

Seneca Resources Corporation

Comments on Senate Bill 258

Before the
Pennsylvania State Senate
Environmental Resources and Energy Committee
Public Hearing

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Good morning Chairman Yaw, members of the Committee and guests. My name is Dale Rowekamp and I'm the Vice President of Land and Marketing for Seneca Resources Corporation, which is a subsidiary of National Fuel Gas Company. I've worked in the oil & gas industry for 30 years and during the past 26 years I've been employed by Seneca or other affiliated National Fuel companies.

The Land Department that I direct is responsible for managing more than 800,000 acres of oil & gas interests that Seneca holds in Pennsylvania. Seneca's position is unique in that we've operated in Pennsylvania for over 100 years and we've held our subsurface position for a very long time. Additionally, our position is very unusual in that we own nearly 80% of the subsurface rights we control as opposed to having leased them from other parties. However, it's important to note that we typically do not own the surface property over Seneca's subsurface rights. Consequently, we are very interested in Senate Bill 258.

Seneca supports a process that allows surface landowners the opportunity to acquire subsurface rights where the mineral owners simply cannot be identified or found today. Once those rights are acquired by the surface owner, companies like Seneca will have the opportunity to lease those lands for drilling and producing oil and gas. However, it's critical that this legislation be very carefully drafted so that it minimizes the legal risk for loss of legitimately held subsurface rights of long-time Pennsylvania owners such as Seneca. Consequently, attached to this testimony are proposed revisions that Seneca believes will improve the clarity of SB 258 while not detracting from the goal of the legislation. I won't cover all the details of Seneca's proposed revisions but will instead cover the general areas that were addressed.

- 1.) Consistency – A few of the modifications that we propose provide consistency by utilizing the same language throughout the document. These changes are contained in various sections of the legislation and are relatively minor in scope.
- 2.) Clarity – The revisions that are proposed in Sections 8320.1 (a) and (b) provide greater clarity regarding situations where a rebuttable presumption applies and where it does not. This is critical to assure consistent future interpretation by the courts. As modified, we believe that Section 8320.1 more clearly communicates the right of the surface owner to acquire subsurface rights that had been reserved by an owner who decades later cannot be found. At the same time, it also protects the subsurface rights of parties such as Seneca that typically acquired those rights through deeds and leases.
- 3.) Due Diligence – Seneca has been involved in various quiet title actions in the past. In those proceedings, we invested significant time and energy to identify and locate other parties who may have an interest in the quiet title action. However, we have also experienced situations initiated by others where very little effort was made to identify and locate all interested parties. In order to afford all impacted parties the opportunity to participate in the quiet title process, it's imperative that the party initiating the action perform a thorough search to identify interested parties and to provide the results and details of that search to the court as part of the quiet title action. Seneca has included a due diligence clause for your consideration in Section E of the attached draft of SB 258.

- 4.) Non-Partition or Division – It's very common that surface properties that were severed from the subsurface rights were later divided into numerous smaller surface tracts. As a result there may be many different surface owners associated with a single subsurface tract. Consequently, it's very important that the new legislation clearly state that subsurface activity that would qualify as an "exercise of subsurface rights" as defined in SB 258, acts to preserve the entire subsurface tract. This would protect active subsurface owners while not hindering the rights of the surface owners to acquire rights where the subsurface owner has completely failed to exercise their rights for 50 years or more. Seneca has included a non-partition clause for your consideration in Section F of the attached draft of SB 258.
- 5.) The Dormant Oil & Gas Act (DOGA) – DOGA was established to allow for leasing, through a trustee, of rights from subsurface owners who cannot be located. SB 258 will modify the current quiet title process to allow surface owners to acquire subsurface rights whose owners cannot be located. It's important that actions taken under quiet title honor the leases that were established under prior DOGA actions. Consequently, it may be beneficial to clarify in SB 258 that a surface landowner may acquire not only the subsurface rights, but also the rights associated with a lease that was established through an earlier DOGA action.

I want to thank the committee and sponsors of the bill for allowing Seneca Resources to provide comments regarding SB 258 and I welcome any questions you may have.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 258 Session of
2013

INTRODUCED BY YAW, ERICKSON, VULAKOVICH AND VOGEL,
JANUARY 18, 2013

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 17, 2013

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in particular rights and immunities, providing for actions to quiet title involving subsurface rights.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 8320.1. Actions to quiet title involving subsurface rights.

(a) Rebuttable presumption.--In an action to quiet title involving subsurface rights to real property, failure by any person claiming to hold the subsurface rights ~~DERIVED~~ **RETAINED** FROM AN EXCEPTION OR RESERVATION IN A DEED OR **AN EXCEPTION OR RESERVATION FROM ANOTHER** INSTRUMENT OF CONVEYANCE OF **AN** ~~FEE OR OTHER~~ INTEREST IN THE REAL PROPERTY, other than the surface owner of the real property, to exercise the subsurface rights for a period in excess of 50 years shall create a rebuttable presumption that the subsurface rights have been abandoned by

such person in favor of the surface owner.

(b) Nonapplicability.--The rebuttable presumption established in this section shall not apply to SUBSURFACE RIGHTS **DIRECTLY** CONVEYED AS PART OF THE fee interests IN THE REAL PROPERTY **OR SUBSEQUENTLY CONVEYED AFTER AN EXCEPTION OR RESERVATION FROM THE FEE INTERESTS**, including, **BUT NOT LIMITED TO** ~~without limitation~~, deeds, **ASSIGNMENTS** and long-term leases for coal, ~~and~~ other minerals, ~~and~~ oil **OR** ~~and~~ gas, including all appurtenant rights, which have been acquired BY AFFIRMATIVE GRANT **AND EVIDENCED** by a duly recorded **INSTRUMENT** conveyance.

(c) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Exercise of subsurface rights." The term includes, but is not limited to, any of the following:

(1) The production of any coal, ~~or~~ other minerals, ~~and~~ ~~the production of any~~ oil, **OR** ~~and~~ gas under subsurface rights.

(2) Operations being conducted under subsurface rights for injection, withdrawal, storage or disposal of water, oil, gas or other fluid substances.

(3) A mortgage, assignment, **LEASE, MEMORANDUM OF LEASE OR** conveyance **OF SUBSURFACE RIGHTS** or **AN** order or agreement to pool or unitize subsurface rights recorded in the recorder's office in the county in which the right or interest is located.

(4) Payment of taxes or fees on subsurface rights by the owner or owner's agent.

(5) A valid permit **OR AUTHORIZATION** of any government

agency pertaining to the use of subsurface rights has been issued.

(6) A statement describing subsurface rights and claiming ownership of the right and the intention to preserve subsurface rights is filed with the court and recorded in the county where the subsurface rights are located **OR, IF AN ACTION TO QUIET TITLE HAS COMMENCED, SUCH STATEMENT IS FILED WITH THE COURT AND RECORDED** prior to entry of a final judgment.

(7) Use of the surface, the strata between the surface and the situs of the **COAL, OTHER mineral, OIL OR GAS** and the strata where the **COAL, OTHER mineral, OIL OR GAS** is situated for, without limitation, exploration, evaluation, surveying, digging, extraction, production, draining, ventilation, cleaning, storing, blending and transportation for and of the mineral.

"Subsurface rights." Coal, ~~or~~ other mineral, oil or gas rights or interests, or any combination of those rights or interests.

"SURFACE OWNER." A PERSON WHO OWNS THE FEE SURFACE RIGHTS. THE TERM DOES NOT INCLUDE THE FEDERAL OR STATE GOVERNMENT OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF.

(D) ANY LESSEE OR OTHER PERSON WHO PAYS BONUSES, RENTAL PAYMENTS, ROYALTIES AND OTHER INCOME TO A SURFACE OWNER WHO HAS ACQUIRED TITLE TO SUBSURFACE RIGHTS PURSUANT TO THIS SECTION SHALL NOT BE LIABLE FOR ANY CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS TO VOID ITS LEASE, BY PERSONS CLAIMING TO OWN SUBSURFACE RIGHTS ON THE SUBJECT PROPERTY, AFTER FINAL JUDGMENT HAS BEEN ENTERED.

(E) DUE DILIGENCE. --SURFACE OWNERS SHALL CONDUCT A GOOD FAITH, REASONABLE, AND DILIGENT SEARCH OF ANY RELEVANT PUBLIC RECORDS, TO IDENTIFY AND LOCATE THE SUBSURFACE RIGHTS OWNER OR OWNERS AND ANY EXERCISE OF SUBSURFACE RIGHTS. SURFACE OWNERS SHALL ATTEST BY AFFIDAVIT ACCOMPANYING THE COMPLAINT THAT THE SEARCH HAS BEEN CONDUCTED AND THE AFFIDAVIT SHALL EXPLAIN THE NATURE AND EXTENT OF THE SEARCH. RELEVANT PUBLIC RECORDS SHALL INCLUDE, BUT NOT BE LIMITED TO, RECORDS AVAILABLE FROM: COURTHOUSE RECORDS OFFICES, OTHER PUBLIC OR GOVERNMENT OFFICES, THE INTERNET, AND OTHER PUBLICLY AVAILABLE ELECTRONIC NETWORKS OR SOURCES.

(F) NON-PARTITION OR DIVISION OF SUBSURFACE RIGHTS. --FOR THE PURPOSES OF THIS ACT THE EXERCISE OF ANY PART OR PORTION OF A DESCRIBED SUBSURFACE RIGHT SHALL BE CONSIDERED AN EXERCISE OF THE WHOLE OR ENTIRE SUBSURFACE RIGHT WITH RESPECT TO APPURTENANT RIGHTS AND WITH RESPECT TO THE AREA, INCLUDING ALL STRATA AND ACREAGE, WITHIN THE DESCRIBED BOUNDARIES AND DEPTH LIMITS OF THE SUBSURFACE RIGHT.

Section 2. This act shall take effect in 60 days.