

[Print This Article](#)

Bar Association Gas drilling impacts residents' rights

David C. Mason November 22, 2010 9:26am EST

Like

Be the first of your friends to like this.

The recent Marcellus Shale gas boom in Pennsylvania has residents wondering how the drilling and transmission of the gas will impact their land ownership.

Two groups of people will be affected — those who buy lands which have been leased for oil and gas, and the owners of the surface in which another party owns the subsurface, or oil and gas interest.

Both of these groups are particularly anxious, and with good reason. Ownership or control of the subsurface oil and gas can have significant consequences to the owners of the surface.

Pennsylvania landowners began to divide this ownership — or “sever” — the subsurface rights from the surface shortly after the Civil War.

One party was permitted to enjoy the surface of the land while someone else would own and control the riches beneath. Coal, clay, iron ore,

and other solids were the first to be severed, along with a generic “and other minerals.”

By 1900, this “other minerals” clause was held not to include “oil and gas,” and as a result, today we find that the surface is often owned by one party, the coal and minerals by another, and the oil and gas by yet another.

Mining activities require the consent of the surface owner for a surface intrusion, not so for oil and gas. The owner of the subsurface oil and gas interest and his lessee enjoy an implied right to use so much of the surface as is necessary for the extraction of the gas, provided they act “with due regard” for the rights of the surface owner.

Though the Pennsylvania Department of Environmental Protection application permit process requires that the surface owner receive a copy of the proposed well pad plat, the objections available to a landowner are mostly limited to the location of the well.

Currently, the wells must remain 200 feet from existing buildings.

Pipelines and roads pose another risk to landowners. The implied easement in surface land in favor of gas production discussed above applies equally to the construction of roads and underground pipelines — both collection lines and transmission lines — and appurtenant above-ground facilities such as pump stations.

Once more, “due regard” for the surface owner must be given, but the pipelines and a gas company’s access to them are generally permanent features of the land which will restrict its future use.

The presence of a pipeline typically prohibits construction in an area 25 feet on either side of the line.

Some municipalities have adopted local ordinances in an attempt to control or limit gas drilling.

The 1968 Pennsylvania Oil and Gas Act expressly provides that any local ordinance that attempts to control or limit the operation of oil and gas wells is invalid. Zoning ordinances that prohibit drilling in a residential (R-1) zone have been upheld, though it remains to be seen if this ruling could be expanded to apply to other zoning classifications which prohibit or restrict gas drilling.

Many rural municipalities, which have no comprehensive zoning legislation, choose instead to regulate the drilling in their Subdivision and Land Development Ordinance.

Subdivision and land development ordinances that attempt to regulate gas drilling operations have been held invalid — preempted by state law.

The natural resources of Pennsylvania have been a valuable national treasure since colonial days and the development of the Marcellus shale gas field will have global effects.

Legislation, regulation and, yes, cooperation among the various participants will be required in order to further the safe and profitable development of clean domestic energy sources such as shale gas.

David C. Mason is with Mason Law Office in Philipsburg. This is one in an occasional series of columns coordinated by the Centre County Bar Association. The information and opinions expressed in the article are those of the author and do not represent the opinions of the Centre County Bar Association. The article is meant to convey general information and should not be relied upon as legal advice pertaining to any individual situation.



Have the CDT delivered to your home. [Click here to subscribe.](#)



Get the TV Book delivered to your home. [Click here to subscribe.](#)