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# SPECIAL BULLETIN: Shale Gas Leases - Pitfalls for Unwary Landowners

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Interest in shale gas development is reaching a fevered pitch in North Carolina. Shale gas is natural gas found in shale deposits a few thousand feet below the surface. The North Carolina Geological Survey ("NCGS") estimates that there are approximately 59,000 acres in several central North Carolina counties that have significant underlying deposits of shale gas. Recovery of shale gas has become a boom industry in other states in recent years due to the use of hydraulic fracturing (or "fracking") which involves injection of water, sand, and chemicals at very high pressure into underground formations. The shale deposits are opened by the fracking, thereby releasing the natural gas to the wellhead. New horizontal drilling methods that allow fracking in multiple directions from a single well have made shale gas development economically attractive.

The NCGS estimates that enough shale gas underlies central North Carolina to supply all of the state's natural gas needs for the next 40 years or more. Although fracking and horizontal drilling are not presently allowed in North Carolina, oil and gas related leasing companies are gambling that they will soon be approved for use and have already leased approximately 9,000 acres in the state.

Landowners in Lee, Chatham, Moore, Durham, Wake, and Richmond Counties are being approached by leasing companies whose job is to lease the mineral, oil, and/or gas rights for acreage overlying shale gas deposits for possible later drilling and development. Once exploration and production economics become favorable for a specific drilling location, these leases will likely be "pooled" by the leasing companies and sold to an oil and gas producer ("Producer") that may drill one or more wells on the leased properties.

In North Carolina, as in most states, an agreement conveying an interest in real property, including rights to the mineral, oil, and/or gas deposits therein, must be in writing. Upon signing such a lease, the landowner may receive hundreds or even several thousand dollars per acre in a "bonus payment" for the right to drill for shale gas. If the Producer is successful in drilling a commercially productive well, the landowner also stands to be paid significant amounts of royalties. With such an attractive prospect, unwary landowners may be tempted to quickly sign any lease form provided by the leasing company. Such forms can be very one-sided in favor of the leasing company and ultimate Producer, and fail to protect important interests of the landowner.

For example, some of the matters a poorly-drafted lease may fail to address are:

- The area covered by the lease;
- The size of the above-ground "footprint" of the Producer's activities in staging, drilling, and transporting;
- The Producer's duty to maintain or restore access roads constructed on the landowner's property; and,
- Under what circumstances the lease can be terminated for lack of drilling activity to ensure that the leasing company or Producer is not merely "tying up" the landowner's property with no intention of

drilling and thereby depriving the landowner of the ability to receive royalties.

Additionally, the fracking process uses an enormous amount of water. If that water is to be extracted from, or deposited on, the landowner's property, the lease may not adequately protect the landowner's ponds, surface water, or drinking water supply during fracking, or ensure that chemical-laden water returned to the surface in the fracking process is captured, treated, and disposed of safely offsite as opposed to being discharged onto the landowner's property, thereby potentially diminishing its future value.

## **Conclusion**

Leasing companies probably will attempt to have landowners sign mineral, oil, and/or gas leases as soon as possible and without suggesting that the landowners seek professional counsel. The form lease provided by a leasing company may be attractively simple, but may well not protect important interests of the landowner or deal adequately with the many issues presented by the drilling, fracking, and transportation process. Landowners should not sign such a lease based on the belief that the landowner can "work out" other details at a later date or as issues arise. That simple lease document is probably all the leasing company needs to move forward and it is unlikely that there will be a second round of negotiations.

Landowners should not fail to seek professional advice when considering an offer to lease their property or the mineral, oil, and/or gas rights related thereto.

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