

# Limiting a Lessor's Free Gas Usage When the Lease Does Not Provide a Numeric Limitation

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### § 13.01. Introduction.

Many oil and gas leases, particularly older oil and gas leases, permit the use of free gas by the lessor or other parties without placing any numeric limitations on the amount used. As the production declines, the proportional burden on the lessee caused by free gas usage increases. At the same time, the free gas user desires to continue using as much free gas as he or she wants because the oil and gas lease does not expressly state a limitation. This situation is complicated when the free gas user is also the lessor, because free gas is often considered to be partial consideration, along with royalties, for the oil and gas lease.

There is case law which gives the lessee the right, in certain circumstances, to place reasonable limitations on the free gas usage. These limitations can only be imposed if the lessee can prove that the free gas user is wasting free gas, therefore abusing the privileges afforded to him or her in the oil and gas lease.

The providing of free gas has been a prevalent practice in the Appalachian Basin,<sup>(1)</sup> and disputes over the amount of free gas to which a user is entitled seem to be unique to the Appalachian Basin. Of the reported cases, only one occurred outside of the Appalachian Basin.

Modern oil and gas leases contain a numeric limitation on the amount of free gas which can be used, eliminating the potential for dispute. This chapter covers only those oil and gas leases or other contracts which do not contain any limitations or restrictions, numeric or otherwise. Also discussed will be oil and gas leases or other contracts which restrict free gas use to domestic consumption, require the use of economical appliances, or have other non-numeric limitations.

### § 13.02. Terminology.

The term "free gas" will be used because of the prevalence of this term in the literature; arguably, the term