

RAFI-USA

Rural Advancement Foundation International - USA

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This resource is meant for landowner education on critical oil and gas rights issues but should not be considered legal advice. Any landowner considering leasing their oil and gas rights should consult with an attorney experienced in oil and gas leasing.

For more information on these issues visit RAFI's website: www.rafiusa.org

Concerns for Sub-surface Mineral Owners

- Forced Pooling occurs when gas operators place multiple landowners into a single drilling unit (the area where they plan to extract gas). Some landowners in this unit may choose to lease their oil and gas rights, but others may choose not to lease their resources or lease their oil and gas rights at a later date. Forced pooling laws allow gas operators to force landowners who have chosen not to lease their property into a lease agreement and drill on their property against their will. This action is a clear infringement on individual property rights and should not be allowed in North Carolina. Current North Carolina pooling laws are antiquated, unclear, and do not have strong landowner protection provisions. For more info on forced pooling see:
<http://www.propublica.org/article/forced-pooling-when-landowners-cant-say-no-to-drilling>
- Assignment of a lease is a common practice by oil and gas operators and involves signing a lease with a landowner and then selling (also known as “flipping”) the lease to a different gas operator. In North Carolina landowners cannot object against this lease sale from one company to another and often landowners are not even notified that the assignment occurred. Assignment without landowner approval prevents landowners from benefiting from negotiating contracts with gas operators with good safety and environmental compliance records, bars the landowner from participating in the negotiation process, and can lead to significant problems when the landowner does not know who is drilling on their property. For more info see:
<http://www.post-gazette.com/pg/11345/1196135-503.stm>
- Gas operators that enter into oil and gas rights contracts with landowners are given specified periods of time to begin well development and gas extraction on a landowner's property. Generally if the operator does not begin to conduct a designated gas extraction activity within the specified periods of time, the lease will end and the landowner will regain control of the oil and gas rights. These periods are called the primary and secondary drilling phases and it is in the interest of the landowner for these periods to be as short as possible. The typical primary phase length in other states is 3-5 years. But in North Carolina, contracts offer excessively long primary and secondary drilling term lengths of 15 and 20 years. House Bill 242 took an important step in limiting contract lengths to 10 years, but this is still too long.
- Accidents and damages from drilling operations can occur at anytime. The cost of compensation and clean-up should be the responsibility of the gas operator conducting drilling activities, not the landowner. But current North Carolina law does not provide clear and strong protections that completely indemnify landowners from the cost of damages that may occur on their property and require gas operators to compensate landowners for damages to their land, water, and agricultural resources.

- It is critical that landowners receive fair compensation for allowing gas operators onto their property and extract minerals and/or oil and gas resources. Landowner compensation typically comes in two forms: one-time bonus payments that are determined by the number of acres of oil and gas rights leased, and royalty payments that are determined on the amount and market price of the gas extracted from the landowner's property (the minimum rate in many states is 12.5% but this is often negotiated upward of 20%). Bonus payments in other parts of the country can vary widely, but it is not uncommon for landowners to receive thousands of dollars per-acre. In North Carolina most landowners are receiving \$1-\$10 per acre. Royalty payments in North Carolina appear to generally be 12.5% (but North Carolina does not have a mandatory minimum royalty rate like other states). North Carolina landowners are not receiving fair compensation for their resources compared to landowners in other states.
http://www.nytimes.com/2011/09/23/nyregion/hydrofracking-leases-subject-of-regrets-in-new-york.html?_r=2
<http://www.nytimes.com/2011/12/02/us/drilling-down-fighting-over-oil-and-gas-well-leases.html?ref=ianurbina>
- A “cooling off” period is the amount of time after signing a contract that a landowner can reconsider their decision and choose to cancel a contract. For door-to-door sales, consumers have three days to review their decision. But there is no “cooling off” period for oil and gas rights leases. Oil and gas rights leases are very complicated legal contracts that can have significant long-term legal and financial ramifications as well as direct land impacts. Most North Carolina landowners have never seen an oil and gas rights lease before and there are few legal and risk management resources available for North Carolina landowners at this time. This puts landowners in a compromised position to negotiate a fair lease that protects their interests and emphasizes the critical need for landowner protections that allow lengthy “cooling off” periods for these contracts.

Concerns for Surface Owners

- Drilling operations and gas infrastructure development have a range of direct land impacts. Land needed for well pads, access roads, gathering lines, compressor stations etc. cannot be used by the landowner and can interfere with other parts of a landowner's property not used for drilling operations. Landowners must be able to influence where this gas infrastructure is placed on their property so that it does not interfere with other uses of their property such as agriculture or forestry and does not degrade their quality of life. Currently there are no landowner protections in North Carolina that allow landowners to have this influence on gas infrastructure placement.
<http://www.dailymail.com/News/201107040823?page=1&build=cache>
- Landowner notification is the period of time, prior to beginning drilling activities, that a gas operator must tell the landowner that they intend to enter their property. This notification may come years after the lease was signed and therefore is a critical period of time for landowners to secure or move any resources on their property that could be impacted by drilling activities. House Bill 242 took an important step in requiring minimum notification periods to protect landowner rights, but these notification periods are inadequate (7-14 days notification depending on the drilling activity) and must be extended.
- Reclamation is the process after gas drilling has finished on a property in which the gas operator removes the drilling equipment and infrastructure from the landowner property, restores the surface property so that it can be used for other activities, and safely closes the well. North Carolina does not have any reclamation requirements which mean the landowner, rather than the gas operator, can be left with the cost of restoring their property.