Issue Date: April 2011

This is the second issue of our newsletter for landowners and other members of the public with interest in the oil and gas industry and how it affects landowners. This newsletter will be updated quarterly and posted on our website. You will also be able to contact your local MSU Extension Office to obtain copies.

Information in this Issue:
- Fracking – The Controversy Continues
- Landowners Cautioned About Mail Order Offers To Lease Mineral Rights
- Where is Oil & Gas Leasing Occurring and What Are The Rates?

Upcoming Informational Meetings

Thursday, April 28, 2011 6—8:00 pm
Fruitland Township Hall
4545 Nestrom Road
Whitehall, MI 49461

Topics to be covered:
- Michigan’s Oil and Gas Industry
  Stafford Dusenbury, Office of Geological Survey MI DNRE
- Understanding the Lease
  Curtis Talley Jr., Farm Management Educator, MSU Extension
- Legal Issues Associated with Oil & Gas Leases
  Trent Hilding, Attorney, Agricultural & Rural Advocates, PLC

There is a no charge for this meeting. For questions related to the program information please contact
Curtis Talley Jr., Farm Management Educator, MSU Extension at 231-873-2129.

Fracking – The Controversy Continues

By: Dean Solomon Senior Educator Michigan State University Extension

Hydraulic fracturing, or fracking, is a process where explosive charges are set off in oil and gas wells, then water and chemicals injected at high pressure to increase well production. The method is largely responsible for greatly increasing productivity of natural gas wells drilled into shale in other states and Michigan.

It is controversial – proponents claim that the method is safe and poses minimal environmental threat; opponents maintain that fracking is unacceptably risky, and has
already contaminated drinking water in other states. Much of the concern is about use of this method in newer, deep natural gas wells that are drilled down thousands of feet, then horizontally up to an additional 5,000 feet. Millions of gallons of water and chemicals are used to frack a single well.

Fracking has been used for years in the state, especially in shallower Antrim natural gas wells, although the volumes used are much less than that in deep wells. During 2010s excitement over natural gas potential in the Collingwood/Utica formation, the fracking controversy reached Michigan. During the year, two of these deep wells were completed by fracking. The national debate about fracking is lively, to say the least. The highly critical “Gasland” documentary made headlines. The EPA embarked on a multi-year study to assess the method’s impacts. The State of New York enacted a temporary ban on the practice. Just recently, an investigation by a group of congressional Democrats concluded, controversially, that previous use of diesel fuel in the fracking process (8,000 gallons in Michigan) between 2005 and 2009 violated the Clean Water Act.

Proponents, especially oil and gas companies, maintain that allegations of contamination caused by fracking are inaccurate and risks overstated. Last November, a coalition of Michigan environmental groups recommended that the Michigan Department of Natural Resources and Environment requires use of Michigan’s water withdrawal assessment process for oil and gas wells, public disclosure of fracking chemicals, increase monitoring and bonding, and drilling companies to use best management practices to prevent water quality problems. The Department responded that many of the recommendations are already appropriately addressed in regulations and practices or are under review. As in many states, Michigan’s regulatory agency is awaiting results of the EPA study and has pledged their cooperation in that effort.

So, what should a landowner do?

One of the most common practices by landowners in other states where oil and gas development occurs is having their well water tested prior to drilling to establish a baseline, then repeating during and after drilling to determine if that activity caused an impact. Pennsylvania State University Extension has some excellent information on the topic, http://extension.psu.edu/water/marcellus-shale. No doubt, the national and Michigan debate will continue. New studies and better science will help regulators, individuals and communities make informed decisions about this issue. Stay tuned!

Landowners Cautioned About Mail Order Offers to Lease Mineral Rights

By: Curtis Talley Jr., MSU Extension Farm Management Educator

MSU Extension offices have had a number of landowners notify us that they are receiving unsolicited mailings from Oil and Gas leasing representatives. These are offers to lease “Oil, Gas and Minerals”. The letter offers a cash bonus and very minimal lease terms. The letter also states that if they sign and return the offer, they are also approving the lease of the minerals. However, there is no lease document to review, so the landowner is approving a lease that they have not yet seen. When you sign an oil and gas lease you are essentially selling the mineral rights for the terms that are laid
out in the lease agreement. Would you sell your land surface rights without knowing how or what you are going to be paid? Attorneys have stated that signing and returning letters of this type creates a contractual obligation and the landowner is bound to whatever lease document they eventually receive to sign.

When it comes to leasing your land for minerals or wind energy development, the devil is in the details of the actual lease agreement. We want to warn landowners that signing and returning these types of letters without a review of the underlying lease by an experienced oil and gas attorney can result in a very poor lease that lacks, among many things, environmental protections, substantially less income to the landowner and potentially very little input as to what occurs on the property after the lease is signed. Unfortunately, these types of offers are not new to Michigan and becoming more common around the state.

Where Is Oil And Gas Leasing Occurring?

Oil and gas leasing is quietly occurring all over the state. As one of the articles in this newsletter states, many offers to lease mineral rights are coming unsolicited through the mail. The first offers of this type in Oceana County offered a royalty of 1/8. Landowners with oil and gas leasing knowledge have notified the companies that this royalty is not acceptable. The companies have changed their offers and are now offering a 1/6th royalty, which, coincidentally is the same royalty the State of Michigan receives.

An oil and gas company that is active in Jackson County stated to Curtis Talley Jr., Michigan State University Extension, that they recently negotiated and signed what is probably the first lease in Michigan with a 25% royalty to a landowner in the state of Michigan. Some new discoveries of oil have occurred in Jackson County and land that is not leased is in demand and has become what is known as a “hot” area. Where the leasing activity is “hot”, particularly if the oil company is looking for oil, which currently has a high value, negotiating the entire lease, not just the royalty is achievable, as this example and the example of the changes to mail order leases demonstrate.

Negotiating changes to the lease is achievable before an area becomes hot if the landowner has the knowledge to know what other landowners in other areas of the state and nation are accepting. A landowner gets only one opportunity to achieve a good lease. Once the lease is signed, the landowner is locked in until it expires. If the terms are good, the landowner feels the gratitude that their lease negotiation efforts are paying off. If the terms are bad, the landowner can have some very unpleasant surprises if oil and gas development eventually occurs. For example, landowners that did not pay attention to the lease language have spoken out at some of our landowner educational meetings and stated that it is not uncommon for them to not receive a royalty some months, even though there is a producing well on the lease. This is because among other things, the post-production costs deductions are so high.