



State of North Carolina

**ROY COOPER
ATTORNEY GENERAL**

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July 28, 2014

Delivery by Express Mail

Mr. Frank Sides
Regional Agent
Crimson Holdings Corporation
2006 E. Carson Street
Pittsburgh, PA 15203

Ms. Anna Campbell
Partner
Campbell Development, LLC
2006 E. Carson Street
Pittsburgh, PA 15203

Re: Unsolicited Oil and Gas Leases in North Carolina

Dear Mr. Sides and Ms. Campbell:

The North Carolina Attorney General's Office has received information that Campbell Development, LLC ("Campbell") is apparently soliciting oil and gas leases from North Carolina landowners on behalf of a "Crimson Holdings Corporation" ("Crimson"). Attached is a copy of a solicitation letter and an oil and gas lease which was received by a North Carolina landowner, and which was recently forwarded to our office. We understand that a number of North Carolina landowners have received similar solicitations from you on behalf of Crimson.

Based upon our research, it appears that the address provided in the leases for Crimson, namely, 2006 E. Carson St., Pittsburgh, PA 15203, is actually the business address of Campbell Development, LLC, and we have found no indication that there is a "Crimson Holdings Corporation" at such address. Further, based upon our initial research, we have been unable to locate any information on a "Crimson Holdings Corporation," including any website or contact information for a company with that name. Neither Crimson nor Campbell are registered with the North Carolina Secretary of State to do business in North Carolina. As our office is unable to reasonably locate any information on Crimson Holdings Corporation, we have serious concerns that North Carolina landowners will be unable to conduct any due diligence research or to obtain information on the ostensible company to which they are being asked to lease their oil and gas

Mr. Frank Sides
Ms. Anna Campbell
July 28, 2014
Page 2

rights. Accordingly, as a threshold matter, we request that you identify the state of incorporation of Crimson, its complete business address, its owner(s), and the nature of its business. We are in communication with the North Carolina Department of Environment and Natural Resources (“NC DENR”), and have been informed by it that it is also investigating this matter.

This letter is to notify you that some of Campbell’s solicitation practices and numerous provisions of Crimson’s leases are in direct violation of North Carolina law. Beginning in 2011, the North Carolina General Assembly has enacted laws for the purpose of protecting North Carolina landowners who enter into oil and gas leases, or who are solicited for such leases. These laws include the Clean Energy and Economic Security Act (“the Act”), S.L. 2012-143, which became effective on July 2, 2012. The provisions of the Act and other landowner protections, including required terms for oil and gas leases, are codified in Chapter 113 of North Carolina’s General Statutes, and specifically in Article 27, Part 3, of that Chapter, at N.C. Gen. Stat. §§ 113-420, *et seq.* A copy of Part 3 is enclosed for your reference.

Among other things, North Carolina law provides:

(1) Registration of Landmen. Any landman offering oil and gas leases to North Carolina landowners is required to register with the North Carolina Department of Environment and Natural Resources, which maintains a registry of landmen operating in the State. N.C.G.S. § 113-425. The purpose of this registry is to provide North Carolina landowners with a means of verifying the contact information and employers of landmen who offer leases in the State. This registry is at <http://portal.ncdenr.org/web/lr/registry-of-landmen>. Based on our review, neither Mr. Sides, nor anyone from Campbell, has registered as a landman in North Carolina.

(2) Landowner Education Information to Be Provided with Lease. At the time an oil and gas lease is offered, the landman or other person offering the lease is required to provide the landowner with (a) a copy of North Carolina law which sets out landowner protections, namely, General Statute Chapter 113, Article 27, Part 3; and (b) a copy of a publication produced by the Consumer Protection Division of the North Carolina Department of Justice titled “Oil and Gas Leases: Landowners’ Rights,” which may be found at the Attorney General’s website at www.ncdoj.gov, and a copy of which is enclosed. N.C.G.S. § 113-423(a). There is no indication that this required information was provided to North Carolina landowners at the time the leases were offered by Mr. Sides or Campbell on behalf of Crimson.

(3) Lender Approval of Lease. The Act requires that all oil and gas leases contain a conspicuous written disclosure that a landowner should obtain the approval of his or her mortgage lender before signing the lease, to ensure that the lease does not violate the terms of the

Mr. Frank Sides
Ms. Anna Campbell
July 28, 2013
Page 3

landowner's mortgage loan. This disclosure, which is set out in N.C.G.S. § 113-423(i), must be initialed by the landowner. Crimson's leases do not contain this required disclosure.

(4) Maximum Lease Term of 10 Years. A lease of oil or gas rights in North Carolina cannot exceed 10 years, unless at the end of the 10-year period, oil or gas is being produced for commercial purposes. N.C.G.S. § 113-423(b). The attached Crimson lease provides for a 12-year primary term, which exceeds the term allowed by North Carolina law.

(5) Right of Rescission and Notice of the Right. North Carolina law provides that after signing an oil or gas lease, either party to the lease may rescind or cancel the lease within 7 business days by notifying the other party in writing. If any payments have been made, those amounts must be returned. All oil and gas leases offered to North Carolina landowners must contain a "bold and conspicuous notice" of this right. N.C.G.S. § 113-423(j). The attached Crimson lease does not contain any right of rescission, nor a conspicuous notice of the right.

The above list is not an exhaustive list of all aspects in which Crimson's leases fail to comply with North Carolina law. Our office cannot provide you with legal advice, and we strongly recommend that you carefully review North Carolina law, and consult with an attorney to ensure Crimson's leases and Campbell's practices comply with the law.

Until you can demonstrate that Campbell's practices and Crimson's leases are in compliance with North Carolina law, we demand that Campbell and Crimson immediately cease and desist from offering or accepting any oil and gas leases in the State of North Carolina. To the extent that Campbell and/or Crimson receive any signed leases from North Carolina landowners accepting the leases' terms, we demand that you reject the leases and return them to the consumers, explaining that the leases do not comply with North Carolina law.

In addition to providing identifying information for Crimson, we request that you provide our office and the North Carolina Department of Environment and Natural Resources with the following information: (1) a list of the names and addresses of all North Carolina landowners to whom oil and gas leases have been offered by either Campbell or Crimson; and (2) identification of any oil and gas leases that have been accepted by any North Carolina landowner, including a copy of such lease, any amount(s) paid by Crimson, Campbell, or any other person or entity to the landowner for the lease, and the date(s) of such payment.

Mr. Frank Sides
Ms. Anna Campbell
July 28, 2014
Page 4

We request that you respond to this letter within 10 days. In the meantime, if you should have any questions, please feel free to contact me at (919) 716-6039.

Sincerely,



M. Lynne Weaver
Special Deputy Attorney General

Enclosures

cc: Tracy Davis
Director of Energy, Mineral and Land Resources
NC DENR
1612 Mail Service Center
Raleigh, NC 27699-1612

Layla Cummings, Esq.
Policy Analyst
NC DENR



Crimson Holdings Corporation

Crimson Holdings Corporation is acquiring leases in Durham County. You have received this letter because we believe you are the mineral owner of a parcel of land that we are interested in developing:

Parcel: [REDACTED]

36.816 acres, more or less

Known as: [REDACTED]

By executing a Lease with Crimson Holdings Corporation, you will be participating in giving Crimson Holdings Corp. the opportunity to explore the natural resources in your area for a limited period of time. As the mineral owner, you will be entitled to receive royalty income from the production of any lands leased.

A sum of \$5.00 for each net mineral acre will be issued to all participants within 120 days of acceptance from Crimson Holdings Corporation of the Lease and pursuant to the conditions outlined in the order of payment.

We will be accepting leases until November 1, 2014, or until the funds established for the pursuit of the development of this area have been depleted.

To participate, you must sign and return the following (included in this packet):

Lease: Must be notarized and signed by all parties.

Memorandum of Lease: This is filed for public record in place of the Lease.

Affidavit of Non-Production: Your acknowledgement that there are no producing wells on or around your property. Must be notarized and signed by all parties.

Order of Payment: Outlining terms and time frame for signing fee.

W-9: You shall be responsible for taxes on signing fee and any future royalties. Crimson will need your SSN or TAX ID to report this income.

If you are interested, please mail your signed and notarized documents back in the pre-paid envelope provided.

If you have questions, call the agent listed below.

Frank Sides
Regional Agent
330.423.3300



Crimson Holdings Corporation

SUBMITTING YOUR LEASE PAPERWORK

IMPORTANT: To ensure the most correct Lease and the timely processing and payment of that Lease, make sure to follow the guidelines below for executing and submitting all five forms. If you have any questions, call:

Frank Sides, Regional Agent (330) 423-3300.

1. A signed and completed W-9.
 - Make sure to fill out your mailing address, SSN (or Tax ID if you are an entity such as a Trust or Company) and sign the W-9.
2. A signed Order for Payment.
 - Sign your name(s) and make sure your mailing address and all other information is correct. This document is not filed in the courthouse and does not need to be notarized.

FOR ITEMS 3 and 4, If any of your personal information needs to be corrected (i.e. name was wrong, marital status has changed, need to add a middle initial, address wrong, etc.), neatly strike thru, with a single line, the information that needs to be changed; then (with a blue ink pen) neatly write in the correct information (you can use an asterisk if there is not enough room). In order to be effective all such changes to personal information must be initialed by you.

3. A signed, notarized copy of the Memorandum.
 - To ensure the accuracy of information please check both the Memorandum of Lease and the Lease for correctness on the below points. The Memorandum is recorded in the courthouse for public record; therefore we must make sure it is signed correctly and notarized.
 - Check your name. **IMPORTANT**, make sure your name is listed **exactly** as it appeared on the deed in which you received the land. (What to do if your name has changed since then is listed below)
 - Check your marital status as it is listed. The marital **MUST** be correct. If the marital status has been left blank, we need you to neatly write in your current marital status for us. If you are married, your spouse **MUST** also sign. If your spouse is not listed, you need to add his/her name.
 - **EXAMPLES:**
 - ✦ For example, if you received the land as Mary Smith and you are single, you will make sure the name is correctly listed as Mary Smith, single. If you received the land as Mary J. Smith and are now married to John Johnson you will put Mary J. Johnson formerly known as Mary J. Smith and John Johnson, husband and wife.
 - ✦ If you received the land as John Davis and Mary Davis but are now divorced you will put John Davis, divorced and not remarried.
 - ✦ Some other examples are:
 - ◆ Brenda Johns, single
 - ◆ Mary Smith, a widow who has not remarried
 - ◆ John Davis, a widower who has not remarried

- ◆ Julie B. Davis, also known as Julie Beth Harolds
- ◆ Jim Franks and Angela Franks, husband and wife
- ◆ Joshua Dye, a single person and Mary Dye, a single person
- ◆ James Richardson, President of ABC Motor Company (if the Lessor under the lease is ABC Motor Company)
- ◆ James Richardson and Mary Richardson, Co-Trustees of the Mary Richardson Family Trust dated 01/07/1982.

➤ **Companies and Trusts:** If you are signing under a company or trust name, we will need a copy of your Articles of Incorporation, Trust Agreement, Operating Agreement or other relevant governance document.

- **Check your address.** This is where notices, bonuses, etc. are to be sent. Help us ensure the most up to date mailing address is listed.
 - **Sign the memo in the presence of a notary public.** Use a pen with blue ink to sign. Make sure to sign exactly as described above. If your name is listed as Mary H. Smith, you must sign "Mary H. Smith." If your name is listed as Mary Jean Smith, you must sign "Mary Jean Smith." You must sign **EXACTLY** as your name is listed in order to ensure we have the most correct Memo/Lease.
 - **Have the notary public notarize the document.** If any changes have been made to the way your name is listed, make sure the notary is aware of this so that they can correctly list your name in the notary acknowledgement.
4. **A signed, notarized copy of the Lease.**
- See the above. Follow the same steps listed for the Memorandum when executing the Lease. Although the Lease is not recorded in the courthouse, it is still critical that it is executed correctly. It, too, must be signed in blue ink and notarized.
5. **A signed, notarized copy of the Affidavit of Non-Production.**
- See the above. Follow the same steps listed for the Memorandum and Lease to ensure the names and addresses are correct.

Once you have these five documents – W-9, OFP, Memo, Lease and Affidavit of Non-Production – please mail/return to:

**LAND DEPARTMENT
Crimson Holdings Corporation
2006 E. Carson Street
PITTSBURGH, PA 15203**

Thank you for your participation in the responsible development and exploration of the oil and natural gas reserves in the area.

ORDER FOR SIGNING FEE

Date: _____

Lessor: _____

Address: _____ RALEIGH, NC 27612

The above named "Lessor/Grantor", does hereby confirm that on this date they executed an Oil & Gas Lease ("Lease") in favor of CRIMSON HOLDINGS CORPORATION, hereinafter called "Lessee/Grantee", covering the following tract of land, to wit:

Known as Tax Parcel(s): _____
Commonly known as: _____

Being all that certain tract of land situated in Map Zone _____ in the County of Durham, State of North Carolina.

Being all the property owned by Lessor or to which Lessor may have any rights in in Map Zone _____ containing 36.816 acres, more or less and being the same property described in Deed Book _____, Page _____ and/or Plat Book _____, Page _____, of the Durham County Public Records.

Acres: 36.816, more or less

As consideration for said Lease, upon delivery to Lessee of a property and fully executed Oil & Gas Lease, and upon final acceptance of the Lease by Lessee's Management and upon approval of title, Lessee/Grantee hereby agrees to pay: \$184.08 to said Lessor/Grantor, subject to the approval of Lessee's Management and Lessee's approval of title and lease, on or before One Hundred and Twenty (120) business days from receipt by Lessee/Grantee of this Order For Payment. If such payment is not received by the specified date, Lessor/Grantor shall inform Lessee/Grantee by Certified Mail and Lessee/Grantee shall have five (5) banking days to tender the payment, otherwise this offer shall be null and void.

LESSOR/GRANTOR

Name

Name

SS#

Phone/Contact #

Email:

Mail to: CRIMSON HOLDINGS CORPORATION, 2006 E. Carson Street, Pittsburgh, PA 15203

AFFIDAVIT OF NON-PRODUCTION

State: North Carolina
County: Durham
Affiant(s): _____

Affiant(s), as herein named above, reside(s) at _____

Affiant(s), having personal knowledge of the facts stated below, and being familiar with the land described as follows (the "Lands"):

Known as Tax Parcel(s): _____
Commonly known as: _____

Being all that certain tract of land situated in Map Zone _____ in the County of Durham, State of North Carolina.

Being all the property owned by Lessor or to which Lessor may have any rights to in Map Zone _____, containing 36.816 acres, more or less and being the same property described in Deed Book _____, Page _____, and/or Plat Book _____, Page _____, of the Durham County Public Records.

- 1) I have been the record owner of the Lands since _____;
- 2) To my knowledge, since that date, there has been no production of oil or gas from the Lands, there are no active oil or gas wells on the Lands, nor has any oil or gas well been drilled on the Lands since that date;
- 3) I have not been advised, informed or notified at any time that the Lands have been pooled or unitized with the other lands adjacent to the Lands nor do I have any reason to believe that the Lands have been pooled or unitized with any other lands for the production of oil or gas.
- 4) In my capacity as the owner(s) of the Lands, I am not currently receiving any delay rental payment, bonus, shut-in or royalty payment in connection with or otherwise related to oil or gas production from the Lands and I have not assigned, sold, conveyed or transferred any such delay rental payment, bonus, shut-in or royalty to any other party.
- 5) To my knowledge, other than a lease of even date to Crimson Holdings Corporation, there are no oil and gas leases covering the Lands, whether recorded or unrecorded, which are within their primary or secondary terms.

AFFIANT(s)

Date: _____

Date: _____

STATE OF NORTH CAROLINA)
COUNTY OF DURHAM)

On this ____ day of _____, 2014 before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS THEREOF, I hereunto set my hand and official seal.

My commission expires on:

Notary Public

This document prepared by:
Crimson Holdings Corporation
Attn: Land Department
2006 E. Carson St.
Pittsburgh, PA 15203

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER.

MEMORANDUM OF OIL AND GAS LEASE

THE STATE OF NORTH CAROLINA §
COUNTY OF DURHAM §

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned _____, whose mailing address is _____, RALEIGH, NC 27612 (herein collectively called "Lessor" whether one or more) has executed and delivered to CRIMSON HOLDINGS CORPORATION, (herein called "Lessee") whose address is 2006 E. Carson Street, Pittsburgh, PA 15203, as Lessee an Oil and Gas Lease dated _____, 2014, and conveying the minerals in 36.816 acres of land, whether more or less (+-) as situated in Durham County, North Carolina and covering the following described lands:

Known as Tax Parcel(s): _____
Commonly known as: _____

Being all that certain tract of land situated in Map Zone _____ in the County of Durham, State of North Carolina.

Being all the property owned by Lessor or to which Lessor may have any rights to in Map Zone _____, containing 36.816 acres, more or less and being the same property described in Deed Book _____, Page _____, and/or Plat Book _____, Page _____, of the Durham County Public Records.

Whereas said Oil and Gas Lease provided for a "Primary Term" of 12 years effective on the date first written above and an option to extend said Oil and Gas Lease for a "Secondary Term" of 5 additional years. Duplicate copies of said lease are in the possession of Lessor and Lessee where the same may be extended by any person having a lawful right of legitimate interest therein.

Now therefore, for the consideration set forth in said lease, Lessor does hereby grant, lease and let unto Lessee all of the rights as specified therein, to the following described properties.

This "Memorandum of Lease" shall be binding on all parties, their heirs, successors and Assigns.

LESSOR:

Signed: _____ Signed: _____

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA §
COUNTY OF DURHAM §

On this _____ day of _____, 2014, before me, the undersigned Notary Public in and for said county and state, personally appeared _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as his/her/their/ free and voluntary act for the purposes therein set forth. In witness whereof I hereunto set my hand and official seal as of the date hereinabove stated.

Notary Public
My Commission Expires: _____

(Printed Name of Notary)

Return to:
CRIMSON HOLDINGS CORPORATION
2006 E. Carson St.
Pittsburgh, PA 15203

PAID-UP OIL and GAS LEASE

THIS LEASE AGREEMENT is made and entered into effective the _____ day of _____, 2014, by and between _____, whose mailing address is _____, RALEIGH, NC 27812, hereinafter called Lessor (whether one or more), and CRIMSON HOLDINGS CORPORATION, whose mailing address is 2006 E. Carson Street, Pittsburgh, PA 15203, hereinafter called Lessee.

WITNESSETH:

1. Lessor, in consideration of \$10.00 and OVC Dollars (\$10.00) in hand paid, receipt of which is hereby provided and of the agreements of Lessee herein contained, hereby grants, leases and lets exclusively to Lessee for the purpose of exploring for, developing, producing, and marketing oil, gas and other substances covered hereby on the leased premises as hereinafter described, or lands pooled or unitized herewith, in primary and/or enhanced recovery. Lessee shall have the right of ingress and egress along with the right to conduct such operations on the leased premises as may be reasonably necessary for such purposes, including but not limited to geophysical operations, the drilling of wells, and the construction and use of roads, canals, pipelines, tanks, water wells, disposal wells, injection wells, pits, frac ponds, central production facilities, electric and telephone lines, power stations, and other facilities deemed necessary by Lessee to explore, discover, produce, store, treat and/or transport production.

The lands covered hereby, hereafter called "leased premises", located in the County of Durham in the State of North Carolina are described as follows:

Known as Tax Parcel(s): _____

Commonly known as: _____

Being all that certain tract of land situated in Map Zone _____ in the County of Durham, State of North Carolina.

Being all the property owned by Lessor or to which Lessor may have any rights to in Map Zone _____, containing 36.816 acres, more or less and being the same property described in Deed Book _____, Page _____ and/or Plat Book _____, Page _____, of the Durham County Public Records.

And containing 36.816 gross acres, more or less, (including any interests therein which Lessor may hereinafter acquire by reversion, prescription or otherwise); of which, for the purpose of exploring for, developing, producing and marketing oil and gas, along with all hydrocarbon and non-hydrocarbon substances produced in association therewith. The term "gas" as used herein includes helium, carbon dioxide and other commercial gases, as well as hydrocarbon gases. In addition to the above describe land, this lease and the term "leased premises" also covers accretions and any small strips or parcels of land now or hereafter owned by Lessor which are contiguous or adjacent to the above-mentioned land and, in consideration of the aforementioned cash bonus, Lessor agrees to execute at Lessee's request any additional or supplemental instruments for a more complete or accurate description of the land and/leasehold rights so covered. For the purpose of determining the amount of any bonus money, shut-in royalty, or other such payment hereunder, the number of gross acres above specified shall be deemed correct, whether actually more or less.

2. **Terms of Lease.** This lease shall be in force for a primary term of 12 years from the date hereof, and for as long thereafter as oil or gas or other substances covered hereby are produced in paying quantities from the leased premises (or from lands pooled therewith) or this lease is otherwise maintained in effect pursuant to the provisions hereof.

3. **Extension Option:** For the same consideration stated above, this lease may at Lessee's option, be extended to all or part of the lands covered hereby for an additional primary term of Five (5) years commencing on the date that the lease would have expired but for the extension. Lessee's option shall be deemed properly and timely exercised by Lessee paying or tendering to Lessor an option and extension payment of \$10.00 (Ten Dollars) per net mineral acre for the land then covered by the extended lease, said option and extension payment to be paid or tendered to Lessor at Lessor's address as shown above or to Lessor's last known address of record. If the Lessee exercises this option, the primary term of this lease shall be considered to be continuous, commencing on the date of the lease and continuing from that date to the end of the extended primary term.

4. **Paid-up Lease.** This is a paid-up lease. In consideration for the cash down payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to pay shut ins or commence or continue any operations during the primary term.

5. **Royalty Payment.** Royalties on oil, gas and other substances produced and saved hereunder shall be paid by Lessee to Lessor as follows: (a) for oil and other liquid hydrocarbons separated at Lessee's separator facilities, the royalty shall be One-Eighth (1/8th) of such production, to be delivered at Lessee's option to Lessor at the wellhead or to Lessor's credit at the oil purchaser's transportation facilities, less a proportionate part of ad valorem taxes and production, severance or other excise taxes and the costs incurred by Lessee in delivering, treating or otherwise marketing such oil and other liquid hydrocarbons, provided that Lessee shall have the continuing right to sell such production to itself or an affiliate at the wellhead market price then prevailing in the same field (or, if there is no such price the prevailing in the same field, then in the nearest field in which there is such a prevailing price) for production of similar grade and gravity; (b) for gas (including casinghead gas) and other substances covered hereby, the royalty shall be One-Eighth (1/8th) of the proceeds realized by Lessee from the sale thereof less a proportionate part of ad valorem taxes and production, severance, or other excise taxes and the costs incurred by Lessee in delivering, processing or otherwise marketing such gas or other substances, provided that Lessee shall have the continuing right to sell such production to itself or an affiliate at the prevailing wellhead market price paid for production of similar quality in the same field (or, if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) pursuant to comparable purchase contracts entered into on the same or nearest preceding date as the date on which Lessee commences its purchase hereunder; and (c) if during or after the primary term one or more wells on the leased premises or lands pooled therewith are capable of

producing oil or gas or other substances covered hereby in paying quantities, but such well or wells are either shut-in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this lease. If, for a period of 90 consecutive days such well or wells are shut-in or production therefrom is not sold by Lessee, then Lessee shall pay aggregate shut-in royalty of one dollar per acre then covered by this lease, such payment to be made to Lessor or to Lessor's credit in or its successors on or before the end of said 90 day period and thereafter on or before each anniversary of the end of said 90 day period during which the well or wells are shut-in or production therefrom is not being sold by Lessee; provided that if this lease is otherwise being maintained by operations, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled therewith, no shut-in royalty shall be due until the end of the 90 day period next following the cessation of such operations or production, as the case may be. Lessee may pay or tender any shut-in royalty at any time in advance of its due date to the Lessor then known to Lessee as provided in Paragraph 11 and such payment or tender shall bind all persons then or thereafter obtaining any part of such shut-in royalty. Lessee's failure to properly pay shut-in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

6. Operations. If Lessee drills a well which is incapable of producing in paying quantities (hereinafter called "dry hole") on the leased premises or lands pooled therewith, or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of Paragraph 6 or the action of any governmental authority, then in the event this lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences further operations for reworking an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled therewith within 90 days after completion of operations on such dry hole or within 90 days after such cessation of all production, or, should the lease be within the primary term no further operations shall be required to maintain this lease for the remainder of the primary term. If during or after the primary term, this lease is not otherwise being maintained in force, but Lessee is then engaged in drilling, reworking or any other operations reasonably calculated to obtain or restore a production therefrom, this lease shall remain in force so long as any one or more of such operations are prosecuted with no cessation of more than 90 consecutive days, and if any such operations result in the production of oil or gas or other substances covered hereby, as long thereafter as there is production in paying quantities from the leased premises or lands pooled therewith. After completion of a well capable of producing in paying quantities hereunder, Lessee shall drill such additional wells on the leased premises or lands pooled therewith as a reasonably prudent operator would drill under the same or similar circumstances to develop the leased premises as to formations then capable of producing in paying quantities on the leased premises or upon lands pooled therewith. There shall be no covenant to drill exploratory wells or any additional wells except as expressly provided herein.

7. Pooling. Lessee shall have the right but not the obligation to pool all or any part of the leased premises or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either prior to commencement of or during drilling or recompletion activities, or any completion of the well and may be retroactive to a prior date at Lessee's option, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. The unit formed by such pooling for an oil well (other than a "horizontal well" and/or a "horizontal completion") shall not exceed 320 acres plus a maximum acreage tolerance of 10%, and for a gas well or a "horizontal well" and/or a "horizontal completion" shall not exceed 1280 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil or gas well or a "horizontal well" and/or "horizontal completion" to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purposes of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate governmental authority having jurisdiction. If no definition is so prescribed, "oil well" means a well with an initial gas/oil ratio of less than 100,000 cubic feet per barrel and "gas well" means a well with an initial gas/oil ratio of 100,000 cubic feet or more per barrel, based on a 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and the term "horizontal well" and/or "horizontal completion" shall be defined by applicable law or the appropriate governmental authority having jurisdiction. In the absence of such a definition, a "horizontal well" and/or a "horizontal completion" shall be defined as an oil and/or gas well in which the well bore is intentionally deviated from a true vertical direction and extended to a distance of at least one hundred (100) feet of horizontal displacement. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if production, drilling or reworking operation were on the leased premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears the total acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to pool, consolidate, amend, revise, reform, or otherwise designate any such unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in accordance with the pooling provision contained herein, or in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. In making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion on which royalties are payable hereunder shall thereafter be adjusted accordingly. Lessor shall formally express Lessor's consent to any pooling agreement or operation adopted by Lessee and approved or needed for approval by any governmental authority having jurisdiction to do so, by executing the same upon request of Lessee. In absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate all or part of the unit by filing of record a written declaration describing the unit and stating the date terminated. Pooling hereunder shall not constitute a cross-conveyance of interests.

8. **Unitization.** Lessee shall have the right but not the obligation to commit all or any part of the leased premises or interests therein to one or more unit plans or agreements for the cooperative development or operation of one or more oil and/or gas reservoirs or portions thereof, if in lessee's judgment such plan or agreement will prevent waste and protect correlative rights, and if such plan or agreement is approved by the federal, state or local governmental authority having jurisdiction. When such a commitment is made, this lease shall be subject to the terms and conditions of the unit plan or agreement, including any formula prescribed therein for the allocation of production, and Lessor shall formally express Lessor's consent to any cooperative or unit plan of development, or operation adopted by Lessee and approved or needed for approval by any governmental agency by executing the same upon request of Lessee.

9. **Surface operations.** Lessee shall have the right of ingress and egress and to make reasonable use of the surface estate of the leased premises to conduct its operations hereunder. When requested by Lessor in writing, Lessee shall bury its pipeline below ordinary plow depth on cultivated lands. No well shall be located less than 300 feet from any house or commercial building now on the leased premises without Lessor's consent, and Lessee shall pay for damage caused by its operations to buildings and other improvements now on the leased premises or such other lands, and to commercial timber and growing crops thereon. Lessee shall have the right at any time to remove its fixtures, equipment and materials, including well casing, from the leased premises or such other lands during the term of this lease or within a reasonable time thereafter. Lessee may use free of cost any oil, gas, water and/or other substances on the leased premises, except water from Lessor's existing wells or ponds.

10. **Proportionate Reductions.** If Lessor owns less than the full mineral estate in all or any part of the leased premises, payment of bonus monies, royalties and shut-in royalties hereunder shall be reduced to the proportion that Lessor's interest in such part of the leased premises bears to the full mineral estate in such part of the leased premises.

11. **Ownership Changes.** The interest of either Lessor or Lessee hereunder may be assigned, devised or otherwise transferred in whole or in part, by area and/or by depth or zone, and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns. No change in Lessor's ownership shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until 60 days after Lessee has been furnished the original or duly authenticated copies of the documents establishing such change of ownership to the satisfaction of Lessee or until Lessor has satisfied the notification requirements contained in Lessee's usual form of division order. In the event of the death of any person entitled to royalties or shut-in royalties hereunder, Lessee may pay or tender such royalties or shut-in royalties to the credit of decedent or decedent's estate the depository designated above. If at any time two or more persons are entitled to royalties, shut-in royalties, or other such payments hereunder, Lessee may pay or tender such shut-in royalties to such persons or to their credit in the depository, either jointly or separately in proportion to the interest which each owns. If three or more parties become entitled to a share of the original Lessor's royalty, shut in royalty, or other such payment under this lease, Lessee, to alleviate excessive administrative burden, may request and the relevant parties shall designate a single representative to administer their collective interest and receive collective payments for the designated group. If Lessee transfers its interest hereunder in whole or in part, Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the area covered by this lease, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

12. **Release of Lease.** Lessee may, at any time and from time to time, deliver to Lessor or file of record a written release of this lease as to a full or undivided interest in all or any portion of the area covered by this lease or any depths or zones thereunder, and shall thereupon be relieved of all obligations thereafter arising with respect to the interest so released. If Lessee releases less than all of the interest or area covered hereby, Lessee's obligation to pay or tender royalties, shut-in royalties, or other such payment shall be proportionately reduced in accordance with the net acreage interest retained hereunder.

13. **Regulation and Delay.** Lessee's obligations under this lease, whether express or implied, shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction, including restrictions on the drilling and production of wells, and regulation of the price or transportation of oil, gas and other substances covered hereby. When drilling, reworking, production or other operations are prevented or delayed by such laws, rules, regulations or order, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay, plus an additional 180 days, shall be added to the term hereof. Lessee shall not be liable for breach of any express or implied covenants of this lease when drilling, production or other operations are so prevented, delayed or interrupted.

14. **Breach or Default.** No litigation shall be initiated by Lessor with any respect to any breach or default by Lessee hereunder, for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default within such period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this lease shall not be forfeited or cancelled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

15. **Warranty of Title.** Lessor hereby warrants and agrees to defend title conveyed to Lessee hereunder, and agrees that Lessee at Lessee's option may pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the leased premises. If Lessee exercises such option, Lessee shall be subrogated to the rights of the party to whom payment is made, and in addition to its other rights, may reimburse itself out of any royalties or shut-in royalties otherwise payable to Lessor hereunder. In the event Lessee is made, aware of any claim inconsistent with Lessor's title, Lessee may suspend the payment of royalties and shut-in royalties hereunder, without interest, until Lessee has been furnished satisfactory evidence that such claim has been resolved.

IN WITNESS WHEREOF, this lease is executed to be effective as of the date first written above, but upon execution shall be binding on the signatory and the signatory's heirs, devisees, executors, administrators, successors and assigns, whether or not this lease has been executed by all parties hereinabove named as Lessor.

LESSOR:

Signed: _____

Signed: _____

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA §
COUNTY OF DURHAM §

On this ____ day of _____, 2014, before me, the undersigned Notary Public in and for said county and state, personally appeared _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as his/her/their/ free and voluntary act for the purposes therein set forth. In witness whereof I hereunto set my hand and official seal as of the date hereinabove stated.

Notary Public

My Commission Expires: _____

(Printed Name of Notary)

**Request for Taxpayer
 Identification Number and Certification**

Give Form to the
 requester. Do not
 send to the IRS.

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
 Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 Other (see instructions) ▶ _____

Exemptions (see instructions):
 Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.) Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
Employer identification number								

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/ws. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

§§ 113-416 through 113-419. Repealed by Session Laws 1959, c. 779, s. 3.

Part 3. Landowner Protection.

§ 113-420. Notice and entry to property.

(a) **Notice Required for Activities That Do Not Disturb Surface of Property.** - If an oil or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil or gas drilling operations, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

- (1) The identity of person(s) requesting entry upon the property.
- (2) The purpose for entry on the property.
- (3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) **Notice Required for Land-Disturbing Activities.** - If an oil or gas developer or operator is not the surface owner of the property on which oil or gas operations are to occur, before entering the property for oil or gas operations that disturb the surface, the developer or operator shall give written

notice to the surface owner at least 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

- (1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.
- (2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.
- (3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) **Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property.** - Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(c) **Venue.** - If the oil or gas developer or operator fails to give notice or otherwise comply with the provisions of this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages. (2011-276, s. 3(b); 2012-143, s. 4(a).)

§ 113-421. Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.

(a) **Presumptive Liability for Water Contamination.** - It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within 5,000 feet of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within 5,000 feet of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(a1) **[Rebuttal of Presumption. -]** In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

- (1) The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the water supply in question conducted in conformance with G.S. 113-423(f).
- (2) The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the water supply conducted in conformance with G.S. 113-423(f).
- (3) The water supply in question is not within 5,000 feet of a wellhead that is part of the oil or gas developer's or operator's activities.
- (4) The contamination occurred as the result of a cause other than activities of the developer or operator.

(a2) **Compensation for Other Damages Required.** - The oil or gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

- (1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.

- (2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.
- (3) Damage to any livestock, crops, or timber determined according to the market value of the resources destroyed, damaged, or prevented from reaching market due to the oil or gas developer's or operator's activities.

(a3) Reclamation of Surface Property Required. - An oil or gas developer or operator shall reclaim all surface areas affected by its operations no later than two years following completion of the operations. If the developer or operator is not the surface owner of the property, prior to commencement of activities on the property, the oil or gas developer or operator shall provide a bond running to the surface owner sufficient to cover reclamation of the surface owner's property. Upon registration with the Department pursuant to G.S. 113-378, a developer shall request that the Mining and Energy Commission set the amount of the bond required by this subsection. As part of its request, the developer shall provide supporting documentation, including information about the proposed oil and gas activities to be conducted, the site on which they are to occur, and any additional information required by the Commission. The Commission shall set the amount of the bond in accordance with the criteria adopted by the Commission pursuant to G.S. 113-391(a)(13a) and notify the developer and surface owner of the amount within 30 days of setting the amount of a bond. A surface owner or developer may appeal the amount of a bond set pursuant to this subsection to the Commission within 60 days after receipt of notice from the Commission of the amount required. After evaluation of the appeal and issuance of written findings, the Commission may order that the amount of the bond be modified. Parties aggrieved by a decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes within 30 days of the date of the decision.

(a4) Remediation Required. - Nothing in this Article shall be construed to obviate or affect the obligation of a developer or operator to comply with any other requirement under law to remediate contamination caused by its activities.

(a5) Replacement Water Supply Required. - If a water supply belonging to the surface owner or third parties is contaminated due to the activities of the developer or operator, in addition to any other remedy available at law or in equity, the developer or operator shall provide a replacement water supply to persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(b) Time Frame for Compensation. - When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) Venue. - The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties or other damages owed due to activities of the developer or operator, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) [Certain Limits Void. -] Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable. (2011-276, s. 3(b); 2012-143, s. 4(b); 2013-365, s. 5(c).)

§ 113-422. Indemnification.

An oil or gas developer or operator shall indemnify and hold harmless a surface owner against any claims related to the developer's or operator's activities on the surface owner's property, including, but not limited to, (i) claims of injury or death to any person; (ii) damage to impacted infrastructure or water supplies; (iii) damage to a third party's real or personal property; and (iv) violations of any federal, State, or local law, rule, regulation, or ordinance, including those for protection of the environment. (2011-

276, s. 3(b); 2012-143, s. 4(c).)

§ 113-423. Required lease terms.

(a) **Required Information to be Provided to Potential Lessors and Surface Owners.** - Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, an oil or gas developer or operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication produced by the Consumer Protection Division of the North Carolina Department of Justice entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the property, the oil or gas developer or operator shall also provide the surface owner with a copy of this Part and the publication prior to execution of a lease for oil and gas rights.

(b) **Maximum Duration.** - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to extend a lease beyond the time frames set forth in this subsection.

(c) **Minimum Royalty Payments.** - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall provide that the lessor shall receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds of sale of all oil or gas produced from the lessor's just and equitable share of the oil and gas in the pool, which sum shall not be diminished by pre-production or post-production costs, fees, or other charges assessed by the oil or gas developer or operator against the property owner. Royalty payments shall commence no later than six months after the date of first sale of product from the drilling operations subject to the lease and thereafter no later than 60 days after the end of the calendar quarter within which subsequent production is sold. At the time each royalty payment is made, the oil or gas developer or operator shall provide documentation to the lessor on the time period for which the royalty payment is made, the quantity of product sold within that period, and the price received, at a minimum. If royalty payments have not been made within the required time frames, the lessor shall be entitled to interest on the unpaid royalties commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per annum on the unpaid amounts. Upon written request, the lessor shall be entitled to inspect and copy records of the oil or gas developer or operator related to production and royalty payments associated with the lease.

(d) **Bonus Payments.** - Any bonus payments, or other initial payments, due under a lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be paid by the lessee to the lessor within 60 days of execution of a lease. If a bonus payment or other initial payment has not been made within the required time frame, the lessor shall be entitled to interest on the unpaid amount commencing on the payment due date at the rate of ten percent (10%) per annum on the unpaid amount.

(e) **Agreements for Use of Other Resources; Associated Payments.** - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall clearly state whether the oil or gas developer or operator shall use groundwater or surface water supplies located on the property and, if so, shall clearly state the estimated amount of water to be withdrawn from the supplies on the property, and shall require permission of the surface owner therefore. At a minimum, water used by the developer or operator shall not restrict the supply of water for domestic uses by the surface owner. The lease shall provide for full compensation to the

surface owner for water used from the property by the developer or operator in an amount not less than the fair market value of the water consumed based on water sales in the area at the time of use.

(f) Pre-Drilling Testing of Water Supplies. - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to conduct a test of all water supplies within 5,000 feet from a wellhead that is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling activities and at least two follow-up tests within a 24-month period after production has commenced. The Department shall identify the location of all water supplies, including wells, on a property on which drilling operations are proposed to occur. A surface owner may elect to have the Department sample wells located on their property, in lieu of sampling conducted by the oil or gas developer or operator, in which case the developer or operator shall reimburse the Department for the reasonable costs involved in testing of the wells in question. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property.

(g) Recordation of Leases. - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, including assignments of such leases, shall be recorded within 30 days of execution in the register of deeds office in the county that the land that is subject to the lease is located.

(h) Notice of Assignment Required. - Written notice of assignment of any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be provided to the lessor within 30 days of such assignment. If the surface owner of the property is not the lessor, written notice of assignment of any lease of oil or gas rights shall also be given to the surface owner of the property to which the lease pertains within 30 days of such assignment.

(i) Lender Approval of Lease. - Any lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property with a surface owner shall include a conspicuous boldface disclosure concerning notification to lenders, which shall be initialed by the surface owner, and state the following:

NOTICE TO LENDER(S) PRIOR TO EXECUTION OF LEASE:

Surface owners are advised to secure written approval from any lender who holds a mortgage or deed of trust on any portion of the surface property involved in the lease prior to execution of the lease and obtain written confirmation that execution of the lease will not violate any provision associated with any applicable mortgage or deed of trust, which could potentially result in foreclosure.

I have read and understood the
terms of this provision.

Surface Owner's Initials

(j) Seven-Day Right of Rescission. - Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be subject to a seven-day right of rescission in which the lessor or lessee may cancel the lease. A bold and conspicuous notice of this right of rescission shall be included in all such leases. In order to cancel the lease, the lessor or lessee shall notify the other party in writing within seven business days of execution of the lease, and the lessor shall return any sums paid by the lessee to the lessor under the terms of the lease. (2011-276, s. 3(b); 2012-143, s. 4(d); 2012-201, s. 12(d).)

§ 113-423.1. Surface activities.

(a) Agreements on Rights and Obligations of Parties. - The developer or operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the developer or operator.

(b) Minimization of Intrusion Required. - An oil or gas developer or operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and damage to

the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator. The standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface. Failure of an oil or gas developer or operator to comply with the requirements of this subsection shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages and equitable relief. In any litigation or arbitration based upon this subsection, the surface owner shall present evidence that the developer's or operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer or operator shall bear the burden of proof of showing that it minimized intrusion upon and damage to the surface of the land in accordance with the provisions of this subsection. If a developer or operator makes that showing, the surface owner may present rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has conducted oil or gas operations in accordance with a regulatory requirement, contractual obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection shall do any of the following:

- (1) Preclude or impair any person from obtaining any and all other remedies allowed by law.
- (2) Prevent a developer or operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract.
- (3) Establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations. (2012-143, s. 4(e).)

§ 113-424: Repealed by Session Laws 2012-143, s. 4(f), effective July 2, 2012.

§ 113-425. Registry of landmen required.

(a) Establishment of Registry. - The Department of Environment and Natural Resources, in consultation with the Consumer Protection Division of the North Carolina Department of Justice, shall establish and maintain a registry of landmen operating in this State. As used in this section, "landman" means a person that, in the course and scope of the person's business, does any of the following:

- (1) Acquires or manages oil or gas interests.
- (2) Performs title or contract functions related to the exploration, exploitation, or disposition of oil or gas interests.
- (3) Negotiates for the acquisition or divestiture of oil or gas rights, including the acquisition or divestiture of land or oil or gas rights for a pipeline.
- (4) Negotiates business agreements that provide for the exploration for or development of oil or gas.

(b) Registration Required. - A person may not act, offer to act, or hold oneself out as a landman in this State unless the person is registered with the Department in accordance with this section. To apply for registration as a landman, a person shall submit an application to the Department on a form to be provided by the Department, which shall include, at a minimum, all of the following information:

- (1) The name of the applicant or, if the applicant is not an individual, the names and addresses of all principals of the applicant.
- (2) The business address, telephone number, and electronic mail address of the applicant.
- (3) The social security number of the applicant or, if the applicant is not an individual, the federal employer identification number of the applicant.

- (4) A list of all states and other jurisdictions in which the applicant holds or has held a similar registration or license.
 - (5) A list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked.
 - (6) A statement whether any pending judgments or tax liens exist against the applicant.
- (c) The Department may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a registrant if the Department determines that the applicant or registrant does any of the following:
- (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.
 - (2) Uses or attempts to use an expired, suspended, or revoked registration.
 - (3) Falsely represents oneself as a registered landman.
 - (4) Engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil or gas interests.
 - (5) Had a similar registration or license denied, suspended, or revoked in another state or jurisdiction.
 - (6) Otherwise violates this section.
- (d) An applicant may challenge a denial, suspension, or revocation of a registration or a reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the General Statutes.
- (e) The Department shall adopt rules as necessary to implement the provisions of this section. (2012-143, s. 4(g).)

§ 113-426. Publication of information for landowners.

In order to effect the pre-lease publication distribution requirement as set forth in G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the North Carolina Department of Justice, in consultation with the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer protection issues and landowner rights, including information on leases of oil or gas rights, applicable to exploration and extraction of gas or oil. The Division and the Commission shall update the publication as necessary. (2012-143, s. 4(h).)

§ 113-427. Additional remedies.

The remedies provided by this Part are not exclusive and do not preclude any other remedies that may be allowed by law. (2012-143, s. 4(i).)



OIL & GAS LEASES IN NORTH CAROLINA: LANDOWNERS' RIGHTS

Deciding whether or not to allow drilling for oil and gas on your land is a serious and difficult decision. Oil and gas leases can impact the value of your land and how you use it. Before you sign an oil or gas lease, read the following definitions and tips for landowners.

- **Oil and Gas Leases.** An **oil or gas lease** is a legal document where a landowner grants an individual or company the right to extract oil or gas from beneath the landowner's property. Courts generally find leases to be legally binding, so it is very important that you understand all the terms of a lease before you sign it.
- **Hydraulic fracturing or "fracking"** is a process in which water, sand and chemicals are injected deep underground to crack shale rock and release natural gas. Hydraulic fracturing often involves **horizontal drilling**, where one or more horizontal drill shafts, which can extend for up to two miles, are drilled off an existing vertical shaft.
- **Fracking in North Carolina.** In 2012, the North Carolina General Assembly legalized fracking and horizontal drilling by passing Session Law 2012-143 (S. 820), the Clean Energy and Economic Security Act. However, drilling cannot take place until the North Carolina Mining and Energy Commission establishes rules for fracking, no later than January 1, 2015. In addition, no company can drill unless it first obtains a permit from the North Carolina Department of Environment and Natural Resources (DENR), and DENR cannot issue permits for fracking until the General Assembly votes to allow it to.

TIPS FOR LANDOWNERS

If you're considering leasing your land for oil or gas exploration, learn about the possible risks and the protections you're entitled to under North Carolina law.

- **Contact an attorney.** Oil and gas leases are complex legal documents. Before you sign an oil or gas lease, contact an attorney and ask them to review it, especially provisions about payment and damages. If you do not know an attorney with expertise in real estate law, contact the North Carolina Bar Association at 1-800-662-7660 for a referral. You also may be able to join with neighboring landowners to consult an attorney.
- **Contact your mortgage lender, conservation easement holder, or Farm Service Agency office.** If you have a mortgage loan, signing an oil or gas lease could violate the terms of your mortgage. It could also prevent you from being able to refinance your mortgage in the future. **Before you sign an oil or gas lease, talk to your lender and get their approval.** If your property is subject to a conservation easement, contact your conservation easement holder to find out about any restrictions on signing a lease. If you have received federal farm program benefits, contact your Farm Service Agency office to find out if you face any restrictions.
- **Check out the landman.** Oil or gas leases are often offered by salesmen called **landmen**. Some landmen work for oil and gas companies; others are independent contractors. In North Carolina, anyone who contacts you to offer you an oil or gas lease is required to register with DENR and provide his or her contact information. To check out a landman, visit <http://portal.ncdenr.org/web/lr/registry-of-landmen> or call 919-707-8605.
- **Research the company.** If you lease your land to a company for oil and gas exploration, you'll be dealing with that company for years to come. Before you sign a lease, check with the North Carolina Secretary of State's office at www.secretary.state.nc.us/corporations or 919-807-2000 to find out if the company is registered to do business in North Carolina. Also, ask your attorney to check out the company.

- **Know the risks to your land and water supply.** Exploring for oil or gas on your property will likely disrupt and possibly damage your land, your home, your crops and your water supply. Different kinds of leases allow different levels of impact. A **non-development lease** allows oil or gas to be extracted, but does not allow access to the surface of the landowner's property. A **development lease** allows access to the surface of the land for drilling and operating the well. This means the operator is generally allowed to clear trees, build roads, and construct a well pad and pipelines on your land, among other things. Each well pad disturbs 7 to 9 acres of land on average. Drilling can also cause noise and increased truck traffic around your property.
- **Make sure your payment is reasonable.** Oil and gas leases usually include three kinds of payments. (1) A **bonus payment** is made when the lease is signed, often based on the number of acres leased. North Carolina law requires that any bonus payment be made within 60 days of the lease being signed. (2) **Payment for surface damages to the property.** North Carolina law requires that landowners be paid for any damage to livestock, crops, timber, or personal property that's damaged, as well as for damage to an existing water supply. (3) **Royalties.** Royalties are a percentage of the proceeds of the sale of any oil or gas produced, and you'll only receive royalties if your land produces oil or gas. North Carolina law requires that landowners be paid a minimum royalty of 12.5 percent for any oil or gas produced, without any deductions for costs.
- **Make sure it covers damages and costs.** Oil and gas exploration on your property may damage your land, home, crops and/or water supply, and you may also face unexpected costs. Provisions of the lease that spell out how you would be paid for any damages need to be broad enough to cover all the types of damages or costs that you may face. For example, if you farm, you could face additional federal or state taxes if a certain percentage of your land is taken out of agricultural production due to oil and gas production. Find out whether you will be paid back for any additional taxes you may owe.
- **Talk with your neighbors.** There is strength in numbers, so you may want to consider negotiating your lease together with a group of neighbors. By working together, you may be able to get more favorable lease terms, including higher payments and better reimbursement for damages and costs.
- **Get all promises in writing, and get a copy of your lease.** Make sure any promises or conditions you discuss are in writing and are part of the lease. Also, be sure to get a copy of your lease. North Carolina law requires that all leases and any lease assignments be recorded with the register of deeds for the county where the property is located. Know that if you sign a lease to allow oil or gas drilling on your property, it may continue for many years because the lease will last as long as oil or gas is being produced.
- **Get a copy of your legal protections.** At the time landmen or companies offer you an oil or gas lease, they are required to give you a copy of the North Carolina law that protects you. The law that legalized fracking also provides important protections for landowners (see North Carolina General Statute Chapter 113, Article 27, Part 3, Landowner Protection, available online at www.ncleg.net.) A detailed summary of these protections is available on the North Carolina Attorney General's website at www.ncdoj.gov. Ask your lawyer to be sure your lease complies with North Carolina law or provides greater protections.
- **Don't be pressured to sign, and know your right to cancel.** Take your time before you sign an oil or gas lease, and don't let high-pressure sales tactics force you to make a decision before you're ready. If you sign, you will have seven days to cancel it under North Carolina law without any penalty. To cancel your lease, send the company a written notice that you want to cancel.
- **Where to turn for help.** If you have questions about oil and gas leases, contact the North Carolina Cooperative Extension Service in your county. Visit www.ces.ncsu.edu/local-county-center or call (919) 515-2813 for a list of Cooperative Extension county offices. If you have questions about the regulation of oil and gas exploration and development in North Carolina, or about environmental impacts, contact DENR at www.ncdenr.org, 919-707-8605. To report a scam or unfair business practice, contact the Attorney General's Consumer Protection Division at www.ncdoj.gov or 1-877-5-NO-SCAM.