In 2012, the North Carolina General Assembly legalized "fracking" in North Carolina, overriding a veto of then Governor Bev Perdue. This rolled back state laws dating back to 1945 that prohibited horizontal drilling and the injection of wastes into wells, creating a *de facto* ban on hydraulic fracturing ("fracking"). The law placed a moratorium on the issuance of permits "until the General Assembly takes legislative action to allow the issuance of such permits," and approves regulations crafted by the Mining and Energy Commission ("MEC"). Because North Carolina has no active oil and gas production, there is no comprehensive regulatory program for the oil and gas industry. The law therefore reconstituted North Carolina's Mining Commission as the Mining and Energy Commission, and charged that body with creating the rules that will govern gas extraction in North Carolina.

The MEC is divided into six committees that draft the rules, which are then voted on by the full Commission. The six committees are: mining, civil penalty remissions, environmental standards, water and waste management, administration of oil and gas, and rules. Study groups, comprised of MEC members and other interested stakeholders, were also formed to look into specific issues: compulsory pooling, local government regulation, coordinated permitting, trade secrets, and funding levels and sources. The full set of regulations was completed by the MEC in May 2014 and is now in the public comment period, which opened July 15th and will remain open until September 30th, 2014. Three public hearings were held in August and September of 2014. The MEC is then scheduled to adopt the final rules in October 2014, and the legislature is expected to rubber stamp the rules in the 2015 long session.

The 2013 legislative session saw repeated attempts to lift the moratorium on issuing drilling permits until all safety rules are written and the legislature votes to approve those rules. One of these bills, Senate Bill 76, known for most of the session as "the fracking bill," but titled "The Domestic Energy and Jobs Act" ultimately passed and became law in July, 2013. The final version of the bill, however, promotes offshore drilling, but does NOT include some of the worst provisions proposed by the Senate, including fast-tracking permitting before regulations are completed and allowing underground injection of fracking wastes.

The 2014 short session, which convened in mid-May 2014 and wrapped up mid-August, saw yet another "fracking bill" (SL2014-4, Energy Modernization Act (S786)), which Gov. Pat McCrory signed into law on June 4, 2014. The Act breaks the state legislature's 2012 and 2013 promises to review a finished package of rules before voting whether to allow fracking permits to issue in North Carolina. Instead, following a truncated legislative review period in early 2015, the rules will go into effect by default, and permits will begin to issue sometime in early to mid-2015. Beyond breaking the legislature's promise, the Act fails to address the most significant risks that shale gas development poses to our health, communities, and the environment. SL2014-4 weakens substantive and procedural safeguards, including:

- **Weakened protection for groundwater wells**. In 2012, S820 made drillers presumptively liable for contamination of groundwater wells within 5,000 feet of a gas well. As outlined in proposed state rules, a company can refute the presumption by collecting pre-drilling samples that show pre-existing contamination. SL2014-4 slashes the radius of presumptive liability to 1⁄2 mile (2,640 feet), nearly in half, amounting to a 72% reduction in the protected area [§13]. The Act adds more required tests following drilling (good), but places the burden of arranging for the

tests to be carried out on landowners, making it quite likely that many will lose the protections theoretically provided by the presumption (very bad).

- **Constraints on local governments**. In 2012, S820 called for a study, and proposed to forbid local governments from adopting measures that would ban 'or having the effect of banning' fracking. That's pretty overbearing by itself. But SL2014-4 goes much further, preempting all local rules as needed to promote shale gas development, and assigning the MEC, rather than an impartial state court, to decide whether a local ordinance goes too far [§14].
- **Exemptions from rulemaking**. The NC Administrative Procedures Act (APA) sets out the process agencies must follow to draft rules, including review by the legislature. In addition to breaking the promise to hold a vote after the rules were final [§3], SL2014-4 radically shortens the time available to the legislature to review the complex package of 120+ fracking rules in 2015 [§2]. Meanwhile, those rules are first schedule to receive public comment in August, and serious gaps in the framework continue to be discovered.

In addition, SL2014-4 does not address the risks that matter most, including:

- **Compulsory pooling**, in which a natural gas driller can force a landowner to allow development of their mineral estate against their will. The Act punts on this issue, asking for more studies [§25], where it should have explicitly prohibited compulsory pooling of unleased shale gas interests.
- **Wastewater disposal**. Fracking creates huge volumes of polluted wastewater. Even if some is reused, most will eventually need to be disposed of. It cannot safely be injected underground in North Carolina. North Carolina lacks both pre-treatment and discharge standards for many of the hundreds of contaminants that can be found in fracking wastewater, and the state is making no effort to establish them. Under the draft fracking rules, a facility could be permitted to treat and discharge fracking wastes to surface waters without removing contaminants that threaten public health.
- **Air emissions**. In 2012, S820 (SL2012-143) instructed the Environmental Management Commission (EMC) to develop rules to control toxic air emissions from fracking operations. In other states, those emissions have sickened families, destroyed property values, and appear tied to higher levels of birth defects among nearby newborns.1 The Mining & Energy Commission (MEC), EMC, and Department of Environment & Natural Resources (DENR) have not proposed state rules, instead suggesting that the state will rely on federal protections. However, those protections explicitly exempt wildcat and exploratory wells – just the kinds that are likely to be drilled here.
- **Remedies for long-term contamination**. Contamination may not show up until years after drilling, or even until after a driller has closed a well and moved on. Nothing in state law, S.L. 2014-4, or proposed state rules provides a remedy for people whose health or property are destroyed by long-term contamination.
- **Oversight of gathering lines**. To move gas from wells to processing facilities, operators send it through 'gathering lines'. In other states, operators have used their power over the lines to fleece landowners. The lines are largely uninspected, and operators in North Carolina may be

able to take private property to lay the lines using eminent domain. SL2014-4 punts on this issue too, telling the MEC to study 'midstream infrastructure', but putting no protections in place for landowners or the environment [§26]

Other missing safeguards include: presumptive liability for damage to private property from seismic testing [§15 leaves the burden on the injured landowner]; requirements for state regulators to be onsite during the critical phases of gas well development; any requirement for a water withdrawal permit; protections for surface landowners who do not own the gas beneath them; and certification criteria for gas well contractors and cementers [§16 exempts oil and gas contractors from the current certification for water well contractors, but does not place them under another authority].