

## **Impacts to Local Transportation Infrastructure: NCLM Proposal**

**OVERVIEW:** To better predict the types of impacts that N.C. cities and towns may experience from development of the hydraulic fracturing industry in this state, the N.C. League of Municipalities (NCLM) surveyed towns in affected areas of drilling in Arkansas. Through conversations with those municipal officials, NCLM found that the major impacts to municipal operations occurred in the area of transportation infrastructure. Similarly, in North Carolina, impacts and damages to local government transportation infrastructure from hydraulic fracturing activities will be experienced exclusively by municipalities. To most adequately recover the costs of repairs to municipal transportation infrastructure, NCLM proposes a bond and permit system modeled after the one in Pennsylvania.

**EXISTING STATUTORY AUTHORITY:** Already, under G.S. 160A-296 and 160A-300, N.C. municipalities have the authority to exercise control over their municipally-controlled public streets by prohibiting, regulating, diverting, controlling, and limiting vehicular traffic. These statutes allow municipalities to establish weight restrictions and truck routes for municipal streets. With either approach, signs must be posted at the appropriate locations in order for the ordinance provisions to be effective and enforceable.

**PROPOSAL:** NCLM proposes a bond and permit system to recover costs of repairs to roads damaged by the hydraulic fracturing industry. The proposal contains the following elements:

1. A municipality in an area expecting hydraulic fracturing-related traffic by high weight vehicles would post weight limits for its roads. In order for a hydraulic fracturing company to operate over-weight vehicles on a posted municipal road, the municipality would issue an over-weight permit for the vehicle or vehicles.
2. To receive a permit, a company would enter into an Excess Maintenance Agreement (EMA) with the municipality, under which it would agree to pay for any maintenance or restoration of a posted road that it traveled that was in excess of normal maintenance. Such maintenance and restoration would not require improvements of the road beyond the state of repair at the time the permit took effect. The agreement would cover the roadway itself, as well as shoulders, curb and gutter, sidewalks, drainage facilities, and other appurtenances.
3. The hydraulic fracturing company and the municipality would first make inspections to determine the condition of the roads covered by the EMA at the beginning and end of the EMA period. Interim inspections could also occur during the EMA period to identify damage that could be mitigated if addressed immediately, rather than at the end of the EMA period.
4. As part of the EMA, the hydraulic fracturing company would agree to either: (1) undertake all required maintenance and restoration itself, or (2) allow the municipality to undertake the maintenance and bill the company for the costs. In either case, the maintenance and restoration

work would be inspected by both parties upon completion.

5. The hydraulic fracturing company would provide security, such as a performance bond or irrevocable letter of credit, to ensure that funds were available to cover the cost of any required maintenance and restoration. The amount of the bond would be tied to the level of use that the hydraulic fracturing company expected to make of the covered municipal roads. A hydraulic fracturing company's liability would not be limited to the level of security provided and the amount of security required could be increased by the municipality during the EMA period if interim inspections found that the expected cost of damage was greater than amount security.
6. If more than one hydraulic fracturing company sought a permit to operate on the same road(s), the companies would agree within a specified period of time on the percentage of maintenance and restoration cost that will be assigned to each company under its EMA. If the companies did not make the assignment within the specified time, the municipality would be authorized to make such assignment itself.
7. A company's failure to meet the EMA's terms would result in suspension or termination of the EMA.
8. A municipality would reserve the right to close a road covered by an EMA, or portion thereof, to any vehicle in excess of a specific weight if such closing was necessary for safety, or was a temporary closing due to weather conditions.