Mineral Rights Leasing, Compulsory Pooling, and Protecting Landowner Rights

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North Carolina’s Shale Gas Basin

Exposed North Carolina Triassic Rift Basins

- Municipalities (2006)
- County Outlines
- Triassic Basins

Location of North Carolina mapped Triassic basins.
Mineral Rights Leasing: Leasing History in the Shale Gas Basin

- 14 counties could be impacted by fracking
- Over 9,000 farms on over 1.3 million acres of farmland
- Gas companies have targeted Lee County
- Companies active in NC since 2006
- Currently 80 active leases in Lee County covering 9,307 acres
Mineral Rights Leasing: Predatory Leasing

- NC leases offer landowners little compensation
  - Per acre bonus payments up to $20,000 in other states
  - $1 - $20 bonus payments in North Carolina

- Minimum Royalty Payments of 12.5%

- Unreasonably long drilling phases
  - Typical Primary drilling phase 3-5 years
  - Primary drilling phases in NC leases 15-20 years, start date unclear

- Few landowner protections that limit financial risk and legal liability for landowners
Mineral Rights Leasing: Landowner Protections in Session Law 2012-143

- Passed in 2012

- Established some landowner protections, including:
  - "cooling off" periods after leases are signed
  - minimum royalty payments
  - a requirement for operators to post a bond sufficient to cover reclamation of a surface owner's property
  - 30 day notice for “land disturbing activities”
  - “Registry of Landmen”
Mineral Rights Leasing: Potential Changes in Senate Bill 76

- Version that Passed the Senate
  - Authorizes DENR to issue permits for fracking on or after March 1, 2015 (MEC regulations scheduled to be complete by October 2014)
  - Repeals the Landman Registry
  - Authorizes “deep injection wells” to dispose of fracking fluids
- Bill is currently in Conference Committee
Mineral Rights Leasing: Process Under Current Law

Stage I: Pre-leasing Period

- Landowner Education
- Baseline Physical Data Collection (e.g., water & air quality) [GS §113-701a & GS §113-423(f)]
- Notice to Buyer if Severed Estate [GS §47E-4(b2)(2)]
- Landman/Operator Contacts Landowner
- Landowner Checks Landman Registration [GS §113-425(a)]

(DRAFT) Lifecycle of a Mineral Rights Lease

Legend

- Blue = State Level Decision Point
- Green = Landowner Decision Point
- Light Blue = Local Government Decision Point
- Gray = Process Action
- Yellow = Action Specific Issues to be Addressed

*Italics = MEC Rules/Study Pending as Required by Statute*
Compulsory Pooling: What is Compulsory (Forced) Pooling?

- **Forced Pooling** - Known as compulsory pooling in North Carolina, forced pooling is used to create a drilling unit by forcing non-consenting landowners into a lease.

- Currently legal in North Carolina (G.S. § 113-393) (1945)

- This is normally done with small or irregular tracts for the purpose of having sufficient acreage to comply with spacing unit regulations.
Compulsory Pooling: Conventional Oil

Migrates toward a well on your neighbor’s land.
Compulsory Pooling: Unconventional Natural Gas

Does not migrate toward a well on a neighbor’s property and requires horizontal drilling to access.
Compulsory Pooling: Rationale

- Prevents environmental damage by minimizing wells
- Maximizes recovery
- Makes development of minerals more economical for small mineral rights owners who share in drilling cost with other mineral rights owners
- Makes development of minerals more economical for oil and gas companies
Compulsory Pooling: What are the arguments against it?

- Removes the right of individual property owners to control their own mineral resource.
- Removes any incentive for the industry to negotiate with small landowners in some circumstances.
- Possible unintended consequences for the unleashed landowner
  - Possible drop in property value
  - Mortgage impacts
Compulsory Pooling: How do other states deal with this issue?

- Approximately 40 states have laws authorizing compulsory pooling (including North Carolina)

- **West Virginia**- Pooling is not available in shallow wells, which includes the Marcellus Shale (West Virginia §22C-9-7)

- **Ohio**- Recommends a 90% voluntary acreage agreement to apply for a compulsory pooling order (Ohio DNR)

- **Texas**- An applicant must make a fair and reasonable offer to non-consenting landowners and the unit is dissolved if no production within 1 year (Texas Natural Resources Code Chapter 102)
The CPSG is studying North Carolina’s current forced pooling law and reporting needed regulatory changes or updates, including legislative proposals, by Oct 1, 2013 to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
CPSG: Recommendations in the case of Unleased Landowners

- **Recommendation 1**: “No surface operations or disturbances to the surface of the land shall occur on a tract pooled by an order without the written consent of or a written agreement with the owner of the tract that approves the operations or disturbances.”

- **Recommendation 2**: Retain compulsory pooling in the case of leased interests. This would mean one operator controlling the majority of drilling unit could compulsorily pool another operator in the same drilling unit.

- No recommendation yet on if or when to compel non-consenting landowners.
Continued…

- **Recommendation 3**: Unleased landowners “shall have absolute tort immunity from any action arising from any exploration or production activities… The unleased landowner shall be entitled to indemnification from the production company for any sums ordered paid and expenses…”

- **Recommendation 4**: Operators shall provide 30 day notice of subsurface entry to any compelled landowner.
CPSG: Next Steps

- **Report Draft:** DENR staff and CPSG Resource Members will draft report during June & July 2013.

- **Next CPSG Meeting:** August 28, 2013

- **Recommendations to Legislature:** Must be made by October 1, 2013
How to Get Involved


- **Contact MEC Member**: [http://portal.ncdenr.org/web/mining-and-energy-commission/members-information](http://portal.ncdenr.org/web/mining-and-energy-commission/members-information)

- **DENR Shale Gas Listserv**: email “subscribe” to denr.shale.gas-subscribe@lists.ncmail.net


- **RAFI Email List**: [http://rafiusa.org/subscribe/](http://rafiusa.org/subscribe/)
Contact James Robinson with any questions.

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