

RAFI-USA

Rural Advancement Foundation International - USA

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October 18, 2011

Trina Ozer
NCDENR
1601 Mail Service Center,
Raleigh, N.C. 27699
Shale_gas_comments@ncdenr.gov

Re: *Session Law 2011-276 Draft Study Outline Comments*

Dear Ms. Ozer:

We would like to thank DENR for conducting a study on the potential impacts of natural gas drilling in North Carolina and for the sponsors of HB 242 for commissioning the study. Below is a list of concerns relating to direct land impacts and landowner property rights that the Rural Advancement Foundation International (RAFI-USA), as a farmer advocacy non-profit organization, believes DENR should include and examine in the HB 242 study.

Each state government currently managing natural gas exploration and extraction approaches these impacts and property rights issues differently. We have made note in these comments of some protections in other states that are related to these issues. In researching landowner rights, land impacts, and the experiences of farmers and rural landowners in states currently drilling for natural gas, we have found that no state adequately or effectively addresses all of these potential impacts at the regulatory level. In deciding whether to open North Carolina to fracking, the legislature will need to consider what protections are needed to allow a fair and functional market in the face of steep asymmetries in the information held by gas companies and landowners. We hope that DENR will recognize the importance of protecting landowner rights and the natural resources of North Carolina and use these comments to inform its study of these issues. We also hope that if there are no findings of public policies that can make the leasing market fair, the study acknowledges this explicitly, as this finding should inform the legislature's subsequent decisions.

We ask that DENR study the extent of these problems listed below and what other states have or have not done to adequately protect landowners. Furthermore, we request that DENR evaluate in its study the extent to which current North Carolina law protects landowners from these potential impacts. We are happy to assist DENR and the Attorney General in this analysis as per our inclusion as a named partner in S.L. 2011-276.

Again we thank DENR staff for their time and efforts in conducting a comprehensive analysis of gas drilling impacts.

Sincerely,

Jordan Treacle
Mineral Rights Project Coordinator

Concerns for Sub-surface Mineral Owners

- Drilling companies can lease a landowner's mineral rights on a large land parcel but only explore and extract gas on a fraction of the property, therefore extending the length of the lease but only providing minimal royalty payments to the landowner based on the few acres in gas production. By extending the lease without producing gas on all the property, gas companies prevent landowners from re-leasing this property to other companies for drilling.
<http://www.ces.purdue.edu/extmedia/EC/EC-564.html>
p. 6: <http://pubs.cas.psu.edu/freepubs/pdfs/ua448.pdf>
<http://www.dailymail.com/News/201107040823?page=1&build=cache>
- Forced pooling laws in many other states (see second link below) override personal property rights and force landowners into a lease agreement if the landowner's property is part of a drilling unit and a percentage of surrounding property has already been leased.
<http://www.propublica.org/article/forced-pooling-when-landowners-cant-say-no-to-drilling>
<http://projects.propublica.org/tables/forced-pooling>
<http://www.ces.purdue.edu/extmedia/EC/EC-564.html>
- Contracts in North Carolina offer excessively long primary and secondary drilling term lengths of up to 20 years compared to contracts in other states where the standard lease length is 3-7 years. These abnormally long leases limit landowner ability to manage their property and re-lease their mineral rights to other companies after a reasonable amount of time.
P. 27: <http://www.fas.org/sgp/crs/misc/R40894.pdf>
- Landowners in North Carolina are being offered extremely low bonus payments for mineral rights leasing in comparison to other states. Landowners in Lee County, NC, have reported receiving offers of \$1-25 per acre compared to bonus payments ranging from \$1,000-\$20,000 per acre in states like West Virginia and Texas.
P. 27: <http://www.fas.org/sgp/crs/misc/R40894.pdf>
http://www.nytimes.com/2011/09/23/nyregion/hydrofracking-leases-subject-of-regrets-in-new-york.html?_r=2
- Drilling companies often transfer a landowner's mineral rights lease to another drilling company for a marginal profit. This infringement of landowner rights and lack of transparency is problematic when drilling occurs on a landowner's property and the landowner does not know whom to contact with complaints or questions.
<http://www.ces.purdue.edu/extmedia/EC/EC-564.html>
- Drilling companies can store gas in shut-in wells or rock formations on a landowner's property while waiting for market prices to improve or developing further infrastructure, which could potentially take years. If landowner protections and shut-in royalty requirements are not in place at a regulatory or leasing level, landowners will not be compensated for this storage practice and sometimes will not be given royalty payments because the gas has not technically been sold.
<http://www.ces.purdue.edu/extmedia/EC/EC-564.html>
p. 8 <http://pubs.cas.psu.edu/freepubs/pdfs/ua448.pdf>

- Drilling companies can deduct landowner royalty payments to pay for gas infrastructure development such as well pads or access roads if regulations or lease clauses are not in-place to protect landowner rights.
p. 8: <http://www.rafiusa.org/docs/gasleasingncsufaq.pdf>
- Mineral rights leases are legal and binding contracts. It is standard practice for the drilling company to have the right to cancel the lease but the landowner does not have this right to cancel or annul a signed lease.
p.2: <http://pubs.cas.psu.edu/freepubs/pdfs/ua448.pdf>
- Many mineral rights leases include arbitration clauses that deny mineral owners the right to have a trial by jury and provide no information on how the arbitrators are chosen. S.L. 2011-276 states that arbitration clauses in mineral rights leases are void and unenforceable although this does not apply to leases that were signed before S.L. 2011-276 was enacted.

Concerns for Surface Owners

- S.L. 2011-276 states that surface owners who have leased their mineral rights or do not own their mineral rights are notified only 7 or 14 days prior to a company entering the landowner's property, depending on the kind of drilling activity. This short timeline gives landowners inadequate time to secure or move land and water resources, equipment, crops, timber, or livestock in the proposed drilling area. This is particularly relevant to landowners who do not own their mineral rights and may not know that the minerals under their home or farm have been leased to a drilling company.
- Most states allow drilling companies the right to access leased minerals in a manner that is economically feasible for the company, even if this drilling plan impacts surface resources including agricultural areas, buildings, or water resources. Generally surface owners have no legal right to influence the location of drilling infrastructure on their personal property. S.L. 2011-276 lists that an oil and gas developer must "offer" to "consult with the surface owner to review and discuss the location of the proposed alterations" but this language provides little protection for landowners if the developer ignores the landowner's input.
<http://www.dailymail.com/News/201107040823?page=1&build=cache>
<http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Documents/PDFs/Well%20Pad%20Guidelines.pdf>
- Drilling infrastructure requires significant development and impact to land. Without state laws requiring minimal setback requirements, drilling infrastructure can be placed next to homes, schools, personal wells, and agricultural lands.
<http://www.dailymail.com/News/201107040823?page=1&build=cache>
- Significant land resources are required for gas gathering lines, compressor stations, access roads, well-pads, and holding ponds but landowners are not always compensated for use of this land and the risk of possible impacts to land resources. Drilling infrastructure development could have direct impacts to pasture lands, row crops, timber resources, and hunting areas for the lifetime of the well, which is typically 80 years.
<http://www.dec.ny.gov/energy/75370.html>
<http://www.dailymail.com/News/201107040823?page=1&build=cache>

- North Carolina has a long history of non-oil and gas mineral extraction and therefore many surface estates have been split from the mineral estate. Tracing the history of a property's mineral rights can be a difficult and costly procedure for many landowners who may not know if they own their mineral rights or do not know that the mineral rights can be separated from the surface estate. But a landowner who does not own his/her mineral rights and signs a mineral rights lease can encounter legal and financial liabilities.
- After drilling at a well-pad has ceased, reclamation of the land is needed to restore the property to its original state for other use. Without state laws requiring reclamation, drilling companies will not restore the land to the pre-drilling state after drilling has stopped.
<http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Documents/PDFs/Well%20Pad%20Guidelines.pdf>
- Surface owners who do not own their mineral rights have no ability to influence or impact the leasing process and therefore cannot voice concerns to the lessor or lessee about impacts to the surface or infringement of their property rights.
http://law.psu.edu/file/aglaw/Natural_Gas/The_Marcellus_Shale_Natural_Gas_Rush-The_Impact_of_Drilling_on_Surface_Owner_Rights.pdf
<http://www.dailymail.com/News/201107040823?page=1&build=cache>
- Landowners who lease their mineral rights in other parts of the country have had mortgage applications rejected, which impacts landowner rights and financial stability.
<http://thetimes-tribune.com/opinion/new-surprise-in-gas-boom-notify-owners-of-mortgage-1.1183443#axzz1TzKtkYm>
- S.L. 2011-276 states that the oil and gas developer must pay the surface owner for damages to a water supply "in use," but does not compensate landowners for damages to water resources that might be on the property for future use. Lease terms may require the developer not to injure the lessor, but that does not protect a surface owner where the mineral estate has been severed from the surface and the lessor is not the surface owner.
- Landowner protections in S.L. 2011-276 provide no clarification for the rights of multiple individual landowners who collectively own one tract of land that may be leased for drilling.
- Natural gas drilling could have a range of direct land impacts as well as less direct impacts to the local agricultural economy including boycotts of farms with drilling rigs, competition for skilled laborers, and increase cost of farm materials such as steel.
<http://www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A95914>
- On average, drilling for natural gas with horizontal hydraulic fracturing technologies requires 3-5 million gallons of water per frack job. As North Carolina routinely experiences periods of drought, water intensive drilling practices could potentially impact other local industries, particularly agriculture.
<http://www.digitaljournal.com/pr/362139>

- Drilling activity can affect soil integrity and compaction on and around all drilling infrastructure, which can have significant impacts on agricultural crop yields.
<http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Documents/PDFs/Well%20Pa d%20Guidelines.pdf>
- Drilling infrastructure development and accidents during the drilling process, such as chemical spills, can directly impact agricultural production and other land and water resources.
<http://www.reuters.com/article/2010/07/01/us-pennsylvania-natgas-cattle-idUSTRE66058L20100701>
<http://www.propublica.org/article/16-cattle-drop-dead-near-mysterious-fluid-at-gas-drilling-site-430>
- Gas drilling requires significant use of heavy trucks for transportation of materials for the drilling infrastructure development and hydraulic fracturing process. This truck traffic will have significant impacts on rural infrastructure including roads and bridges.
http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch6b0911.pdf
<http://www.cantonrep.com/news/x824879489/Agreement-to-protect-county-roads-during-fracking>
- There have been numerous reports of impacts to well water quality due to methane migration or chemical leaks into wells. Limited research has been done on this issue but should be acknowledged and studied extensively.
<http://www.nicholas.duke.edu/cgc/pnas2011.pdf>
http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch6a0911.pdf
- Flaring or venting of air emissions is a common practice at well-sites but this practice can have impacts on landowner quality of life and agricultural sustainability as air quality is affected.
http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch6a0911.pdf
- Gas drilling creates significant noise pollution for an extended period of time, which can impact landowner quality of life for those who have leased their property as well as neighboring residents who have not leased their property.
http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch6b0911.pdf
- As gas wells are drilled, detailed data on the location of the drill head is collected by the drilling company. This data should be provided to the state and available to landowners so that the public can determine that no trespasses on non-leased property have occurred during the drilling process.

Additional Resources:

Arkansas Citizens First Congress

<http://citizensfirst.org/about-us/legislative-priorities/gas-drilling-accountability>

Cornell Cooperative Extension Natural Gas Resource Center

<http://www.cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Pages/default.aspx>

New York State Department of Agriculture and Markets

Guidelines for Construction and Restoration at Natural Gas Well Drilling Sites in Agricultural Areas

<http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Documents/PDFs/Well%20Pad%20Guidelines.pdf>

New York State Department of Environmental Conservation

<http://www.dec.ny.gov/energy/75370.html>

Penn State Cooperative Extension Center

<http://extension.psu.edu/naturalgas>

Penn State Dickenson School of Law: The Agricultural Law Resource and Reference Center

Marcellus Shale Resource Area

http://law.psu.edu/academics/research_centers/agricultural_law_center/resource_areas/marcellus_shale/penn_state_publications