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Natural Gas Development in New York State – *An Opportunity*

SPECULATION CONCERNING THE Marcellus Shale as the next great natural gas resource in the United States has created a buzz about natural gas drilling in New York. Recent technological developments and advancements have made the exploration and development of natural gas highly profitable for companies in similar shale formations throughout the country. In turn, landowners have profited tremendously from the leasing of their lands for exploration and development.

Gas companies have initiated a leasing frenzy by dispatching hoards of leasing agents throughout New York's Southern Tier. Hearing rumors of large signing bonuses and royalty payments, landowners have rushed to enter into leases ignoring many of the risks.

Mining companies, as owners of large tracts of land, are prime targets for gas leases because there are not multiple landowners to deal with, simplifying both the leasing and the regulatory hurdles before wells can be drilled. To ensure that your rights are protected, it is important that your company understand some of the basic issues surrounding the process of natural gas drilling in the Marcellus Shale, the potential regulatory and environmental issues, and leasing issues you may be faced with as a landowner.

WHY THE RECENT SURGE IN INTEREST?

The Marcellus Shale is a black shale formation extending deep underground from Ohio

and West Virginia northeast into Pennsylvania and southern New York. Geologists have initially estimated that the shale contains between 168 trillion to 516 trillion cubic feet of natural gas in its entirety. To put this estimate in context, New York State uses about 1.1 trillion cubic feet of natural gas each year.

Within the past several years, two technologies, horizontal drilling and multi-stage hydraulic fracturing, have been utilized in other shale formations in the country with impressive results. These technological developments have triggered an intense interest in drilling and leasing in the Marcellus Shale in New York. While horizontal drilling has been prevalent for some time, its use in the tight shale formations and the ability to "fracture" the formation at long distances from the vertical wellbore have made these shale formations highly productive.

ENVIRONMENTAL & REGULATORY ISSUES

In addition to the mining program, NYSDEC's Division of Mineral Resources

regulates oil and gas activity. The department evaluated the impacts of oil and gas exploration and development a Generic Environmental Impact Statement ("GEIS"), which was finalized in 1992. The 1992 GEIS, however, did not evaluate the potential environmental impacts of the use and disposal of the very large volumes of hydraulic fracturing liquids associated with horizontal wells that these shales require.

NYSDEC has initiated a formal public review process to supplement the 1992 GEIS to ensure that any issues unique to Marcellus and other horizontal shale formation drilling, including environmental issues associated with the increased use of high-volume hydraulic fracturing, are adequately addressed.

Although there is *not* a formal moratorium in place preventing drilling permits from being issued, until the Supplemental GEIS ("SGEIS") is finalized, any permit applicant for a horizontal well using large amounts of fresh water will be required to conduct a complete SEQRA review; whereas after the SGEIS is completed, the permit applicant will likely not need additional

Did you know...

- In 2007, New York had almost 13,000 producing oil and gas wells
- Total production market value of those 13,000 wells was \$516 million
- Landowners collected an estimated \$60.75 million in royalties in 2007
- NYS produced a near record 55 billion cubic feet of natural gas
- And Marcellus Shale was yet to be developed!

environmental review. NYSDEC is expected to complete the SGEIS by late summer.

OIL AND GAS LEASES

Typically, companies will present you with a pre-printed or standard lease. A lease is a contract and is negotiable. It is crucial that these documents be reviewed carefully and that changes are negotiated to meet your needs and protect your interests before signing.

There are numerous leasing issues to be aware of, including but certainly not limited to, bonuses, length of the lease, royalty payments and calculations, and termination (plugging and abandonment, extinguishing the lease). All of these issues must be reviewed carefully with an attorney and other professionals who understand the oil and gas leasing and development process to ensure that the lease protects your interests.

Certainly, with mining companies or other business entities, there needs to be recognition of current operations and the need to ensure that any drilling or development will not adversely affect your current or future operations on the property.

Most importantly, however, is that the lease is an encumbrance on the property. It could be viewed positively because of its income generating potential or, if not properly handled, negatively because of its potential to affect future uses.

There are significant advantages to signing a lease as opposed to letting the regulatory process dictate your involvement. Your land could be forced into a drilling and production unit even if you did not sign a lease. New York's oil and gas law is complex, and there are many provisions of the law that are too complicated to discuss here.

An oil and gas lease could provide significant revenue to you, both on a one-time basis and more importantly, long term if successful wells are drilled on the property. If your land is being held for mining reserves, oil and gas leasing may provide a source of revenue that was not contemplated when the land was purchased.

Whether or not you choose to enter into an oil and gas lease is your decision, and it should be made with all information and all of your options before you. To protect your mineral rights, it is important to understand some of the basics of natural gas drilling, as well as the intricacies of oil and gas leases and the oil and gas law. NYSDEC, as always, is doing its part to protect the environment and to protect your rights as a landowner. Whether a marginal source of revenue or an even greater contributor to your bottom line, oil and natural gas development represents a great opportunity. If done right, oil and gas development could potentially be a source of income to your company for many years. ○

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