

A Few Comments on the Terms of a Chesapeake Lease

I have prepared these brief comments on some of the terms of a Chesapeake lease at the request of Sue Lange, Chair of the Planning Board of the Town of Barrington. Sue provided me with a copy of terms from a Chesapeake lease, and asked me to review them with her. She requested that I write up the verbal comments I gave her on the lease terms, so that she could share the comments with her neighbors. The comments below are based on my preliminary review of the lease wording. These comments are not comprehensive and I am making them available for educational purposes only. Nothing in these comments constitutes legal advice or an offer of legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem with a gas lease. As background information on gas leasing, I strongly encourage people to read *Oil and Gas at Your Door? A Landowner's Guide to Oil and Gas Development*, by Lisa Sumi, Oil and Gas Accountability Project, 2nd Edition, 2005, http://www.earthworksaction.org/library/detail/oil_and_gas_at_your_door_2005_edition/, and *Minerals, Surface Rights and Royalty Payments*, by Judon Fambrough, Senior Lecturer and Attorney at Law, Texas A&M University, Nov. 2009, <http://recenter.tamu.edu/pdf/840.pdf>, as well as other materials linked on my website at <http://treichlerlawoffice.com/gasleasingworkshop.html>. If you have a lease that you think was unfairly obtained, check out the landowner group Fleased in Ithaca, NY, <http://fleased.org/>

Lease Terms

PAID-UP OIL & GAS LEASE

Lease No. ____
7/06-NY

This Lease, made this 13th day of February, 2007, by and between _____, whose address _____, hereinafter collectively called "Lessor", and CHESAPEAKE APPALACHIA, L.L.C., an Oklahoma limited liability company, P.O. Box 6070, Charleston, WV 25362-0070, hereinafter called "Lessee".

WITNESSETH, that for and in consideration of One Dollar (\$ 1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

LEASING CLAUSE. Lessor hereby leases exclusively to Lessee all the oil and gas including, but not limited to coal seam gas, coalbed methane gas, coalbed gas, methane gas, gob gas, occluded methane/natural gas and all associated natural gas and other hydrocarbons and non-hydrocarbons contained in, associated with, emitting from, or produced/originating within any formation, gob area, mined-out area, coal seam, and all communicating zones, and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased, together with such exclusive rights as may be necessary or convenient for Lessee, at its election, to explore for, develop, produce, measure, and market production from the Leasehold, and from adjoining lands, using methods and techniques which are not restricted to current technology, including the right to conduct geophysical and other exploratory tests; to drill, maintain, operate, cease to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including data acquisition, compression and collection facilities for use in the production and transportation of products from the Leasehold or from neighboring lands across the Leasehold, to use oil, gas, and non-domestic water sources, free of cost, to store gas of any kind underground, regardless of the source thereof, including the injecting of gas therein and removing the same therefrom; to protect stored gas; to operate, maintain, repair, and remove material and equipment

Comments

Keep in mind that compulsory integration is a more favorable option than leasing in many respects, contrary to what a landman will tell you. Integration is done by geological layer and you don't agree to any surface activities. Integration is under the supervision of the DEC. Two types of compensation. (1) Royalty, get smallest royalty that anyone in unit is receiving; (2) Integrated owners get 100% of production, but must pay share of costs by either paying share of cost up front or paying 300% of cost taken out of production. Integrated owners retain the right to market their share of production; have negotiating ability to get best price for share. Can purchase liability insurance for liability protection. Compulsory integration is not a threat, but a benefit. Gas companies don't want people to be compulsory integrated because it is much less favorable to them, so they try to make it sound bad.

Keep the leasing clause as limited as possible. Just lease oil and gas, not all mineral rights. Should receive additional compensation for "Associated Non Hydrocarbons" that have value, such as hydrogen sulfide. Lease each geologic formation separately. Thirteen gas producing formations underlie New York. Companies get permits by formation. A company could put separate wells for each formation covered by a lease. Don't give permission for techniques you don't understand; possibly don't allow hydrofracing; Exclude storage. Storage rights should be negotiated separately in a different kind of lease. Exclude all surface activity from the property. If you agree to allow well pads, roads, pipelines, compressor stations, etc., on the surface, the lease should provide substantial additional payments for hosting each such facility. Exclude access to non domestic water sources. Water may be more valuable than gas. If you do give water rights, lessee should pay for water usage. Payments Clause should provide payments for every right granted by the Leasing Clause.

DESCRIPTION. The Leasehold is located in the Town of Barrington, in the County of Yates the State of New York, and described as follows:

Tax Map No. _____

and is bounded formerly or currently as follows:

On the North by lands of: _____

On the East by lands of: _____

On the South by lands of: _____

On the West by lands of: _____

including lands acquired from _____ by virtue of deed dated _____, and recorded in Liber _____ at Page _____, and described for the purposes of this agreement as containing a total of _____ Leasehold acres, whether actually more or less, and including contiguous lands owned by Lessor. This Lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor, by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land.

LEASE TERM. This Lease shall remain in force for a primary term of Five (5) years from 12:00 A.M. February 13, 2007 (effective date) to 11:59 P.M. February 12, 2012 (last day of primary term) and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied:

- (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or
- (ii) a well deemed by the Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or
- (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or
- (iv) the Leasehold or lands pooled/unitized therewith is used for the underground storage of gas, or for the protection of stored gas, or
- (v) prescribed payments are made;

If Lessee's operations are delayed or interrupted as a result of any coal mining or coal related operations under any existing and effective coal lease, such delay will automatically extend the primary term of this oil and gas lease for a period of time equal to any delay or interruption.

If there is any dispute concerning the extension of this Lease beyond the primary term by reason of any of the alternative mechanisms specified herein, the payment to the Lessor of the prescribed payments provided below shall be conclusive evidence that the Lease has been extended beyond the primary term.

EXTENSION OF PRIMARY TERM. Lessee has the option to extend the primary term of this Lease for one additional term of five (5) years from the expiration of the primary term of this Lease; said extension to be under the same terms and conditions as contained in this lease. Lessee may exercise this option to extend this lease if on or before the expiration date of the primary term of this lease Lessee pays or tenders to the Lessor or to the Lessors credit an amount equal to the initial consideration given for the execution thereof. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

(A) **CONSTRUCTION OF LEASE:** The language of this Lease (including, but not limited to, the Lease Term and Extension of Term clauses) shall never be read as language of special limitation. This Lease shall be construed against termination, forfeiture, cancellation or expiration and in favor of giving effect to the continuation of this Lease where the circumstances exist to maintain this Lease in effect under any of the alternative mechanisms set forth above. In connection therewith,

(ii) the Lessee shall be deemed to be conducting operations in search of oil or gas, or their constituents, if the Lessee is engaged in geophysical and other exploratory work including, but not limited to, activities to drill an initial well, to drill a new well, or to rework, stimulate, deepen, sidetrack, frac, plug back in the same or different formation or repair a well or equipment on the Leasehold or any lands pooled/unitized therewith (such activities shall include, but not be limited to, performing any preliminary or preparatory work necessary for drilling, conducting internal technical analysis to initiate and/or further develop a well, obtaining permits and approvals associated therewith and activities was beyond the control of Lessee, including interruptions caused by the acts of third parties over whom Lessee has no control or regulatory delays associated with any approval process required for conducting such activities).

LIMITATION OF FORFEITURE: This Lease shall never be subject to a civil action or proceeding to enforce a claim of termination, cancellation, expiration or forfeiture due to any action or inaction by the Lessee, including, but not limited to making any prescribed payments authorized under the terms of this Lease, unless the Lessee has received written notice of Lessor's demand and thereafter fails or refuses to satisfy or provide justification responding to Lessor's demand within 60

Do not include "contiguous or adjacent land."

Only described property should be included.

Best to have a three year lease. Don't agree to more than five years. Don't allow the lease term to be extended for any activities other than paying production in a certain specified amount per month. The lease should only extend if you are earning money from production.

Be sure to eliminate storage from your lease. You don't want storage to extend the lease.

Pooling or unitization with adjoining landowners is an important issue. According to Prof. Ingraffea, Marcellus drilling units are likely to be long narrow units to take advantage of the stresses in the shale. So it's likely that there will be pooling. See discussion of pooling below in connection with the pooling and unitization clause.

Remove this entire clause, including (A), (i) and (ii) below. Do not allow extensions of the lease if no production. Lease should terminate and parties can renegotiate.

If lease provides for renewal by "tendering" payment, this means that all they have to do is offer you a check. You do not have to accept or cash the check and the lease will still be extended.

This clause should be removed. The concept of special limitations is a concept imposed by courts in other states for the benefit of landowners. Lessees try to include this clause to limit landowner rights under the lease.

Do not allow extensions of the lease if no production..

Remove this clause. Don't give away your legal rights. Is there going to be any dispute in which the Lessee does not "in good faith disagree with the Lessor's position?"

days from the receipt of such notice. If Lessee timely responds to Lessor's demand, but in good faith disagrees with Lessor's position and sets forth the reasons therefore, such a response shall be deemed to satisfy this provision, this Lease shall continue in full force and effect and no further damages (or other claims for relief) will accrue in Lessor's favor during the pendency of the dispute, other than claims for payments that may be due under the terms of this Lease.

PAYMENTS TO LESSOR. In addition to the bonus paid by Lessee for the execution hereof, Lessee covenants to pay Lessor, proportionate to Lessor's percentage of ownership, as follows:

(A) **DELAY RENTAL:** To pay Lessor as Delay Rental, after the first year, at the rate of five dollars (\$5.00) per net acre per year payable in advance. The parties hereto agree that this is a Paid-Up Lease with no further Delay Rental and/or Delay in Marketing payments due to Lessor during the primary term hereof.

(B) **ROYALTY:** To pay Lessor as Royalty, less all taxes, assessments, and adjustments on production from the Leasehold, as follows:

1. **OIL:** To deliver to the credit of Lessor, free of cost, a Royalty of the equal one-eighth (1/8) part of all oil and any constituents thereof produced and marketed from the Leasehold.

2. **GAS:** To pay Lessor an amount equal to one-eighth (1/8) of the revenue realized by Lessee for all gas and the constituents thereof produced and marketed from the Leasehold, less the cost to transport, treat and process the gas and any losses in volumes to point of measurement that determines the revenue realized by Lessee. Lessee may withhold Royalty payment until such time as the total withheld exceeds fifty dollars (\$50.00).

(C) **DELAY IN MARKETING:** In the event that Lessee drills a well on the Leasehold or lands pooled/unitized therewith that Lessee deems to be capable of production, but does not market producible gas, oil, or their constituents, therefrom and there is no other basis for extending this Lease, Lessee shall pay after the primary term and until such time as marketing is established (or Lessee surrenders the Lease) a Delay in Marketing payment equal in amount and frequency to the annual Delay Rental payment, and this Lease shall remain in full force and effect to the same extent as payment of Royalty.

(D) **SHUT-IN:** In the event that production of oil, gas, or their constituents, is interrupted and not marketed for a period of six months, and there is no producing well on the Leasehold or lands pooled/unitized therewith, Lessee shall thereafter, as Royalty for constructive production, pay a Shut-in Royalty equal in amount and frequency to the annual Delay Rental payment until such time as production is re-established (or Lessee surrenders the Lease) and this Lease shall remain in full force and effect. During Shut-in, Lessee shall have the right to rework, stimulate, or deepen any well on the Leasehold or to drill a new well on the Leasehold in an effort to re-establish production, whether from an original producing formation or from a different formation. In the event that the production from the only producing well on the Leasehold is interrupted for a period of less than six months, this Lease shall remain in full force and effect without payment of Royalty or Shut-in Royalty.

(F) **MANNER OF PAYMENT:** Lessee shall make or tender all payments due hereunder by check, payable to Lessor, at Lessor's last known address, and Lessee may withhold any payment pending notification by Lessor of a change in address. Payment may be tendered by mail or any comparable method (e.g., Federal Express), and payment is deemed complete upon mailing or dispatch. Where the due date for any payment specified herein falls on a holiday, Saturday or Sunday, payment tendered (mailed or dispatched) on the next business day is timely.

(G) **CHANGE IN LAND OWNERSHIP:** Lessee shall not be bound by any change in the ownership of the Leasehold until furnished with such documentation as Lessee may reasonably require. Pending the receipt of documentation, Lessee may elect either to continue to make or withhold payments as if such a change had not occurred.

(H) **TITLE:** If Lessee receives evidence that Lessor does not have title to all or any part of the rights herein leased, Lessee may immediately withhold payments that would be otherwise due and payable hereunder to Lessor until the adverse claim is fully resolved.

(I) **LIENS:** Lessee may, at its option, pay and discharge any past due taxes, mortgages, judgments, or other liens and encumbrances on or against any land or interest included in the Leasehold; and Lessee shall be entitled to recover from the debtor, with legal interest and costs, by deduction from any future payments to Lessor or by any other lawful means.

(J) **CHARACTERIZATION OF PAYMENTS:** Payments set forth herein are covenants, not special limitations, regardless of the manner in which these payments may be invoked. Any failure on the part of the Lessee to timely or otherwise properly tender payment can never result in an automatic termination, expiration, cancellation, or forfeiture of this Lease. Lessor recognizes and acknowledges that oil and gas lease payments, in the form of rental, bonus and royalty, can vary depending on multiple factors and that this Lease is the product of good faith negotiations. Lessor hereby agrees that the

If you are seriously considering entering into a lease, you should consult a geologist and an accountant experienced in representing leaseholders on oil and gas tax law and accounting issues. You need an experienced oil and gas accountant to review the payment provisions and make sure they are worded in a way that is favorable to you and in accordance with the latest tax and accounting guidelines.

Review the royalty provisions with an accountant. The market for oil and gas leases in New York is rapidly changing. Until very recently, landowners in New York were generally willing to accept less favorable royalty percentages and less favorable lease terms than landowners in other parts of the country. This is changing rapidly as gas production companies seek to develop the Marcellus shale formation. I recommend providing that all payments are to be made without deduction of any costs of production. In addition, you will want the right to examine Chesapeake's books and records to determine how royalty payments have been calculated.

Don't include. The Lessee should assume this risk.

Don't include. The Lessee should assume this risk.

Specify the Due Dates.

Check with your mortgagee about the effect on your mortgage of entering into the lease.

Do not agree to this clause. A failure to make timely payments should be grounds for termination of the lease.

payment terms, as set forth herein, and any bonus payments paid to Lessor constitute full consideration for the Leasehold. Lessor further agrees that such payment terms and bonus payments are final and that Lessor will not seek to amend or modify the lease payments, seek additional consideration or register any complaint based upon of any differing terms which Lessee has or will negotiate with any other lessor/oil and gas owner.

(K) PAYMENT REDUCTIONS: If Lessor owns a lesser interest in the oil or gas than the entire undivided fee simple estate, then the rentals (except for Delay Rental payments as set forth above), royalties and shut-in royalties hereunder shall be paid to Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

UNITIZATION AND POOLING. Lessor grants Lessee the right to pool, unitize, or combine all or parts of the Leasehold with other lands, whether contiguous or not contiguous, leased or unleased, whether owned by Lessee or by others, at a time before or after drilling to create drilling or production units either by contract right or pursuant to governmental authorization. Pooling or unitizing in one or more instances shall not exhaust Lessee's pooling and unitizing rights hereunder, and Lessee is granted the right to change the size, shape, and conditions of operation or payment of any unit created. Lessor agrees to accept and receive out of the production or the revenue realized from the production of such unit, such proportional share of the Royalty from each unit well as the number of Leasehold acres included in the unit bears to the total number of acres in the unit. Otherwise, as to any part of the unit, drilling, operations in preparation for drilling, production, or shut-in production from the unit, or payment of Royalty, Shut-in Royalty, Delay in Marketing payment or Delay Rental attributable to any part of the unit (including non-Leasehold land) shall have the same effect upon the terms of this Lease as if a well were located on, or the subject activity attributable to, the Leasehold. In the event of conflict or inconsistency between the Leasehold acres ascribed to the Lease and the local property tax assessment calculation of the lands covered by the Lease, Lessee may, at its option, rely on the latter as being determinative for the purposes of this paragraph.

FACILITIES. Lessee shall not drill a well within 200 feet of any structure located on the Leasehold without Lessor's written consent. Lessor shall not erect any building or structure, or plant any trees within 200 feet of a well or within 25 feet of a pipeline without Lessee's written consent. Lessor shall not improve, modify, degrade, or restrict roads and facilities built by Lessee without Lessee's written consent.

Pooling is the combination of acreages leased from different property owners to form a single production unit. It is rarely the case that a landowner has all their acreage put into a production unit. It is often the case that a production unit overlaps the property of several landowners. If a drilling operator does not have all the acreage in a proposed production unit under lease, it will seek compulsory integration of the remaining property owners in the unit. Because drilling operators commonly pool acreages to form production units, operators will demand that a lease include the right to pool. But as a landowner, you need to restrict the pooling rights granted. Broad pooling rights like those currently included in the Chesapeake lease can be used to the severe disadvantage of the landowner. If no restrictions are added to this provision, Chesapeake will be able to include a small area of the leased property in a pooled production unit, pay royalties only on production from this small area, and still maintain the lease as to the full area of the leased property. To avoid this prejudice, you should negotiate the inclusion of a "Pugh" clause in your lease. A Pugh clause provides for the severance of a lease into separate tracts whenever less than all of the premises are included in a single pool or unit. A typical Pugh clause reads:

"Upon the pooling of less than all of the leased land, this lease shall be severed and considered as separate and distinct leases. The lease term and all the rights and obligations of the lessee under this instrument shall apply separately to the pooled and unpooled acreage."

Including such a provision in your lease will allow you to sign other leases for the unpooled portion of your property once the primary term expires. The pooling clause should also be amended to permit pooling only to the extent necessary for Chesapeake to get a drilling permit from New York State. Otherwise, your written consent should be required to pool, and it should be provided that such consent may be withheld with no penalty. You should not consent to any pooling arrangement without receiving a full description of the proposed pool area, the details of how the boundaries were determined and a clear understanding of the full impact of that particular pooling arrangement on the lease terms. The lease should provide that you may limit your permission to pool to certain producing strata or to certain substances, and that any alteration or change the size or shape of an approved pool requires additional consent.

In my opinion, 200 ft. is not sufficient for protection. Given the flows of air emissions and groundwater contamination, it is difficult to say what setbacks would be sufficient. I recommend not allowing any surface activities on your property.

CONVERSION TO STORAGE. Lessee is hereby granted the right to convert the Leasehold or lands pooled/unitized therewith to gas storage. At the time of conversion, Lessee shall pay Lessor's proportionate part for the estimated recoverable gas remaining in any well drilled pursuant to this Lease using methods of calculating gas reserves as are generally accepted by the natural gas industry and, in the event that all wells on the Leasehold and/or lands pooled/unitized therewith have permanently ceased production, Lessor shall be paid a Conversion to Storage payment in an amount equal to Delay Rental for as long thereafter as the Leasehold or lands pooled/unitized therewith is/are used for gas storage or for protection of gas storage; such Conversion to Storage payment shall first become due upon the next ensuing Delay Rental anniversary date. The use of any part of the Leasehold or lands pooled or unitized therewith for the underground storage of gas, or for the protection of stored gas will extend this Lease beyond the primary term as to all rights granted by this Lease, including but not limited to production rights, regardless of whether the production and storage rights are owned together or separately

TITLE AND INTERESTS. Lessor hereby warrants generally and agrees to defend title to the Leasehold and covenants that Lessee shall have quiet enjoyment hereunder and shall have benefit of the doctrine of after acquired title. Should any person having title to the Leasehold fail to execute this Lease; the Lease shall nevertheless be binding upon all persons who do execute it as Lessor.

LEASE DEVELOPMENT. There is no implied covenant to develop or market within the primary term or any extension of term of this Lease. There is no covenant to develop the Leasehold within a certain time frame, and there shall be no Leasehold forfeiture, termination, expiration or cancellation for failure to comply with the implied covenant to produce. Provisions herein, including, but not limited to, the prescribed payments, constitute full compensation for the privileges herein granted.

COVENANTS. This Lease and its expressed or implied covenants shall not be subject to termination, forfeiture of rights, or damages due to failure to comply with obligations if compliance is effectively prevented by federal, state, or local law, regulation, or decree, or the acts of God and/or third parties over whom Lessee has no control.

RIGHT OF FIRST REFUSAL. If at any time within the primary term of this lease or any continuation thereof, Lessor receives any bona fide offer, acceptable to Lessor, to grant an additional lease ("Top Lease") covering all or part of the Leasehold, Lessee shall have the continuing option by meeting any such offer to acquire a Top Lease on equivalent terms and conditions. Any offer must be in writing and must set forth the proposed Lessee's name, bonus consideration and royalty consideration to be paid for such Top Lease, and include a copy of the lease form to be utilized reflecting all pertinent and relevant terms and conditions of the Top Lease. Lessee shall have fifteen (15) days after receipt from Lessor of a complete copy of any such offer to advise Lessor in writing of its election to enter into an oil and gas lease with Lessor on equivalent terms and conditions. If Lessee fails to notify Lessor within the aforesaid fifteen (15) day period of its election to meet any such bona fide offer, Lessor shall have the right to accept said offer. Any Top Lease granted by Lessor in violation of this provision shall be null and void.

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease, performance thereunder, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee..

ENTIRE CONTRACT. The entire agreement between Lessor and Lessee is embodied herein. No oral warranties, representations, or promises have been made or relied upon by either party as an inducement to or modification of this Lease.

SURRENDER. Lessee, at any time, and from time to time, may surrender and cancel this Lease as to all or any part of the Leasehold by recording a Surrender of Lease and thereupon this Lease, and the rights and obligations of the parties hereunder, shall terminate as to the part so surrendered; provided, however, that upon each surrender as to any part of the Leasehold, Lessee shall have reasonable and convenient easements for then existing wells, pipelines, pole lines, roadways and other facilities on the lands surrendered.

SUCCESSORS. All rights, duties, and liabilities herein benefit and bind Lessor and Lessee and their heirs, successors, and assigns.

Exclude storage rights from the lease. Storage rights should be negotiated separately in different kind of lease. Most lessees will readily agree to remove storage rights from the lease.

Check with your mortgagee about this provision and about the effect on your mortgage in general of entering into the lease.

The concept of an implied covenant to market is a concept imposed by courts in other states for the benefit of landowners. Lessees try to include this clause to limit landowner rights under the lease.

Remove this clause. Why grant the lessee this benefit?

Don't include this provision. Why give the lessee a right of first refusal? After dealing with the lessee for a few years, you may decide that you don't want to have anything to do with them.

Delete this clause. You are better protected if you can go to court. Arbitration is expensive. You have to pay all the costs of the arbitrators. You do not have to pay the costs of the court system. Arbitration does not give discovery rights and other protections that are available in court.

Remove this clause. Any right to terminate should be reciprocal. Do not grant any easements after termination.

Try and get a clause providing that the lessee cannot assign the lease without your prior written permission. If they do so, it should void the lease.

FORCE MAJEURE. When drilling, reworking, production or other operations hereunder, or Lessee's fulfillment of its obligations hereunder are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this Lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any provisions or implied covenants of this Lease when drilling, production or other operations are so prevented or delayed.

SEVERABILITY. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Lease and all of which, when taken together, will be deemed to constitute one and the same agreement.

IF THIS LEASE BECOMES FORFEITED, TERMINATED, OR EXPIRES, THE LESSEE, OR IF THE LEASE HAS BEEN ASSIGNED, THE ASSIGNEE IS REQUIRED TO PROVIDE A DOCUMENT CANCELING THE LEASE AS OF THE RECORD, AT NO COST TO THE CURRENT LANDOWNER. IF THE LESSEE OR ASSIGNEE FAILS TO CANCEL THE LEASE, THE CURRENT LANDOWNER MAY COMPEL A CANCELLATION PURSUANT TO SECTION 15-304 OF THE GENERAL OBLIGATION LAW.

THIS IS A LEASE OF OIL AND GAS RIGHTS, NOT A SALE, CONTAINING TERMS THAT MAY BE NEGOTIATED BY YOU. YOU HAVE THE RIGHT TO CANCEL THIS LEASE WITHIN THREE BUSINESS DAYS AFTER EXECUTION OF THE LEASE BY NOTIFYING THE LESSEE THAT YOU HAVE CANCELED THIS CONTRACT. IN ORDER TO CANCEL THIS LEASE, YOU MUST EXECUTE A NOTICE OF CANCELLATION IN THE FORM PROVIDED BELOW, MAIL IT TO THE LESSEE AND REFUND ALL AMOUNTS PAID TO YOU BY THE LESSEE WITHIN THE THREE-DAY CANCELLATION PERIOD. THE MAILING MUST BE POSTMARKED WITHIN THE THREE-DAY CANCELLATION PERIOD TO BE EFFECTIVE.

In the comments above, I recommend deleting many of the provisions of the Chesapeake lease. Conversely, there are many provisions that I recommend adding for your protection as a leasing landowner which are not in the Chesapeake lease.

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January 21, 2012

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This clause is far too broad. It should be very limited. Be aware that Chesapeake is currently asserting force majeure invalidly, claiming a ban on drilling, when in fact there is no ban if the company does an individual environmental review or drills into formations other than black shales.

Do not agree to this Severability Clause. If the lessee breaches the lease, you should have the right to terminate the entire lease.

Section 15-304 of the General Obligation Law provides that when an oil and gas lease "becomes forfeited, terminates or expires by its own terms," a lessee shall provide a document in recordable form to the landowner canceling the lease as of record. If the lessee fails to do this, the landowner may compel them to so. But it is not necessary for the landowner to take such action to terminate the lease. Since the procedure is relatively expensive, I don't recommend going through it unless there is a compelling reason to do so. If a landowner wishes have evidence of the termination of a lease on record in the county clerk's office, there are a variety of documents a landowner might consider recording in order to give public notice of the termination, including the lease itself if only a memorandum of lease has previously been recorded.