



The Duties of a Well Owner to a Free Gas Consumer

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§ 4.01. Introduction.

Many oil and gas leases permit a lessor or a surface owner to take gas free of charge. The free gas provision of an oil and gas lease and the resulting relationship place duties and liabilities on a well owner, some of which are apparent, and others that are less obvious.¹ This chapter will examine some of the leading case law that has developed regarding the duties and obligations to initially provide free gas, to continue providing free gas throughout and at the end of the lease, and the liability of a well owner for injuries caused to a free gas consumer.

¹ For the sake of simplicity, the term “well owner” will be used throughout to denote the party who owns the well which is providing the free gas, even if that party is only an operator for the owner. Similarly, the term “free gas user” will denote the party using the free gas, rather than using the terms lessor, landowner or tenant.

The lease may contain some very important limitations on the right to use free gas and is therefore the starting point in defining the relationship between the well owner and the free gas user. The lease may require that the free gas must be taken from a well which is producing and is located on the leasehold. Absent such a provision, the free gas obligation may arguably commence at the inception of the lease and continue until formal surrender of the lease without gas ever having been produced from the leasehold. Other important limitations which a lease may contain are the criteria for when the free gas obligation commences, what type of well the free gas obligation is tied to, limitations on the well owner's rights to operate and control the destiny of the well providing free gas, and limitations on the uses for and the amount of free gas.

§ 4.02. When the Duty to Provide Free Gas Commences.

[1] — The Necessity of Production from the Leasehold.

Upon execution of an oil and gas lease with a free gas clause, the issue arises as to when the free gas obligation commences. There are several cases which are instructive in this area. Recently, the Supreme Court of West Virginia addressed this issue in *Breedlove v. Pennzoil Co.*² The *Breedlove* case concerned seven leases. A common element in all of the free gas provisions was the requirement that free gas be taken from gas produced from the premises.³ The parties to the case stipulated that gas had never been produced from any of the leaseholds. Nevertheless, the free gas users were supplied with free gas from 1950 to approximately 1987.⁴

The court stated that there were two issues presented by the case: first, whether the leaseholds needed to produce gas before the free gas users were entitled to free gas and second, whether the 37-year practice of providing free gas required the well owner to continue providing free

² *Breedlove v. Pennzoil Co.*, 184 W. Va. 44, 399 S.E.2d 187 (1990).

³ 399 S.E.2d at 189.

⁴ *Id.* The use of free gas, absent production from the leasehold, will generally not hold a lease. *Goodwin v. Wright* 163 W. Va. 264, 255 S.E.2d 924 (1979), *Babb v. Clemens* 455 Pa. Super. 1891, 687 A.2d 1120 (1996).