

August 27, 2010

Mr. Chairman, Ladies and Gentlemen of the committee, my name is Frankie Kartch , I am a native of Kenmare and a landowner in Mountrail County. I would like to take the opportunity today to talk about the economic and environmental issues affecting some landowners in North Dakota's oil producing counties.

Today I would like to encourage you, the state's policy makers, to develop legislation on the following issues:

1. Require a written agreement between oil companies and landowners prior to the drilling of wells and disposal of waste on their property.
2. Require the state Oil and Gas Division to give equal weight to landowners concerns about the effects of oil development and waste disposal on their property, with an emphasis on the protection of clean water.
3. Hold the oil companies and the state responsible for any clean-up required over the lifetime of the reserve pit and its contents.

For the record, I am not a mineral owner as I own surface only. I have an oil well on my property that was drilled in late 2008 and early 2009. That oil well cost millions of dollars and involved several different businesses from the pad site surveyor to the drilling company to the oil pumping company all whom were able to participate in the free market and negotiate for a fair price. EOG, the well's owner paid the price agreed upon. That's called the cost of doing business.

The mineral owner negotiated his signing bonus and lease details.

The State of ND is in the enviable position it is because of the free market's ability to produce wealth. We have built more pipelines to export oil faster and efficiently, state of the art rail loading facilities have been built to get oil to market quicker. EOG and Hess have invested tens of millions in their Stanley and Tioga rail loading facilities. Again, the cost of doing business to get their product to market.

When EOG's landman approached me about drilling a well on our property, he offered me a \$8000 one-time payment for a lifetime lease for approximately 5 acres. When I said that was not enough, he said, "if we pay you more, we have to give everyone more."

When I said, I wanted an annual payment EOG's vice-president, Ty Stillman told me "we don't do annual payments. And if we pay you more, we have to pay everyone more."

Consequently, mineral holders often delay signing a lease in the hope that a bigger offer may follow.

This is not a new story. I know half a dozen other landowners who have had the same experience with EOG. The landowner refuses to sign the paperwork and with no surface use agreement EOG goes in and drills a well anyway. I know of other landowners who signed the paperwork because they felt hopeless to do otherwise –only a deuce in their hand to play against four aces.

The State of ND itself is receiving annual damage payments from several companies who have drilled on state land. Some of these companies are also paying private landowners small annual payments. The State of ND is participating in the free market by negotiating for an annual payment and companies willingly pay it, knowing it's a small piece of the overall investment. EOG or any other oil company would never drill a well on state land without a surface use agreement. It simply doesn't happen. So why does it happen to our farmers, ranchers and other small landowners?

The end result is that I now have a well on my rural property that I have never been paid for; there is no signed surface use agreement. EOG refused to sit down and negotiate, and refused to acknowledge that I had any property or constitutional rights whatsoever to dictate what should or should not happen on my land. Its as if I did not even own it.

When oil wells are drilled there is a large pit dug to store all the waste used in drilling, etc. It is called a "reserve pit." The one on our property is 160 ft. long by 60 ft. wide by 14 ft deep. It is full of many cancer causing agents like Benzene, Toulene, Xylene, Ethyl Benzene, Barium, Mercury, Arsenic, Cadmium, Chromium, Lead, Selenium and Silver. I know this because I paid a testing lab to take samples. All of the above chemicals and minerals are now wrapped in a cheap 12mm plastic liner and buried on our property....and that is now my responsibility for as long as I own the property. All chemicals you would not want your children, cattle or dog to drink.

The health dept. calls the contents of this pit, "special waste." The average person would call it "hazardous waste"; Lynn Helms says these pits are not regulated and are exempt from Federal gov't oversight under RCRA. A draftsman and I figured out the total tons of "special waste" buried in this pit on my property. If the pit was completely full, we calculated 4,020 total tons. With 4 ft of freeboard, we figured 2,348 tons.

Landowners should realize that this waste has a cost attached to it that the oil companies want to bury. There are two licensed disposal companies in ND that accept this kind of waste. One is

in Sawyer (Clean Harbors) and the other is south of Tioga (Prairie Disposal). Both charge by the ton to accept this kind of waste. We obtained a quote from one of these companies and the cost to remove and haul away this pit is just shy of \$200,000.

As a result, EOG saved themselves \$200,000 in disposal, removal and transportation fees by sticking their waste on our property. Prairie Disposal charges \$50 a ton to accept "special waste." These disposal sites are licensed with the Dept. of Health and inspected annually. The people who run them are trained professionals equipped to handle and maintain the disposal of such wastes.

Before this pit was reclaimed, I emailed the State Oil and Gas Division Director, Lynn Helms, and told him that I did not want this pit left on my property because it is hazardous waste and close to permanent wetlands. The liner had torn away from the bank in several spots on top; a wetland is directly downhill from this pit not more than 60-70 ft away.

I also wanted this pit removed because it poses a permanent pollution risk to underground aquifers; it is not marked to indicate its borders and most importantly removes the ability to use my land as I want. For example, my grandkids could never build a house in the vicinity of this pit or well site. This pit and perhaps the well site, removes that option forever.

The Oil and Gas Division's Administrative Rules indicate that the Director can require these pits be removed if special circumstances warrant it. In my opinion, an unsecure liner such as the one in my pit should be enough to mandate removal of the entire pit and its contents.

Lynn Helms disagreed and ordered the pit reclaimed and buried on site. During the reclamation process, the liner was found to be also torn on the bottom. It was patched and buried. This took place in October of 2009.

It would have cost the state of ND nothing to have this pit removed. With a single stroke of the pen, Lynn Helms could have respected the wishes of the landowner and done the right thing. Instead he sided with the oil company he is tasked to regulate. This is an indication of the coziness that exists between the oil industry and the Oil and Gas Division.

I was reminded of this last January when I paid a visit to Glenn Wallan, the Director of Reclamation for the ND Oil and Gas Division. When I asked Glenn why he did not require EOG to remove this pit from my property he said,

"Why would I make someone spend money when they don't have to."

Now this "someone" that Mr. Glenn Wallan refers to is a corporate giant tasked with earning a good return for their shareholders. The CEO of EOG, Mark Papa, potentially made \$91 million dollars in 2008 according to the Wall Street Journal. That's more \$\$ than the state of California has in its savings account, yet a landowner in Mountrail County gets a take-it-or-leave-it offer of \$8000. Forever.

There are alternatives to these pits. Shortly after EOG notified me in 2008 they were going to drill a well, I told them that I wanted a "closed-loop" or "pitless" type system. These systems are engineered so that none of these chemicals used in drilling a well ever hit the surface, instead these chemicals are circulated above the ground throughout an enclosed tank and often reused in the operation. Closed loop systems ensure that ground water and the surface are not polluted. A 1992 congressional study found that these systems could potentially save oil producers money.

EOG declined saying they don't operate like that.

So far during this oil "boom" I have had a well drilled on my property without compensation or a written agreement, had my constitutional rights trampled, had the state Oil and Gas Division make irrational, permanent decisions about how my property should be used; and had a Corporate giant, EOG, leave me with my very own future superfund site. Yep, its been great. When I'm lying in bed at night listening to the sound of the oil wells generator ½ mile away I wonder what it would be like to have two and I could go thru this all over again.

North Dakota may be "Open for business" but its surface owners are not open to being treated like second class citizens. I encourage legislation that promotes surface owners ability to participate in the free-market system this country was founded upon. Fair damage payments are not based on what the oil companies offer but what the surface owner and oil company can agree upon and if no rational agreement can be met, than today's horizontal drilling technology certainly allows oil companies to cross the road and negotiate with the neighbor who's price may be easier met. That's how the free market works.

And should a price be agreed upon and the well drilled, mandate that the oil companies use closed loop systems that ensure the clean future of our state's water and soils. Require the Oil and Gas Division to seriously look at the concerns of landowners and respect their property. After all, this entire "boom" starts with the surface owner, who so far has been shut out of the ability to participate in the free market.

Mr. Chairman, members of the Committee, thank you for your time today. I will certainly entertain any questions you may have.

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