

NO INSURANCE **AGAINST ENVIRONMENTAL RISK & PUBLIC LIABILITY ON** **PROPERTIES HOSTING CSG ACTIVITIES**

LANDHOLDERS NOW CARRY THE RISKS 12 June 2020 – vs 3

Background

CSG activities can have a range of “on-farm” impacts including surface and groundwater contamination, contamination of soil, weed infestation and other physical impacts. In addition, the presence of production facilities can cause ‘business interruptions’ and effect producers’ ability to hold or gain various product accreditations.

Further, they can migrate off-farm, impacting neighbours and other landholders or, in the event of surface and groundwater contamination, downstream users. (See Factsheet *Effects of Gaswells*.¹)

These impacts expose landholders to a range of potential risks, losses and complications with other legal obligations. Landholders can also become subjected to compensation claims by neighbours and other affected parties, especially through Public Liability.

On 19 May 2020, Agforce put a statement on their Website saying:

*“AgForce is beginning to receive worrying reports from landholders that some insurers are refusing to renew their policies in their entirety, in particular public liability cover. If this is the case, it will have a significant impact on many farming operations which may be without public liability cover for external parties, such as CSG company employees.”*²

This new development makes it imperative for landholders to review their risks related to hosting CSG facilities on their properties. Farm insurance and related public liability insurance held by landholders will not cover many physical and business risks posed by CSG facilities. Gas companies should have an obligation to hold insurance covering their operations and assets. Not all do, they rely on ‘self-insurance, leaving landholders vulnerable as their legal responsibilities to compensate landholders are not defined. Other risks leave them exposed to huge costs once their agreement with a CSG company ends.

Risks from CSG wells

- Spills of chemicals near wells poisoning the soil. Claims that there are no such risks are based on a study by Gisera involving a non-representative sample of just six wells in two nearby locations where no spills had occurred³.
- Introducing Prohibited Weeds onto your property. This can open landholders to risks under the Qld Bio-Security Act 2014 and similar Acts elsewhere.
- Loss of water wells due to lowering of underground water tables⁴. This affects local wells on the host-property as well as on surrounding areas. Given the number of gas wells (19,000 and increasing) it will also affect the Great Artesian Basin.
- Contamination of stock-water by fugitive gasses. These pose risks to landholders’ Livestock Production Assurance Accreditations, National Vendors Declarations, Insurance policies and relevant food safety standards, leading to loss of income.

¹ See: https://www.lockthegate.org.au/queensland_regional_fact_sheets_on_coal_and_gas: Factsheet: ‘*The Effects of gaswells*’.

² http://web.agforceqld.org.au/agforceqldorgau-apjnk/pages/4e429f1bc198ea11a812000d3a6aae9d.html?fbclid=IwAR0s5T_kLh0NCLA7kIIIFuinXrCEtuDRol_sjGrCdiaHfDRizbTyks4G2vFY

³ See Footnote 1, Factsheet: ‘*Avoiding the real issues*’.

⁴ See Footnote 1, Factsheet: ‘*Water bores at Risk from CSG*’.

- Contamination from ‘flow-back water’⁵. This water contains a wide range of heavy metals and BTEX chemicals. It is stored in holding ponds ‘pending treatment’. There is no affordable treatment. Concentrations are initially below thresholds but due to evaporation build up over time. The plastic-lined ponds will fail at some future time, posing a serious long-term contamination risk to land-holders nearby and downstream. Polluted water and soil are a risk to cattle, crops and the above-mentioned schemes.
- Well failures. USA documents show that 6% of gas wells fail immediately and 60% fail over 20 years. If wells fail, gas and toxins can find further pathways into aquifers, surface water and the air.
- Orphaned wells. These are wells that have not been properly plugged and sealed, but just left on landholders’ property and are likely to becoming their responsibility. This may include Public Liability as orphaned wells can be on-going sources of fugitive gasses with cumulative ill-effects on people and animal health.
- Non-compliance with end-of-life handing-over arrangements. Large mining, oil and gas companies often hold their field-operations in subsidiaries. When the mine, oil or gasfields near their end, or have accumulated substantial ‘closing-down’ commitments, these companies are often sold. Many buyers are small special-purpose companies with limited or no resources. The Government’s fund for restoration, such as appropriate capping of wells and land restoration, is woefully inadequate.

How landholders can protect themselves

The current *Conduct and Compensation Agreement (CCA)* template and process does not protect landholders against Public Liability claims related to these risks. To ensure landholders interests are protected CCA’s must:

- Identify all potential risks relevant to the host’s circumstances in the ‘*Conduct and Compensation Agreement*’.
- Ensure all risks are explicitly covered under one or more insurance policies (additional to public liability insurance).
- Obtain indemnity against claims by 3rd parties by the landholder being named as an interested party (but **not** a ‘named insured’) on the gas company’s insurance policies.
- Ensure that contract liability exclusion clauses are removed from insurance policies and that the *Conduct and Compensation Agreement* is noted in the policies.
- Require the gas company to provide evidence of other classes of insurance, including workers’ compensation insurance and motor vehicle liability insurance.
- Require the gas company to provide a *Certificate of Currency* for all relevant insurance policies at least 1 month prior to accessing the property and on each annual anniversary of the policies.
- Require that a bank guarantee, surety bond or similar is held in the landholder’s favour to cover the costs associated with remediating land, water and other assets in the event of an incident.

Join forces with neighbours and network Local Community groups

Fighting for fairness can be expensive and time consuming. When we work together, we can lighten the load, support one another and become powerful allies. Learn from other people’s experiences, see footnotes⁶ and⁷.

And join others in calling for urgently needed review and reform of land access laws here: lockthegate.org.au/insurance. Together we can achieve real reform.

⁵ ‘Flowback water’ is water pumped out of a gas well to let the gas flow to the surface.

⁶ See Footnote 1: “*How to deal with Arrow’s expansion – “what to do before they come calling”*”

⁷ See Footnote 1: ‘*How to deal with Arrow’s expansion – “Negotiations”*’.