

## Chapter 20

# Shale Transactions in Appalachia: Key Transactional Documents

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**§ 20.01. Introduction.**

With the development of the Marcellus and Utica shale plays in Pennsylvania, West Virginia and Ohio, a large increase in the size and number of transactions involving the disposition and acquisition of oil and gas assets in the Appalachian Basin has occurred in recent years. Those transactions require drafting of certain key documents and thoughtful attention from experienced counsel can ensure that a client receives the most value from the deal and avoids unexpected and costly difficulties during the development phase of their operations.

Agreements relating to the acquisition and development of the Marcellus and Utica shales differ in some significant respects from transactions involving traditional oil and gas reserves. Because shales are low-permeability geologic plays, horizontal drilling and hydraulic fracturing are crucial to increasing production from those formations.<sup>1</sup> The very nature of horizontal drilling causes shale producers to approach the acquisition process with different needs than traditional producers.

Horizontal wells cover a larger surface area and require the pooling of considerably more mineral acreage than traditional wells. The implication is that purchasers have less room to accept leases with clouds, or defects. The hydraulic fracturing process is constantly facing new and more stringent regulation relating to water withdrawals, injection of fluid, and disposal of brine.<sup>2</sup> This can translate into costly fines, injunctions, or orders to replace contaminated water sources.<sup>3</sup> Moreover, because these formations are found in the Appalachian region, other special considerations must be made. Chief among them, parties must appreciate the informality with which historic transactions have taken place and records have been kept.

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<sup>1</sup> U.S. Energy Info. Admin., *Review of Emerging Resources: U.S. Shale Gas and Shale Oil Plays* 4 (July 2011), <ftp://ftp.eia.doe.gov/natgas/usshaleplays.pdf>.

<sup>2</sup> West Virginia, Pennsylvania, and Ohio have recently adopted legislation to regulate hydraulic fracturing. *See* W. Va. Code §§ 22-6A-1 to 22-6A-24 (2012); H.B. 1950, 2012 Gen. Assemb., Reg. Sess. (Pa. 2012); S.B. 315, 129th Gen. Assemb., Reg. Sess. (Ohio 2012).

<sup>3</sup> *See* W. Va. Code §§ 22-6A-18, -19; 58 Pa. Stat. Ann. §§ 3252–3262 (West 2012); Ohio Rev. Code Ann. § 1509.04 (2012).