

**§ 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 pay for the reasonable costs involved in testing all water supplies within a one-half mile radius from a proposed 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 five follow-up tests at six months, 12 months, 18 months, and 24 months after production has commenced and a test within 30 days after completion of production activities at the site. 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 shall use an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program to sample wells located on their property, and the developer or operator shall pay for the reasonable costs involved in testing of the wells in question. Developers and operators may share analytical results obtained with other developers and operators as necessary or advisable. All analytical results from testing conducted pursuant to this section (i) shall be provided to the Department within 30 days of testing and (ii) shall constitute a public record under Chapter 132 of the General Statutes, and the Department shall post any results to the Department's Web site within 30 days of receipt of the results. 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); 2014-4, s. 13(b).)