Oil & Gas Leasing in North Carolina

I. Statutory/Regulatory
   a. The Oil and Gas Conservation Act (1945), N.C.G.S. §113-387 - 415
      i. §113-389(14) “Waste” ... shall include: ... f. The drowning with water of
         any stratum or part thereof capable of producing oil or gas.
      ii. §113-393(d) Variation from Vertical. - ... shall not unreasonably vary from
           the vertical...
   b. Subchapter 5D - Oil and Gas Conservation, 15 NCAC 05D .0102 - .0111
   c. N.C.G.S. §§ 87-88. General standards and requirements. (c) Prevention of
      Contamination. — Every well shall be constructed and maintained in a condition
      whereby it is not a source or channel of contamination of the groundwater supply
      or any aquifer. ... Contamination as used herein shall mean the act of introducing
      into water foreign materials of such a nature, quality, and quantity as to cause
      degradation of the quality of the water.
   d. Subchapter 2C - Well Construction Standards, 15 NCAC 02C .0108 Standards of
      Construction: Wells Other Than Water Supply (a) No well shall be located,
      constructed, operated, or repaired in any manner that may adversely impact the
      quality of groundwater.

II. Issues of Health, Safety, the Environment, and Regulation
   a. Water Quality
      i. Ground water
      ii. Surface water
   b. Water quantity
   c. Waste water disposal
      i. Injection
      ii. Treatment
      iii. Recycling
         1. Disposal of chemicals removed
      iv. Evaporation
      v. Temporary storage
      vi. Illegal dumping
   d. Air quality
      i. Dust/particulates
      ii. Mobile sources
      iii. Fugitive methane
   e. Drinking water
i. Surface  
ii. Wells
f. Land  
i. Competing uses  
ii. Damage  
iii. Restoration
g. Methane migration  
i. Explosion hazard  
ii. No known health risks
h. Traffic  
i. Road improvements & maintenance  
ii. Bridge maintenance and improvements
i. Development of regulatory infrastructure  
i. Enforcement & well permitting  
ii. Tracking laterals and piping  
iii. Provision of information to the lessors & the public  
iv. Provision of information to health care professionals and emergency responders
j. Noise
k. Light

III. Local issues
a. Zoning
b. Ordinances
c. Health rules
d. Emergency responder training/equipment
e. Additional local expenses  
i. Emergency response  
ii. Law enforcement  
iii. Schools  
iv. Streets/roads (to extent not a state responsibility)
f. Sources of additional revenue/Revenue sharing
g. Local permitting requirements/responsibilities (e.g., auxiliary buildings)

IV. Landowner leasing issues
a. Due diligence  
i. Broker or Drilling Company  
ii. Safety/environmental compliance record  
iii. Litigation history  
iv. Registered to do business in NC?  
v. Financial condition
b. The Leasing Process
   i. Standard lease agreement
   ii. The landowner addendum
   iii. Lease governs entire relationship between the parties
   iv. Everything negotiable!

c. Threshold Issues
   i. Do you own the gas? (title)
   ii. Do you own the water?
   iii. Gas production compatible with your future land use plans?
      1. Any current restrictions on land use?
         a. Zoning
         b. Conservation easements
         c. Present use value (PUV) taxation program
         d. USDA/State conservation programs
         e. Financing agreements (mortgages/deeds of trust)

d. Factors That Affect Negotiation of Gas Lease
   i. Amount of acreage
   ii. Physical features of property
   iii. Geologic features of property
   iv. Other production / infrastructure in area
   v. Number of companies in area
   vi. Natural gas market
   vii. Negotiating skills of parties

e. Hiring an Attorney
   i. Experience with shale gas leasing
   ii. Comfortable working with your attorney
   iii. Understand the basis of all fees charged by attorney
   iv. Receive a written retainer agreement from your attorney

f. Typical Clauses
   i. Indemnification
   ii. Non-Disclosure (confidentiality) Clause
   iii. Choice of law
   iv. Choice of forum (court)
   v. Attorney fee clause
   vi. Arbitration/mediation clause
   vii. Pugh clause
   viii. Force majeure

g. Terms of Lease Agreement
   i. Parties to lease agreement
ii. Property description

iii. Length of lease agreement
   1. Primary term
   2. Secondary term

iv. Payment terms
   1. Bonus Payment
   2. Delay Rental Payments
   3. Royalty Payments
      a. How calculated
      b. Expenses
   4. Shut-In Royalty Payments
   5. Free Natural Gas

v. Rights granted by landowner
   1. Mineral estate
      a. Oil & gas only
      b. Other minerals, coal, coal bed methane
      c. Dominant estate - surface or subsurface?
   2. Surface Estate
      a. Specific locations (if allowed):
         i. Drilling pads and wells
         ii. Pipes
         iii. Waste storage
         iv. Compressors
         v. Processing facilities
         vi. Equipment storage
         vii. Roads and power lines
      b. Damage and disruption payments
         i. Reduced soil fertility
         ii. Personal property
         iii. Fences
      c. Loss of production payments
         i. Crops
      d. “No Surface Rights Lease”
   3. Water
      a. Quantity and source
      b. Damages
   4. Storage Rights
   5. Transportation of foreign gas/Installation of pipelines

vi. Additional Considerations
1. Rule of Capture
2. Pooling/Unitization
3. USDA and state cost-share/CREP/ Farmland Preservation Programs
4. Access to records/production audits
5. Increased real estate taxes
6. Imposition of severance tax
7. Drilling clause/Development clause
8. Insurance implications (e.g., exclusion clauses)
9. Value of property for collateral

vii. Provision for Project Failure/Termination
   1. Insolvency/bankruptcy clause
   2. Removal or forfeiture of equipment

viii. Recordation
   1. Full lease or memorandum

RESOURCES

• North Carolina Cooperative Extension/NCSU Department of Agricultural and Resource Economics
  – http://www.ag-econ.ncsu.edu/gasleasing.html

• National Agricultural Law Center,
  – Renewable Energy Reading Room
    – http://www.nationalaglawcenter.org/

• Water wiki
  – http://sogweb.sog.unc.edu/Water/index.php/Main_Page

• Penn State Agricultural Law Resource and Reference Center
  – http://law.psu.edu/academics/research_centers/agricultural_law_center/resource_areas/natural_gas_exploration

• Penn State Cooperative Extension
  – http://extension.psu.edu/naturalgas

• Cornell Natural Gas Resource Center
  – http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Pages/default.aspx

• NC Secretary of State
  – http://www.sosnc.com/

• NY Department of Environmental Conservation, Draft SGEIS on the Oil, Gas and Solution Mining Regulatory Program (September 2009)
  – http://www.dec.ny.gov/energy/58440.html
• NC Department of Justice, consumer complaints

• North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division
  – https://www.dmr.nd.gov/oilgas/

• Pennsylvania Department of Environmental Protection, Oil & Gas
  – http://www.depweb.state.pa.us/portal/server.pt/community/oil_and_gas/6003


• Railroad Commission of Texas
  – http://www.rrc.state.tx.us/

• Arkansas Oil and Gas Commission
  – http://www.aogc.state.ar.us/

• Louisiana Department of Natural Resources
  – http://dnr.louisiana.gov/

• Oklahoma Corporation Commission, Oil and Gas Division

• The University of Texas at Austin, Jackson School of Geosciences
  – http://www.jsg.utexas.edu/research/themes/energy-geosciences

• The University of North Dakota, School of Engineering and Mines, Petroleum Engineering
  – http://engineering.und.edu/petroleum/