

Frustrated with gas companies



Bob Ellis/staff photographer

Mike Bosetti stands on his land on Muckey Road in Virgil. Bosetti's natural gas lease with Chesapeake Energy expired on Nov. 29, and he was concerned that the company would automatically extend the agreement, something he does not want to have happen.

Residents with expiring leases fight extensions

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VIRGIL — Virgil resident Mike Bosetti's natural gas lease was set to expire on Nov. 29, and he worried that the gas company would automatically extend his lease, a recent industry trend.

Gas companies like Chesapeake Energy have used a statewide moratorium on hydrofracking until June of this year to effectively extend the terms of their leases.

Bosetti tried to ensure his lease would terminate by sending out notices stating he would not renew. But now, more than two months later, he has found the process was not as simple as he expected.

Phillips Production Co., the gas company he originally signed the lease with in 2000, assigned his property to two gas companies, resulting in eight different assignments through mergers within the industry or assigning of interests.

To be safe and ensure he is fulfilling the re-

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— *Michael Bosetti*
Virgil resident

quirements under law, Bosetti was advised by the state Attorney General's Office to notify all eight companies.

Bosetti sent the notices several days ago and is still waiting to hear responses.

If a company does not respond within 30 days to a landowner's request to terminate, the landowner can file with the county clerk office the notice sent to the gas companies to terminate the lease, according to the General Obligations Law,

Virgil resident's lease history stretches back to '02.

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which governs gas lease terminations. This action effectively terminates the lease.

In addition, the law requires a gas company to notify a landowner when a lease is coming up for termination. But if a company does not do that, the onus falls to a landowner to notify the company of his or her desire to terminate the lease.

Scott Kurkowski, a lawyer with the Binghamton firm Levene, Gouldin and Thompson LLP, warns that people should never assume their lease has been terminated just because the end date has come due.

Kurkowski is suing Chesapeake on behalf of landowners who have received notices of lease extensions they are disputing. Some landowners

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whose leases expired last year, incorrectly thought they were in the clear, he said.

Kurkowski urges landowners to assert their rights. Once the lease has terminated, Kurkowski said, landowners must do everything they can to get the proper notice of termination filed by following the General Obligations Law.

Kurkowski advises landowners who receive a notice of lease extension to hire a lawyer to protect themselves.

"They need to respond to the company letting them know they disagree with their position and ... if they have received lease extension notices they should join the lawsuit to protect their rights," Kurkowski said.

The suit is open to anyone in the state, he said. The lawsuit asserts the companies are not lawfully allowed to extend the leases.

Bosetti never got a notice of lease extension and he was never notified by the company of his lease's termination.

"I want my lease terminated, and the law provides a vehicle for me to terminate my lease and I need to see that through," Bosetti said in a phone interview last week.

In Bosetti's case, properly notifying all eight companies to be sure the lease was terminated, would cost him about \$530 in postage and recording fees.

Preble resident Joe Heath, a lawyer and member of Gas Drilling Awareness of Cortland County, said Bosetti's experience is just one example of how gas companies treat their lessees.

A letter to a landowner, provided by Heath and dated Jan. 26 from Chesapeake Energy, informs the landowner that the lease is extended until the date

Mike Bosetti's lease history

In 2002, Phillips Production Co. assigned 50 percent of its interests to Triana Energy Inc. In 2004 Triana merged into Columbia Natural Resources LLC, so Phillips and CNR each had 50 percent working interest in Bosetti's lease.

In 2006, Phillips had assigned all its interests to Fortuna Energy Inc. In 2010, Chesapeake Energy completed acquisition of CNR LLC from Triana. Therefore the lessees were 50 percent CNR/CHK and 50 percent Fortuna.

In 2008, Chesapeake assigned about 32 percent of its interests to Statoil Hydro USA. Onshore Properties, a European company. In 2009, Statoil became Statoil ASA and in 2010 Fortuna became Talisman Energy USA.

the executive order is lifted or ends. The company argues the executive order amounts to a "force majeure" event, or a force beyond the company's control, preventing the issuance of high volume fracking permits. Therefore, the company says, the lease is effectively extended.

Another method gas companies sometimes use falls under a provision known as delay rental. In this case companies assume that if landowners cash a check the company sends after the lease has expired, this effectively extends the lease.

Residents are also warned not to cash any checks that come after the lease's termination date.

Heath wants to see the General Obligations Law changed, saying Gas Drilling Awareness in Cortland County will contact Assemblywoman Barbara Lifton to push for this.

"It is not a provision that protects the individual the way I would like to see it," Heath said.

Michelle Duffy, a spokeswoman for the state attorney general, said the office does not comment on any potential or ongoing cases. Duffy said the office is aware of the situation of gas companies extending leases and is looking into it.

In the meantime, Bosetti is waiting to see if the companies respond, hoping they do not so his lease is officially terminated.

Heath faults the gas companies for purposefully keeping landowners in the dark.

"They need to maintain a percentage of land leaseage ... they need to get 60 percent of the area in the spacing units to qualify for compulsory integration," Heath said, referring to the practice where companies acquire mineral rights to even those properties where landowners do not want to lease.

In addition, holding on to older leases that have lower per-acre payments than more recently negotiated leases would, saves companies money, he said.

Heath said organizations like GDACC help landowners to be mobilized and unified in the face of large, powerful gas companies.

In an e-mail sent Saturday, Chesapeake Energy stood by its decision to extend leases.

Brian Grove, senior director of corporate development for Chesapeake, said the lease extensions are based upon the original lease agreements which allow extensions for various reasons.

"Chesapeake would much rather be drilling well and creating value for New Yorkers, especially in the Southern Tier where economic development is much needed," Grove wrote. "Regrettably, the current antigas environment, fueled by rumor and misinformation, prevents that at this time."

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