

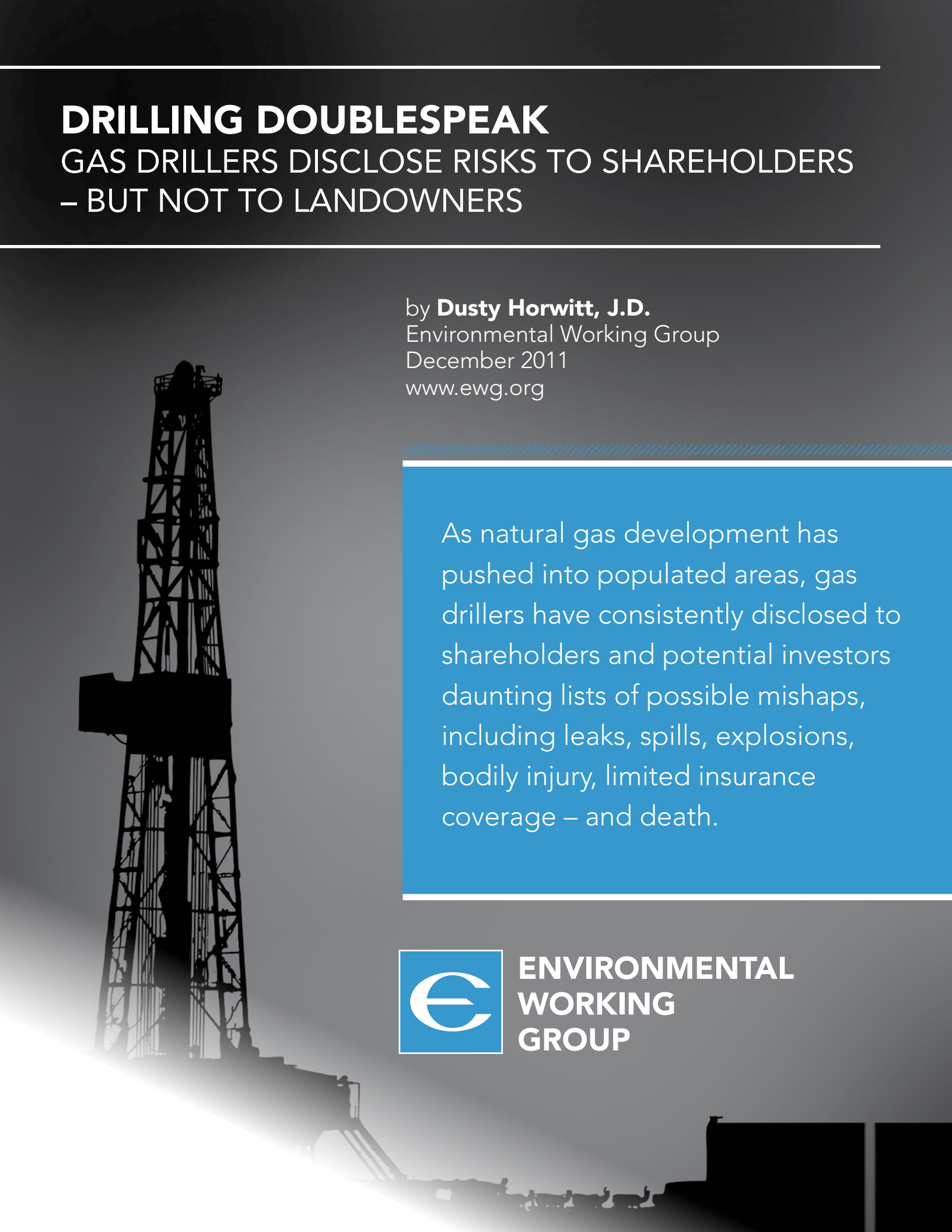
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# DRILLING DOUBLESPEAK

## GAS DRILLERS DISCLOSE RISKS TO SHAREHOLDERS – BUT NOT TO LANDOWNERS

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by **Dusty Horwitt, J.D.**  
Environmental Working Group  
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As natural gas development has pushed into populated areas, gas drillers have consistently disclosed to shareholders and potential investors daunting lists of possible mishaps, including leaks, spills, explosions, bodily injury, limited insurance coverage – and death.



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See all of EWG’s research on fracking at:  
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# Drilling Doublespeak

by Dusty Horwitt, J.D.  
EWG Senior Counsel

## Gas Drillers Disclose Risks to Shareholders – But Not to Landowners

As natural gas development has pushed into populated areas, gas drillers have consistently sent their shareholders and potential investors daunting lists of possible mishaps, including leaks, spills, explosions, bodily injury, limited insurance coverage – and death.

The reason for these warnings: federal law, enforced by the U.S. Securities and Exchange Commission, aims to protect investors against fraud by requiring companies that sell stock to disclose “the most significant factors that make the offering speculative or risky.”

But according to landowners, attorneys and industry documents, gas drillers paint a far more benign picture in the millions of unregulated transactions in which they persuade landowners to lease their property for drilling in exchange for a share of the proceeds. In its filings with the SEC, Oklahoma City-based Chesapeake Energy Corp., the nation’s second-largest natural gas producer, proudly called its aggressive pursuit of these leases a multi-million-acre “land grab.”

In personal interviews, nearly two dozen landowners

who live atop the gas-and-oil-rich Marcellus and Utica shale formations that stretch from New York to Kentucky told Environmental Working Group researchers that drilling industry representatives, often known as “landmen,” never mentioned possible risks to their water supplies or health as they negotiated gas-drilling leases. The landowners, in Maryland, New York, Ohio, Pennsylvania and Virginia, said that some landmen even denied that any such risks exist – despite SEC filings to the contrary by multiple companies including Chesapeake, Irving, Tex.-based Exxon Mobil Corp. and Houston-based ConocoPhillips.

The risks of gas drilling aren’t hypothetical. State officials in Colorado, Ohio, Pennsylvania and Wyoming have documented water pollution from natural gas drilling in recent years. As far back as 1987, the U.S. Environmental Protection Agency detailed dozens of cases of gas and oil drilling-related contamination in a report to Congress.<sup>1</sup>

“We were never told about any kind of risks whatsoever,” Craig Sautner of Dimock, Penn., told an EWG researcher. Craig, who works as a cable

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technician for a telephone company, and his wife Julie, a homemaker, leased about 3½ acres of land to Houston-based Cabot Oil and Gas Corp. in 2008. After drilling began in 2009, Pennsylvania officials concluded that Cabot's natural gas drilling operations had contaminated well water used by the Sautners and 18 other families in Dimock. Cabot has disputed the finding.

The state estimated the cost of extending public water lines to the families at nearly \$12 million. Along with some of their neighbors, the Sautners sued Cabot. They would like to move but say they cannot sell their home due to the water contamination problem. For the past two years, they and two of their children still living at home have relied on water that the state ordered Cabot to provide: bottled water for drinking and cooking and water pumped from a truck into a large plastic water tank for cleaning and bathing. Recently, the state ruled that Cabot had met its obligations and could end water deliveries. The Sautners and their attorney have protested, saying that their well water remains polluted.

"We've had prices anywhere from \$50 to \$100 per day" to buy replacement water, said Craig, "\$36,000 a year



After Julie and Craig Sautner leased their land to Houston-based Cabot Oil and Gas Corp., the company's improper drilling contaminated their water. Julie Sautner stands next to a vent that allows natural gas to escape from their water well so their home will not explode.

*Photo Credit: Vera Scroggins*

just to have clean water in the house."<sup>2</sup>

The relatively new practice of combining horizontal drilling with higher-volume hydraulic fracturing has allowed drilling companies to produce natural gas – and oil – from shale deposits that were previously inaccessible. These technologies have helped fuel the current drilling boom that has seen shale gas production increase from virtually nothing in 1990 to 25 percent of total U.S. gas production in 2011, according

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to the U.S. Department of Energy.<sup>3</sup>

EWG's review showed that the language of leases the Sautners and other landowners signed with Cabot and other drilling companies provides scant information about drilling risks. In interviews, the landowners said the landmen were equally uninformative in their verbal communications. But when the companies file their 10-K disclosure forms with the SEC, they tell a different and much more detailed story. Cabot's 2008 Form 10-K is typical:

"Our business involves a variety of operating risks, including:

- well site blowouts, cratering and explosions;
- equipment failures;
- uncontrolled flows of natural gas, oil or well fluids;
- fires;
- formations with abnormal pressures;
- pollution and other environmental risks; and
- natural disasters.

"Any of these events could result in injury or loss of human life, loss of hydrocarbons, significant damage to or destruction of property, environmental pollution, regulatory investigations and penalties, impairment of our operations and substantial losses to us.... We maintain insurance against some, but not all, of these risks and losses. We do not carry business interruption insurance. In addition, pollution and environmental risks generally are not fully insurable. The occurrence

of an event not fully covered by insurance could have a material adverse effect on our financial position and results of operations."<sup>4</sup>

Since at least 1996, Chesapeake Energy's 10-K forms have conceded "horizontal and deep drilling activities involve greater risk of mechanical problems than vertical and shallow drilling operations." The documents did not specify what the problems might be.<sup>5</sup>

These deceptive industry practices may cover thousands of leases and millions of acres. In its SEC filings, Chesapeake has described its land acquisition strategy unapologetically in blunt terms:

"We embarked on an aggressive lease acquisition program, which we have referred to as the 'gas shale land grab' of 2006 through 2008 and the 'unconventional oil land grab' of 2009 and 2010. We believed that the winner of these land grabs would enjoy competitive advantages for decades to come as other companies would be locked out of the best new unconventional resource plays in the U.S. We believe that we have executed our land acquisition strategy with particular distinction. At December 31, 2010, we held approximately 13.2 million net acres of onshore leasehold in the U.S. and have identified approximately 38,000 drilling opportunities on this leasehold."<sup>6</sup>

Chesapeake's 13.2 million acres comprise an area twice the size of the state of Maryland.

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*The New York Times* recently reported that Americans have signed more than a million natural gas leases over the past decade. The number of gas wells drilled in the U.S. has surged from about 105,000 between 1991 and 2000 to almost 250,000 over the following decade. The number of oil wells drilled grew from about 85,000 between 1991 and 2000 to 115,000 over the following 10 years.<sup>7</sup>

All of the landowners interviewed by EWG – who included nurses, retired teachers and small business owners – said they had no idea the dangers of drilling were so significant and expressed second thoughts about signing leases that are difficult to revoke. Attorneys who have consulted with thousands of clients on leasing issues also said that drillers habitually fail to disclose significant risks to water, property and health.

When it comes to discussing risks, drilling companies clearly have a double standard: Shareholders are warned, but many landowners are not. This means that thousands of landowners may be signing legally-binding contracts without understanding that their property, their health, their finances and their communities could suffer serious harm. As the rush to exploit new gas and oil deposits continues, public officials have a duty to bring an end to this pattern of deception.

## Recommendations

- i. State governments, which typically have jurisdiction over natural gas and oil drilling, should require disclosure of drilling risks to landowners similar to that which the SEC requires for shareholders.
- ii. Risks should be stated conspicuously in the lease language.
- iii. Disclosures should state plainly that leasing a property for drilling might violate the terms of a current mortgage or make it impossible to secure a mortgage or refinancing on the property in the future.
- iv. Disclosures should follow the example set by New York state's draft environmental impact statement on gas drilling, explaining that:
  - Drilling a well may involve thousands of truck trips.
  - Drillers are likely to engage in hydraulic fracturing (used in more than 90 percent of natural gas and oil wells in the U.S., according to the industry).
  - The fracturing process involves injecting as much as eight million gallons of fluid underground at high pressure.
  - Some chemicals used in the fluid may be carcinogenic.
  - Millions of gallons of fluid possibly containing carcinogenic substances can potentially flow out of the well.
  - What provisions have been made to dispose of this fluid.

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- v. States should publish their own landowners' guides with similar disclosures.
  - vi. State attorneys general and other officials should investigate whether drilling companies have engaged in fraud or violated consumer protection statutes by failing to fully disclose drilling risks to landowners or by claiming that there are no risks.
  - vii. If drilling companies are found to have engaged in fraud or other illegal conduct, state attorneys general and other officials should help landowners terminate their leases and hold drilling companies accountable.

## Drilling Companies Disclose Risks to Shareholders

In 1933 and 1934, Congress passed legislation to prevent fraudulent stock sales – sales that were viewed as a major cause of the Great Depression.<sup>8</sup> For decades, these laws have required publicly held companies, including drilling companies, to disclose any “material fact” to shareholders that could affect the purchase or sale of the companies’ stock.<sup>9</sup> Since 1998, the agency has directed companies to make the disclosures “in plain English.”<sup>10</sup>

Securities experts say that since 1995, federal law has provided another incentive for disclosing risks to shareholders. If a company makes “forward-looking statements... accompanied by meaningful cautionary

statements,” the law provides that a company can use those statements to defend against civil lawsuits alleging that it misrepresented itself to shareholders or failed to disclose key information.<sup>11</sup>

SEC rules say that the disclosures of risk must be “material,” a term that “limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.”<sup>12</sup> In 1976, the Supreme Court ruled that under securities laws “an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.” The court found that “there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”<sup>13</sup>

The SEC regulations governing the content of 10-K forms specify that in the sale of stock, companies are obligated to disclose only “the most significant factors that make the offering speculative or risky.”<sup>14</sup>

As a result, many leading natural gas and oil producers – including Exxon Mobil, Chesapeake, Anadarko Petroleum Corp., Devon Energy Corp., Encana Corp. and Southwestern Energy Co. – have disclosed a long list of drilling hazards to shareholders in their 10-K forms for at least the past five years. Some have made such disclosures for a decade or more. A 2002 filing



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by Fort Worth, Texas-based XTO Energy Inc., now a subsidiary of Exxon, is typical:

“Our operations are subject to inherent hazards and risks, such as fire, explosions, blowouts, formations with abnormal pressures, uncontrollable flows of underground gas, oil and formation water and environmental hazards such as gas leaks and oil spills. Any of these events could cause a loss of hydrocarbons, pollution or other environmental damage, clean-up responsibilities, regulatory investigations and penalties, suspension of operations, personal injury claims, loss of life, damage to our properties, or damage to the property of others... As protection against operating hazards, we maintain insurance coverage against some, but not all, potential losses. We do not believe that insurance coverage for all environmental damages that could occur is available at a reasonable cost. We believe that our insurance is adequate and customary for companies of similar size and operation, but losses could occur for uninsured risks or in amounts exceeding existing coverage. The occurrence of an event that is not fully covered by insurance could adversely affect our financial condition and results of operations.”<sup>15</sup>

Other companies say that such dangers are “inherent” or “normally incident to” oil and natural gas production.<sup>16</sup> Privately held companies are not required to file 10-K forms with the SEC, but risk language is so common in forms filed by publicly traded firms that there can be no doubt that these

risks are well known throughout the industry. Some regulators, including the SEC and New York Attorney General Eric Schneiderman, are investigating whether drilling companies’ disclosures to investors have been adequate. Some investors, including Investor Environmental Health Network and Green Century Funds, have called for greater disclosure.<sup>17</sup>

## No Disclosure to Landowners

Leasing the rights to drill on private land has been crucial to energy companies’ unprecedented drive to exploit shale formations beneath New York, Ohio, Pennsylvania and other states. In some cases, drilling companies send their employees to lease land. In others, independent land acquisition companies negotiate leases on behalf of drilling companies.

The recently developed technique used to extract oil and natural gas from shale formations combines horizontal drilling with high-volume hydraulic fracturing. The process requires the underground injection at high pressure of up to eight million gallons of fluid (a mix of water, sand and chemicals, some of them toxic) in order to fracture shale and release the gas or oil from millions of tiny pores. Drilling in shale deposits can require thousands of truck trips and the disposal of millions of gallons of toxic wastewater per well.<sup>18</sup>

Two of the targets of Chesapeake’s self-styled “land

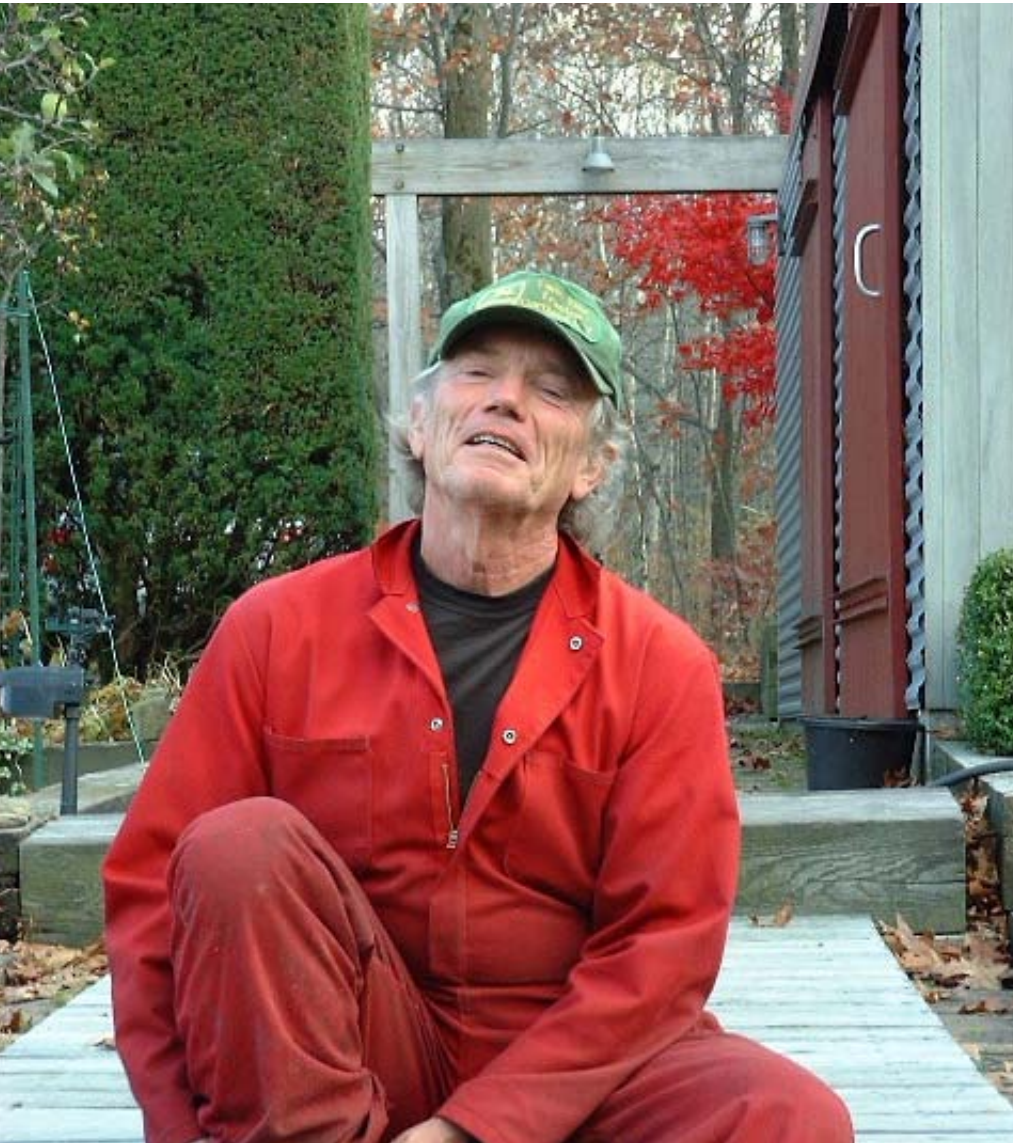
grab” were retired teachers Larry Hart and his wife, Nancy, who live near Syracuse, N.Y. They said they were never given any warnings when a landman persuaded

them to lease 44 acres in 2006. “We didn’t even know hydrofracking existed,” Larry said. The Harts and 22 other landowners who live above the natural

gas and oil-rich Marcellus and Utica shale formations, which stretch from upstate New York to Kentucky, told EWG that landmen did not disclose that drilling can involve serious risks to their property, health and finances. Some landowners said the landmen affirmatively told them that drilling would involve no risks.

An EWG examination of the landowners’ leases shows that the language of the documents also did not explicitly disclose the hazards the companies described to shareholders. At most, the lease language includes clauses that vaguely suggest the possibility of risks, such as provisions stating that companies will pay for property damages. John Miller, a retired architecture professor who leased his land to a driller, faulted the state of New York for publishing a guide for landowners that fails to disclose specific risks of drilling.<sup>19</sup>

Most of the landowners interviewed by EWG said drilling had not yet begun on their land and that they hoped to avoid the kind of damage



In 2007, retired architecture professor John Miller leased about 100 acres on which he lives to Denver-based Ansbro Petroleum Co., now known as Anschutz Exploration Corp., without being informed of drilling risks. “I believe that I have been a victim of deceptive business practices,” he wrote in a letter to New York Gov. Andrew M. Cuomo and Attorney General Eric Schneiderman.

*Photo Credit: Emoretta Yang*

suffered by the Sautners in Dimock, Penn. Almost all of the landowners said that if they had known of the dangers that companies disclose to shareholders, they would not have signed leases. Only Robert Williams of Troy, Penn., took a slightly different position, saying he might lease again because companies would extract his gas whether he leased or not, and a lease would provide him with at least some compensation.

EWG first learned of the discrepancy between what drilling companies tell shareholders and what they tell landowners from small business owner Leslie Avakian, who invited an EWG researcher to testify last year at a zoning hearing about gas drilling in her hometown of Greenfield Township, Penn. She said that in 2008, a landman presented her with a lease from Dallas, Tex.-based EXCO North Coast Energy Inc., that contained no explicit disclosure of risks and had her and her husband's names and address pre-typed on it. She declined to speak to the landman and did not lease.

Over the past two years, EWG spoke to a number of other landowners who told similar stories about drilling companies' failure to disclose risks. EWG visited landowners in upstate New York, Dimock, Penn.

and Rockingham County, Va., and contacted others by phone and email.

Chesapeake, Cabot and 17 other companies and individuals involved in leasing to landowners in the five states either did not respond to phone calls and emails seeking comment or declined to comment.

The lone exception was Jack Norman, chief executive officer of Elexco Land Services, a company with offices in several states that acquires leases for



*In 2006, Everett May, a farmer in Rockingham County, Va., leased more than 1,200 acres to the Keeton Group; he thought it would be an easy way to earn some money for the farm. He later learned about the risks of gas drilling and said that if he had known the dangers, he would not have leased.*

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drilling companies. Norman acknowledged that his company does not use disclosure language like that in companies' 10-K forms. He said such language would discourage landowners from signing leases because it doesn't make clear that the actual likelihood of problems is small.

"I'm not going to go out there and tell [landowners] the sky is falling because I've got contracts I've got to negotiate," Norman said. "If I told someone what the real risk was, I don't think I'd scare anyone off anyway."

He noted that his company's leases have clauses that hold drilling companies responsible for damages to property and that landowners have the right to consult a lawyer.<sup>20</sup> However, it is not always easy to find lawyers who are knowledgeable about oil and natural gas leasing.

"I think 99 percent of lawyers in New York State would not be able to break apart a lease and understand all of the interconnected ramifications and nuances," said Joe Heath, general counsel for the Onondaga Nation in New York, who has consulted with about 300 leaseholders as companies have bought drilling rights to the Marcellus Shale over the last several years.<sup>21</sup>

Lance Astrella, a Denver-based attorney, spent 20 years representing oil and gas companies. Fifteen years ago, he decided to represent landowners instead because he believed drillers were not doing enough to protect them from environmental harm. He said he has seen

"very little" disclosure of drilling risks for most of his career but added that some companies have recently become more open about potential dangers.

"More recently, you've gotten better disclosure about the surface disturbance and impact of drilling," Astrella said. He believes the shift is driven by greater scrutiny of drilling operations.<sup>22</sup>

Several attorneys who represent landowners said that they are not aware of any regulations requiring disclosure of drilling risks in the leasing process. Regulators from Maryland, Ohio, Pennsylvania and Virginia confirmed that their states do not require such disclosure.<sup>23</sup> The New York Department of Environmental Conservation did not respond to a request for comment.

## Landowners in a Bind

Lawyers familiar with the leasing process say that once a landowner signs a lease, he or she may not have many options to undo it, aside from hoping that it expires before drilling begins.

"It is essential that landowners fully understand the terms of the lease as drafted, not based on what a land agent tells them, because they are bound by what they have signed," said Gerald Gray, an attorney in southwestern Virginia who has represented landowners in natural gas leasing situations since the 1970s.<sup>24</sup>

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A typical lease usually runs for five years and gives the drilling company the option to extend it for at least another five. An unhappy landowner could try to terminate a lease on the grounds that the company engaged in fraud by failing to disclose risks, but attorneys who practice in the field say fraud is difficult to prove, in part because drilling companies may not have the same legal duty to disclose risks to landowners as they do to shareholders. In some states, consumer protection laws may give landowners a way to terminate a lease, attorneys said.

Compounding the problem, several attorneys said, is that few lawyers are willing to litigate against the oil and gas companies because the industry, with deeper pockets, can drag out cases in an effort to make the cost of litigation prohibitive. In addition, landowners seeking to terminate leases before drilling begins may not have much proof of actual damages that would provide attorneys a financial incentive to take their cases.

That's why Joe Heath, the Onondaga Nation's attorney, is urging New York Attorney General Eric Schneiderman to take up the landowners' cause. "This is a consumer protection issue that goes beyond an individual fraud issue," he said.

Avakian, the Pennsylvania landowner, agreed that there is a need for more government oversight to level the playing field for landowners.

"Suddenly you open the door to a landman," she said, "and you're engaged in a business transaction, but you've got no business experience, no legal counsel and no government protection."<sup>25</sup>

## The Landowners' Stories

### Maryland

**Dana Shimrock** is the director of the Garrett College library. Her husband, Tom, is a retired art teacher. They live in Garrett County, Md. In 2006, they leased about 50 acres where they live to a Lexington, Ky.-based firm called the Keeton Group.

Dana said she did not want to lease at first, but landmen from the Keeton Group kept returning to her home to press for her signature. She said they never mentioned risk and said everything would be fine. Dana was worried about fracking fluids polluting her well water and remembers asking one of the landmen, "What's in the fracking water?" He responded, "It's just water and sand," she recalls. The landmen told her they would test her water before and after drilling. Dana was familiar with conventional drilling operations and said she did not realize that the shale gas drilling would be more intensive and would involve more trucks, equipment and fluid. The landmen implied that if she and her husband did not lease, their neighbors would benefit from drilling and they would lose out, she said.



Dana and Tom Shimrock in their garden in Garrett County, Md.

They finally decided to lease because she and her husband were the last in their neighborhood to do so and were surrounded by leased property. She said she decided that the nearby drilling activity would forever change the landscape, so she might as well receive some royalties. The lease, which was transferred to Chief Exploration Development and subsequently to Chevron, is due to expire soon. The Shimrocks hope to terminate it. Dana said they would not lease again because of what they now know about the risks. She also fears being trapped on a polluted piece of land because lenders might not be willing to give prospective buyers a mortgage on property with a gas lease on it.

"Thirty-five years of developing this property... this is kind of our security," Dana Shimrock said. "And we may not be able to even sell it. Then you're stuck."<sup>26</sup>

The Keeton Group did not return a phone call seeking comment.

## New York

**John Miller** is a retired Cornell University architecture professor who lives in Brooktondale, N.Y. In 2007, he leased about 100 acres on which he lives to Denver-based Ansbro Petroleum Co., now known as Anschutz Exploration Corp. The company's website describes it as "the world's largest owner and operator of sports and entertainment

venues," including the Staples Center in Los Angeles and the O2 Arena in London. Miller said he agreed to lease in part because the landman who approached him, Blake Thatcher of Mason-Dixon Energy, did not mention anything about risks. Miller said he reviewed the "Landowner's Guide to Oil and Gas Leasing" published by the New York State Department of Environmental Conservation. He now considers its disclosure of risks inadequate.

"I believe that I have been a victim of deceptive business practices," he wrote in November 2010 to New York Gov. Andrew Cuomo and Attorney General Eric Schneiderman. "I received no information, written or visual, that represented the nature of the large-scale industrial drilling sites required for the process of [high volume hydraulic fracturing]... I would never have

signed the lease with Ansbros Petroleum Company had I known of the proposed methods and materials to be used in the High Volume Hydraulic Fracturing drilling and extraction of natural gas from the Marcellus Shale.”

Miller said he had consulted with local independent lawyers but found they had little experience with mineral leases. He said they told him that the leases were standard forms used by the industry. The transaction seemed to him like a “win-win situation.”

Miller said that one factor that swayed him was that his land is sandwiched between two larger landowners who had already leased. The landman told him that if he did not sign, state law would allow Ansbros to take the rights to drill under his land as part of a joint drilling unit with the other landowners, and he would forfeit the signing bonus. Miller now hopes to terminate his lease.<sup>27</sup> Thatcher, Mason Dixon Energy and Anschutz did not return phone calls seeking comment.

**Kathie Arnold** and her family are organic dairy farmers in New York’s

Cortland County. In 2006, they leased about 570 acres of their farm to Fortuna Energy Inc., a subsidiary of Calgary-based Talisman Energy Inc. They signed a




Kathie Arnold on her farm in Cortland County, N.Y.

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lease at the behest of a landman who did not mention any risks to their land or water. “We never heard a word about that,” she said, referring to the risks that drilling companies routinely disclose to shareholders.


The Arnolds thought they were agreeing to conventional vertical drilling. They were happy to have the extra financial support. When they learned later that their lease allowed for horizontal hydraulic fracturing, they became very concerned about their water and the implications for their organic farming certification. Arnold said her lease has expired and she has taken steps under New York State law to prevent its extension. She has been offered a new lease but has declined to sign, knowing what she knows now about the risks.<sup>28</sup> Talisman did not respond to a phone call seeking comment.



**Wayne Chauncey** is a retired high school history teacher who lives near Syracuse, N.Y. In 2005, he and his siblings signed a lease for \$5 an acre with Fortuna for drilling rights on more than 167 acres owned by the family in Tioga County. A landman approached them about leasing the land in 2000. Chauncey and his siblings had moved away, but one of their parents still lived on land next to the property. Chauncey did not ask about risk and does not remember risks being mentioned or being warned about liability or damages. He and his siblings thought the company would conduct conventional vertical drilling; they saw leasing as an opportunity to support their elderly

parents, who didn’t have long-term healthcare insurance. They put the money from leasing into a trust for their parents.

Once they learned about the dangers of horizontal hydraulic fracturing, they became very concerned and terminated the lease last year. Chauncey said he would not lease again even if he were offered \$3,000 an acre. “It’s just not worth it,” he said. “I could use the money, but the possible risk to the environment, the land, the water and the future of the land as a place for grandkids is much too great.”<sup>29</sup>



**Alfred and Gloria Santillo** live in Sharon Springs, N.Y. They are retired, but Alfred does some farming. In 2008, they leased 324 acres to Elexco Land Services. They said they were approached by a landman who offered them \$36,000 over five years and never mentioned anything about the risks associated with drilling. Alfred and his wife recall asking the landman how the drilling would impact the land and their farming routine. The landman said it was an innocuous and harmless process that would take less than two weeks and would be hardly noticeable. Alfred said he didn’t know anything about gas drilling or hydraulic fracturing: the processes to be used were never mentioned. He asked about risks to drinking water and was assured by the landman that the drilling company would exercise caution and secure the gas well with cement, so there would be no possibility of contaminating his water well. Alfred refused to sign



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the original lease, however, insisting on an addendum with 14 protective provisions. Alfred took this copy of the lease to an attorney friend who did not have a lot of experience with leases but told Alfred that it looked reasonable and straightforward. Asked if he would lease again knowing what he knows now about drilling risks, Alfred said, "No, of course not."<sup>30</sup>



Other New York state residents who said they were not told the risks of gas drilling before they leased, or were told there were no risks, include the following:

**Robert Armstrong** is a semi-retired newspaper wholesaler who lives in Dryden and works part-time delivering the Cornell Daily Sun. In 2007, he leased about 20 acres to Ansbro. "There's no way in hell I would have leased if I had known about hydrofracking," he said, adding that Ansbro indicated the drilling would be conventional and relatively low-impact, not the more intensive process involving horizontal drilling combined with high-volume hydraulic fracturing, as is planned for New York.<sup>31</sup>

**Ellen Harrison** is a retired environmental scientist who lives in Ithaca. In 2008, she leased 33 acres to Anschutz. She later founded Fleased, an organization that advocates for landowners who leased land without being told of the dangers. She said that she and other members of the group leased before they knew about the risks of shale gas drilling. "The landman was trained to mislead us, and he sure did," she said.<sup>32</sup>

**Larry Hart**, a retired physical education teacher, athletic director and coach, and his wife Nancy, a retired elementary school teacher, live near Syracuse. In 2006, they leased 44 acres to Chesapeake. "We didn't even know hydrofracking existed," he said. "The hydrofracking issue wasn't even known by anybody." The Harts insisted on an addendum to their lease that had five important items. They and the landman signed the addendum. The Harts assumed that the amended lease had been filed at the county clerk's office. But when they went there to begin the process of terminating their lease, they discovered that the lease on file was not the same as the one they had signed. In the filed lease, one item on the addendum had been rewritten and a second item had been removed. Hart said that they pursued the matter until Chesapeake filed a release ending the lease.<sup>33</sup>

**Suzanne Hinderliter**, a retired sales representative for a book company, lives in Lansing. In 2007, she leased 14 acres to Anschutz. "Hydrofracking was not a word they ever used," she said. "We didn't even know about hydrofracking until much later, probably not until a couple of years later." Before signing, Hinderliter contacted two lawyers; one told her that it was all right to sign the lease, so she did. Shortly afterward, the second lawyer called her and advised her not to sign the lease.<sup>34</sup>

**Peter Hudiburg**, a home renovator, lives in South Plymouth. He bought a farm and farmhouse in 2005 with an existing gas lease on 250 acres that had been

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signed by the original owner. In 2007, he reviewed the gas lease and found that there were no protections for his land or water. He agreed to sign a new lease on additional land with a Norwegian company, Norse Energy (also known as Nornew), that was taking over the original lease. He did so in an attempt to gain protections in both the original lease and the new lease. But attorneys specializing in gas leases later told Hudiburg that the protections were inadequate. Before negotiating with Nornew, he tried unsuccessfully to find a lawyer familiar with gas leasing who might be able to help him terminate the original lease or add protections. "I didn't know anything about fracking," he said. "There should have been some procedures prescribed by New York State law that would require them to divulge any potential problems or any past problems."<sup>35</sup> Norse Energy did not respond to a phone call seeking comment.

**Anne Mantey**, a substitute school nurse, and her husband Albert, a retired mechanic, live in Moravia. In 2006, they leased about 19 acres to Chesapeake. "At the time we agreed to sign that lease, nobody around here had ever heard about hydrofracking," she said. She also said the landman, John Britz of Mason-Dixon Energy, told her that she had the option not to renew the lease after five years. "Come to find out that the only person who has the option to not renew is the gas leasing company," she said.<sup>36</sup> Mason-Dixon Energy did not respond to a call seeking comment.

**Marie McRae** runs a small horse-boarding stable

where she cares for horses and owns rental property. She lives in Freeville. In 2008, she leased 12.5 acres to Anschutz. "When I brought up some questions to the landman [about my water], he said oh, no, goodness no, we would never mess with your water." She added that "I signed a gas lease because after chasing after us for nine months, the landman said if you don't sign, we'll just come in here with compulsory pooling." He was referring to a process that allows the state to force drilling under a landowner's property. "I felt totally backed into a corner," she said.<sup>37</sup>

**Bruce Murray** runs a house-painting business and lives in Caroline. In 2007, he leased about 150 acres to Ansbro. Murray said that before he leased the land, which he had managed for conservation purposes, he attended two dinners hosted by Ansbro in 2007 to explain the drilling process. "Never once was high-volume hydrofracking shown or mentioned," he said. "It was very deceiving – the whole thing." He said he leased because the company told him that he would be forced into a compulsory drilling pool, and a lawyer told him that if he did not lease, his land would be subject to the least protective terms of any lease in the pool. He added that he was surprised to learn after leasing that gas drilling companies had exemptions from several federal environmental laws, including the Clean Air Act and Clean Water Act.<sup>38</sup>

**Ellen Ricketson**, an organic farmer, lives in Ithaca. In 2006, she leased 30 acres to Chesapeake. "I have been an organic farmer for 50 years," she wrote in an

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email. "I press cider from my fruit trees, make wreaths from my evergreens. I have planted thousands of trees... There is no conceivable reason I would ever jeopardize the viability of the plant and wildlife. If I had been made aware of any such risks of contamination, I would never have signed a lease. I wish I knew then what I know now." Ricketson said a primary reason she signed was because the landman told her that she if she did not lease, the state would be able to force drilling on her land and she would receive no money.<sup>39</sup>

## Ohio

**Suzanne Garver**, a retired teacher for individuals with mental disabilities, lives in Canton. In 2008, she leased about two acres to Range Resources. The landman told her that he had a gas well on his own property that never caused any issues, and he never mentioned risks of drilling. "I had no idea of any other ramifications [from drilling]," Garver said. "We hadn't heard of what was going on in Pennsylvania or New York yet." She regrets signing. When asked if she would lease again, Suzanne said, "Absolutely not. If I could undo it, I absolutely would."<sup>40</sup> Range Resources did not respond to a phone call seeking comment.

## Pennsylvania

**Michael Bastion**, a retired engineer, lives in Bradford County. In 2009 he leased about one acre of his residential property to Capital Land Services, which was acquiring leases for Chesapeake. He said the

landman "mentioned nothing about any risk, any hazards. All he wanted to do was for me to sign the lease," Bastion said. Bastion had no idea what he was about to experience. "C'mon, I was an industrial engineer. I was for this," he said. "None of us knew how devastating this would be."

Soon after he leased, Bastion said, drilling activity surrounded his property, though no drilling has occurred on his own land. The base of one well pad is 50 to 100 feet from his property line, he said, and there are numerous other well pads within a half-mile. He must contend with constant truck traffic, noise and ground vibrations from blasting of rock and heavy equipment in a quarry used to build roads and well pads. After drilling began in 2010, he said, the water in his well disappeared for five days. When it returned, it had unsafe levels of heavy metals and elevated turbidity, and he now buys bottled water for drinking and cooking. For financial reasons, however, he has to use well water for bathing, laundry and washing dishes. "This has totally destroyed my life. I'm sick, my land is worth nothing, and I can't look out my window without seeing [drilling activities]... I'm engulfed in this and it's killing me. I would not lease again for a million dollars for this one acre." Chesapeake and Capital Land Services did not respond to phone calls and email seeking comment.<sup>41</sup>



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**Ron Gulla** lives in Washington County and is a heavy equipment salesman in western Pennsylvania. In 2002, he leased his 141-acre farm to Great Lakes Energy Partners, a company that was later purchased by Range Resources. Great Lakes, a smaller company, usually drilled shallow wells, Gulla said, so he and his

dozens of audiences, including the Maryland State Legislature. He takes a drilling industry Form 10-K with him to show that companies disclose risks of drilling to shareholders, but not to landowners. "The landowners know nothing about it," he said, "and you're the one holding the bag of liabilities when they're done."<sup>42</sup>



Ron Gulla, who leased 141 acres he owned in Washington County for drilling, said the landman who offered the lease said nothing about risks or horizontal drilling.

neighbors had expected the same type of drilling. Gulla said he signed primarily because he was promised free natural gas, and the landman who offered the lease never said anything about risks or horizontal drilling. Range began drilling on Gulla's property in 2005. The company drilled two vertical and two horizontal wells that destroyed his farm and pond, he said.

"My pond turned black," he said. Gulla said he would not have leased had he known the risks. In recent years, he has spoken about the risks of drilling to

Range resources did not respond to a phone call requesting comment, but in newspaper accounts it has denied any responsibility for the pollution on Gulla's property.<sup>43</sup>

**Robert and Darlene Williams** live in Troy. Robert worked for a natural gas utility, and both are retired. In 2008, they signed a lease with Range Resources. Robert said he attended a community meeting held by the company, where a representative explained the leases but went so

fast that "our heads were spinning." There was no mention of risk, he said. Robert asked if he could take the lease home and think about it, but the man said he had to decide right then. Robert signed because a lot of farmers in the area had leases and he thought it would be safe. Robert said he probably would not lease again, but added, "I'm not sure what the point would be of refusing to lease because they'll just take your gas anyways, and you won't get anything from it. At least if you sign you get something."<sup>44</sup>

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## Virginia

**Sandra Estep** lives in Harrisonburg. In 2007, she leased a portion of her land to R.L. Powell, a company representing Infinity Oil and Gas. Estep said she asked the landman about potential risks because she was worried about her new water well and the nearby national forest. The landman said everything would be fine and the land would be in better shape after drilling than before, she recalled. Estep was hesitant but signed because influential people in the neighborhood had done so, and she figured that they knew what they were doing. Several people in the community had had their leases examined by lawyers before signing and were told the leases were fine, she said. The landman also claimed that some of her neighbors had already signed, implying that she would soon be forced into a joint drilling pool. "I didn't ask a lot of questions because I didn't know what to ask," she said.

She did not learn more about the risks of drilling until later and now regrets signing the lease. The land has been in the family, and she wants her grandchildren to be able to enjoy it. "This is where people go to get away from the rest of the world," she said of her rural property. "No one thought about hundreds of trucks coming in."<sup>45</sup> In a telephone interview, a representative of R.L. Powell declined to comment. Infinity Oil and Gas did not respond to a telephone call seeking comment.

**Everett May Jr.** is a farmer in Rockingham County whose family has worked the property for several generations. In 2006, he leased more than 1,200 acres to the Keeton Group; he thought it would be an easy way to earn some money for the farm. He said the landman told him there would be a simple vertical well drilled on his land and never mentioned any risks associated with drilling. May, who was familiar with historical drilling in the area and did not think there would be a problem, said he did not understand the lease and did not realize that it allowed horizontal hydraulic fracturing. After signing he found out about fracking and the problems it has caused in various states, he said. If he had known the risks, May said, he never would have signed. His lease expired recently and he had hoped that the company would not renew, but the Keeton Group extended it for another term.<sup>46</sup>

**Faye and Danny Smith**, retired schoolteachers, live in Bergton. They leased their land to Powell Land Company in 2008. They said the landman told them that all their neighbors had leased and they would be force-pooled and have little or no say in future development if they did not sign. The landman also told them that the hydrofracking used to drill wells on their land would be the same as the hydrofracking that had previously been used in the Bergton area. The Smiths were not aware of any problems with the previous fracking in the area. "That's the only reason I agreed to sign the lease," said Faye. Later, she said, they learned that the hydrofracking likely to occur in the area was different and riskier than the drilling

process they had known and that it would include unregulated and unknown chemicals. They regret signing the lease and are hoping it will soon expire.<sup>47</sup>

## Endnotes

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4. Cabot Oil & Gas Corp., Annual Report (Form 10-K), at 22 (Feb. 27, 2009).
5. Chesapeake Energy Corp., Annual Report (form 10-K), at 19 (Mar. 1, 2011).
6. Id. at 4.
7. U.S. Energy Info. Admin., Annual U.S. Natural Gas Exploratory and Developmental Wells Drilled, [http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=E\\_ERTWG\\_XWC0\\_NUS\\_C&f=A](http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=E_ERTWG_XWC0_NUS_C&f=A) (last visited Dec. 1, 2011); U.S. Energy Info. Admin., Annual U.S. Crude Oil Exploratory and Development Wells Drilled, [http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=E\\_ERTWO\\_XWC0\\_NUS\\_C&f=A](http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=E_ERTWO_XWC0_NUS_C&f=A) (last visited Dec. 1, 2011); Ian Urbina, A Rush to Sign Leases for Gas Runs Into Mortgage Restrictions, N.Y. Times, Oct. 20, 2011, at A1.
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11. See Private Securities Litigation Reform Act of 1995, § 102(b), 15 U.S.C. § 78u-5(c).
12. 17 C.F.R. §§ 240.10b-5, 230.405.
13. See *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting

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and expressly adopting language from *TSC Industries v. Northway*, 426 U.S. 438, 448-49 (1976)).

14. See 17 C.F.R. § 229.503(c) (companies must disclose the “most significant” risks); 17 C.F.R. § 240.10b-5 (it is illegal “to make any untrue statement of a material fact or to omit to state a material fact . . . in connection with the purchase or sale of any security); 17 C.F.R. § 230.405 (“the term material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered”).

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31. Telephone interviews with Robert Armstrong (Sept. 26, 2011 and Nov. 16, 2011).

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Nov. 16, 2011).

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