

Compulsory Integration (CI): How NYS can force you to allow gas drilling under your property

Property owners unswayed by the possibly dishonest dealings of landmen seeking drilling leases for gas corporations, may have thought that all they had to do was “Just Say No” in order to protect their families and properties from the impacts of gas-drilling. Now they are becoming aware of the role of the DEC in *forcing* landowners to give up their subsoil rights. How does that work?

1. When it applies for a permit from the DEC to drill a well, the gas company proposes a “drilling unit” from which gas will be extracted. The unit boundaries may cut across property lines and include parts of, or all of, unleased properties.
2. If the driller *affirms* (rather than *provides evidence*) that 60% of the land *surface* in the proposed unit is leased or owned outright, the DEC will schedule a Compulsory Integration hearing (in Albany on Tuesdays) which will give the driller the remaining landowners' *subsoil* gas rights to that gas formation.
3. Of the three “options” offered to the Integrated property-owner, most landowners end up making the default choice to receive royalties at a rate of 12 1/2%, much lower than that available to lessors. This process serves to extort acceptance of the gas company's lease offer.
4. The integrated property can be “mined” of its gas without drillers setting foot on your property. Recent amendments to drilling laws have halved the setback from property lines and unit boundaries. The newest drilling techniques have increased the likelihood of multiple hydraulic fracturing events far from the wellhead.
5. Each gas-bearing formation will have its own “drilling unit”: some properties have already been Integrated into more than one drilling unit.

So, if your neighbors have leased or sold to the gas corporation, there's a good chance your property will suffer the impacts of gas drilling, which is almost completely exempt from federal environmental law, and minimally regulated by New York State. The state also forbids county, town, and other municipal governments from taking any steps to protect their citizens (environmental Law 23-0303).*

But State Senator Seward has distinguished CI from Eminent Domain , writing that “ED is the taking by government of private property [while] under CI, the property owner retains ownership of his land and has several options for addressing his or her status within the unit.”

First, the “options” offered to the landowner whose property is being integrated into a drilling unit (established by the corporation) are window dressing. The fact that 98% of integrated owners “choose” the default option, which returns him/her a state-enforced 12.5% royalty rate that is among the lowest in the country, indicates the real extent of the “choices” in the CI process. (The other, riskier “options” : 1)going into partnership with the driller by sharing upfront the drilling and maintenance costs of the well and 2) owning all production attributable to his/her integrated acreage *after* the driller has triple-covered his costs. See <http://www.dec.ny.gov/energy/28013.html>)

Second, Integrated owners have no power to specify environmental protections, protect their property values, prevent the storage of commercial gases or the injection of used fracking fluids under their homes, nor prevent storage-associated access / pipeline easements taken by ED. (Environmental Law 23-1303*)

Third, the DEC schedules CI hearings in response to an Affirmation Form, submitted by the gas corporation, asserting that it controls over 59% of the land in the unit that it has defined. This assertion is not required to be supported by evidence (URL), so it is not surprising that Affirmations don't always square with reality.

Finally, the CI hearings that purport to give the landowners the option of "partnering" with these multi-national corporations before drilling starts, have often (60% of the time in Seward's district in Chenango County) been scheduled after the drilling commences (and more recently, after it is completed), in clear violation of the law. (Environmental Law 23-0501 ss 2b*)

Compulsory Integration is simply Eminent Domain without the fig leaf of "public purpose."

CI seems to be unjust, a gift from the state to the gas corporations. But the landman tells me that given the power of the gas corporation to take my subsoil rights, I'm better off to sign a lease . Isn't that right?

Landmen will lie to reach the 60% threshold, so assume nothing that they tell you is true until you confirm it. Maps look authoritative but they are just ink on paper. Often they will claim that they have leased much more land than they have. Ask your neighbors. If you and your neighbors deny them the 60%, then they can't drill.

By not signing a lease, you give them no rights to do anything on the *surface* of your property.

Compulsory integration is a bother for the driller and possibly bad publicity, so they have *some* incentive to try to lease as close to 100% as possible.

Fannie Mae/Freddie Mac are constrained from offering mortgages for any property contiguous to properties that have simply been leased for gas drilling. Inability to get a mortgage would depress the value of a property. for more info on this contact Joel Kupferman at lawproject@earthlink.net

CI is a defacto taking of the value of your home. If your property asset is a house on a small plot of land, its value will fall as more and more wells are drilled on the drilling unit, while your royalty payments will be small.

Then, What SHOULD I do?

If you are told by landmen that your property will be subject to CI because all your neighbors have signed:

- 1) Get the landman's name and employer, and try to have more household members witness that claim: his making such statements may be illegal
- 2) Talk with your neighbors and find out whether *they* have been told that *you* have leased
- 3) Contact the ChenangoDelawareOtsegoGasGroup at www.un-naturalgas.org . We have mapped leases in many towns in the three-county area and may be able to tell you whether your neighbors are leased.

If you are notified by a gas company that your subsoil property *will* be taken by CI, you must immediately go into action.

- 1) Keep every scrap of paper you get from the gas corporation/ New York State. Accept no phone calls: everything must be in writing, and signed by an officer

- 2) Locate a lawyer who has experience with Compulsory Integration and other gas issues. Madison County, where many properties have been subject to CI, maintains a list of good, gas-savvy lawyers. Contact us at www.un-naturalgas.org

If you want to be proactive, avoid the pressure and financial burden of being the last to know that the state intends to give your subsoil rights to a gas corporation :

- 1) Read the state law governing CI. All the laws cited above can be seen at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS> (click on ENV, click on Article 23, then click on the sections listed above, and any others you want.
- 2) Read the DEC Policy Memo on CI, <http://www.dec.ny.gov/energy/28013.html> CDOG may be able to help understand the law. Contact us at www.un-naturalgas.org
- 3) Educate your friends and neighbors on this issue by copying this pamphlet or directing them to our website
- 4) Take a broad view of CI and promote the position that CI is just another variation on Eminent Domain(ED) powers that have been given to private corporations to site windmills, electric transmission lines, gas pipelines, shopping centers, corporate offices, sports arenas, and more. Get to know and support community groups in their struggles against projects that are profitable only because they are endowed with ED powers by a corporate-compliant state government.
- 5) **Support CDOG** (*ChenangoDelawareOtsegoGasDrillingOppositionGroup*), a representative organization whose mission is to

1 create, assist, and coordinate action groups in the region;

2 assemble and disseminate information to defend our families, land, and resources from potential harm;

3 critique agencies, leasing agents, and officeholders who downplay or obscure the dangers of gas drilling ;

4 help local governments strengthen and assert their power to protect their communities.

CDOG is a non-profit organization that accepts contributions.

Help us do our work.

Send checks to

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