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### **Seeking Input on Lease Negotiations**

It is very important to Michigan State University Extension's educational mission to receive feedback from our efforts. All information is kept confidential and only the data is utilized, not names or locations. Please call or e-mail me with your experiences in these areas:

1. Terms of the offered lease that led you to sign or not sign.
2. Any negotiated changes to the lease that met your goals. Examples are an increased bonus; increased royalty; resource protection such as baseline groundwater testing; topsoil segregation, etc.
3. Post production costs that you are incurring ( a copy of a revenue statement)
4. If you did not sign an offered lease, the terms of the lease that were the deal breakers
5. Any other issues or questions that you might have relating to the oil and gas lease

Notify Curtis Talley Jr. at 231-873-6841 or [talleycu@anr.msu.edu](mailto:talleycu@anr.msu.edu)

### **Some Thoughts on the Order for Payment for an Oil and Gas Lease**

Curtis Talley Jr. Michigan State University Extension Educator 231-873-6841

Aaron K. Bowron attorney with Zirnhelt, Bowron & Wiggins, P.L.C.; [abowron@zblaw.com](mailto:abowron@zblaw.com).

Initially, the order for payment (Order) can stir excitement in a mineral owner (Owner) because it appears to be a determination that the lease bonus will be paid and a deadline is set for the payment to be received.

I have talked with several Owners lately that discovered the language in the Order had created indigestion, disappointment and frustration. In one case, it had been more than six months since the lease was signed and the bonus had not been received.

The Order provides the lessee with a time period, in this case 45 days to finalize its review of title to insure that when it makes payment, it is to the correct owner of the mineral rights and that such rights are not otherwise encumbered. Unfortunately for the Owner, the language used to structure the Order can allow the lessee much more time to make payment than it appears.

Many Orders state that payment will be made within 45 days of Lessee's (Company) receipt of the Order, along with the executed oil and gas lease. It appears that a 45 day deadline clock begins running. However, in the first paragraph of the Order it may state that "No default shall be declared for failure to make payment until 10 days after written notice from payee of intention to declare such default." The layman's interpretation of this is that the Company can wait to make payment until you notify them in writing that they are in default. The Owner has the responsibility to watch the clock. The Order provides no penalty for payment after the 45 days, nor does it provide the Owner the right to cancel the lease for non-payment if payment is not received within the 45 day period. In this case, the fine print of the Order also states that the Order will expire one year from the date it is issued, or sooner if terminated by Company. It provides the Owner no opportunity to cancel the Order.

In addition to verifying title, other things might be going on that the Owner may not be aware of during the 45 day or longer delay period. The Company may be shopping the lease in hopes it can assign it for a greater bonus than the one owed the Owner. The landman may record the lease and then attempt to assign it. If there is an assignment, the Order is paid and the Owner is none the wiser.

To counter this, the Owner has several alternatives:

- The lease can be amended to require that the lease will not be recorded until such time as actual payment is made to the Owner.
- The Owner can insist upon retaining the original lease and then providing it to the Company when the bonus payment is received.
- Amend the lease to require a deadline for payment of the bonus and if that deadline is not met, the Owner has the option to declare the lease void.
- The Order should be executed (signed) by both Owner and Company. If a signature line for Company is missing, insist upon its inclusion.
- Typically, Orders do not provide an objective standard by which the legitimacy of Company's disapproval of title is gauged. Shorten the 90, 60 or 45 day timeframe for title verification to 30 days. State that marketable title is title that is curable. For example, title defects will **not** include:
  - A mortgage encumbering Owner's lands
  - The lease was not properly styled
  - The lease was outside the approved leasing area
  - The lease was taken after the project ended
  - The lease was not on the approved lease form.

If Company finds a defect, require that they advise Owner of this defect and allow Owner 60 days to attempt to cure the defect. During this period Company is not obligated to make payment.

- Many Orders provide "The right to receive this payment shall not be assigned, whether as collateral or otherwise" or some variant thereof. If the lease permits the Company and Owner to assign it, the Owner should also be permitted to assign his or her bonus payment and this provision should be struck.

- Make sure that the Order is consistent with the lease as to the names, legal description, acreage and bonus amount.

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## **Encana Oil and Gas Outlines Utica-Collingwood play in Michigan**

By Curtis Talley Jr. Michigan State University Extension Educator 231-873-6841

Encana is a North American energy producer that is located in Calgary, Canada. According to previous reports in the Michigan Oil and Gas News, Encana has assembled a large leasehold in the central and northern lower peninsula of Michigan. As of 2010 they had leased approximately 250,000 acres of State of Michigan mineral rights @ a bonus of \$150/acre for 7 year leases. The amount of private land they have leased is unknown.

At the March 21, 2013 Michigan Petroleum Conference at Mount Pleasant, Michigan, geologist Bill Paul provided information regarding Encana's Michigan exploration of the Utica-Collingwood formation. According to their estimates, there are 5.6 million acres in MI that the Collingwood shale underlies. The Collingwood is the upper most portion of the Trenton formation. The Utica does have natural fractures, but the Collingwood does not, hence the necessity of hydraulic fracturing. As the author has mentioned in public educational meetings and in previous articles in this newsletter, the oil and gas industry has Best Practices for protecting groundwater. Mr. Paul stated that Encana utilizes those best practices, which includes baseline groundwater testing using an independent third party. He also stated that they disclose the materials in their fracture fluids. Some of the technology they have been using in Michigan is natural gas powered drilling rigs instead of diesel power, closed loop drilling mud systems, flareless completions and following stringent groundwater protection safeguards.

If you have attended Michigan State University Extension (MSUE) educational meetings, you have seen photos of multi well pads in Colorado. Mr. Paul described how the utilization of horizontal wells has reduced surface disturbance. "The drilling of twelve 10,000 foot horizontal wells from Resource Play Hub (RPH) Multi -Well Pads disturbs less than 1% of the surface in a four square mile area, compared to drilling of 64 vertical wells on 40-acre spacing in an area of the same size, which would disturb 10% of the surface"<sup>1</sup>. By using measuring while drilling technology, they are able to steer the drill bit for horizontal lengths up to 10,000 feet.

Mr. Paul provided some production test information for Encana's Michigan Utica-Collingwood wells drilled to date. The five State of Michigan wells located in Kalkaska County's Excelsior Township have produced an average of 10 million cubic feet per day of natural gas over a one-year period. Also produced is 85-100 barrels of natural gas liquids per million cubic feet of gas. There is no water contained in the Collingwood, it is 100% hydrocarbons. They have determined that letting a well sit for approximately 60 days after hydraulic fracturing improves performance. He noted that the well with the longest horizontal section – the 10,000 foot State Excelsior 3-25 HD-1 – exhibited the highest 24 hour initial test rate, 10.1 million cubic feet per day.

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<sup>1</sup> Michigan Oil and Gas News April 26, 2013

Oil has been found at true vertical depths in the range of 4,000 feet to 6,000 feet in the northern Lower Peninsula and natural gas liquids and condensate found in the Central Basin at true vertical depths of 8,000 feet to 10,000 feet.

### **Michigan Dormant Minerals Act Question**

Curtis Talley Jr., Michigan State University Extension Educator and Peter Zirnhelt, Zirnhelt Bowron & Wiggins, P.L.C.; [legaloil@aol.com](mailto:legaloil@aol.com)

**Background:** An owner that holds both the surface and mineral estate can elect to retain the oil and gas rights and sell the surface only. This creates a severed interest, with an owner of the surface and a separate owner of the oil and gas rights.

Under Michigan's Dormant Minerals Act, which applies to only oil and gas rights, severed rights are considered abandoned and revert to the surface owner after twenty years, unless **one of** the following actions have occurred within a 20-year period:

- The severed interest is sold, leased, mortgaged, or transferred by recorded instrument.
- A drilling permit is issued.
- Oil or gas is actually produced or withdrawn from the severed holdings.
- The interest is utilized for underground gas storage operations; or
- A record claim of interest is filed with the county Register of Deeds (Affidavit to Retain).

**The question:** Based on the above, does the current surface owner have to be the owner for a continuous 20 years? For example, if there have been a couple of sales involving the surface estate and the current surface owner has owned the surface 5 years, do the mineral rights now belong to that surface owner, even if he has not owned the surface for a continuous 20 years?

**Answer:** The surface owner at the end of a 20 year abandonment period need not have owned the surface for the entire 20 years and may tack onto the ownership period for prior owners of the surface.

*Peter Zirnhelt represents and counsels both corporate clients and landowners in litigation and contract negotiation and preparation, including an extensive oil and gas law practice. The firm has three locations; Traverse City, Cadillac and Oakland County.*

### **Preserve Your Farm Through Purchase of Development Rights if you Have an Expired Oil and Gas Lease**

Part two of a two part series

**Farmland owners should be prepared to sign an Affidavit of Non-Production at closing.**

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[Purchase of Development Rights](#) or PDR is a voluntary farmland preservation program that pays property owners to place a permanent agricultural conservation easement on their farmland. Property owners wanting to preserve their farmland through PDR need to be aware of the status of their [mineral rights](#). PDR applications ask property owners to state who owns their mineral rights and if they are being leased or not.

The purpose of PDR is to preserve prime and unique farmland for food production. Only some counties and townships in Michigan actively participate in a PDR program. Contact your township office to find out if there is an active PDR program in your area.

Property owners can access the easements, leases and deeds on their property by contacting their County Register of Deeds Office or by hiring a title company to do a title search of their property. Property owners should request copies of all title documents. Title companies usually charge around \$350 for this service.

[Oil and gas leases](#) are a significant concern for PDR programs because this lease conflicts with the purpose of the agricultural conservation easement. Oil and gas development requires disturbance of the soil to extract resources. Agricultural conservation easements prohibit the disturbance of the soil except for normal agricultural practices.

If an active oil and gas lease exists on the property, see the article, "[Oil and gas leases can affect farmland owners' purchase of development rights](#)" from [Michigan State University Extension](#). This article helps property owners understand why active oil and gas leases make it difficult to preserve their land through PDR.

If property owners find they have an expired oil and gas lease, PDR is possible if property owners can truthfully state to following:

1. That the oil and gas company has not installed equipment on their property;
2. And that oil and gas was never extracted on their property.

These statements are made through an Affidavit of Non-Production, which is prepared by the PDR Program or the title company and signed by the property owner(s) at the PDR closing. The Affidavit of Non-Production is then recorded with the agricultural conservation easement and other closing documents.

If a property-owner cannot truthfully make these statements, PDR is likely not possible on the property as most PDR Programs require title insurance without oil and gas lease exceptions.

Oil and gas leasing is complex. Legal assistance should be sought before a lease is signed. [Michigan State University Extension](#) has several educational oil and gas [resources available](#) for property owners online. For more information, visit <http://www.msue.msu.edu>. To contact an expert in your area, visit <http://expert.msue.msu.edu>, or call 888-MSUE4MI (888-678-3464).

### **Upcoming Landowner Educational Meetings:**

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. If you would like an oil and gas leasing, Michigan regulations and industry educational meeting please contact Curtis Talley Jr. at 231-873-6841.

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](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 Curtis Talley Jr. You can also contact your local MSU Extension Office to obtain copies of the newsletter and other free oil and gas leasing information.