from Joseph Heath, an antidrilling lawyer from Onondaga County, and to hear from a landowner who had successfully ended his lease.

Many said they feared large-scale industrial activity, spills, water contamination and noise.

About 100 miles away in Schoharie County, recent catastrophic flooding has stirred new worries that toxic chemicals used in hydrofracking and the wastewater could travel far.

Alfred Santillo, 67, a farmer in Sharon Springs, said that after he leased 324 acres to Alexco Oil and Gas for \$40,000 in 2008, he promptly spent a chunk of the money on equipment repairs and drainage improvements.

During the recent rains, he said, the water stopped just short of breaching the road and his house and barn.

“It sort of held, but that was just luck,” he said. “What would happen is that the holding ponds would overflow and this toxic water would be all over the countryside. How would you contain it?”