

**Meeting Minutes of the Local Government Regulation Study Group of the
North Carolina Mining and Energy Commission
June 21, 2013**

1. Preliminary Matters

Study Group Director, Mr. Charles Taylor called the meeting to order at 1:01 pm and welcomed study group members and others attending. He read the ethics statement and asked Study Group members whether or not they had any conflicts of interest with respect to any action items on the agenda. No conflicts were noted.

The following personnel were in attendance for all or part of the meeting:

Study Group Members

Charles Taylor
Mack Paul
Richard Whisnant
Becki Gray
James Womack

DENR Staff Members

W.E. "Toby" Vinson
Katherine Marciniak
Ryan Channell
Mell Nevils
Walt Haven

Others in Attendance

Refer to the meeting sign in sheets attached to these minutes.

3. Background and Introductions

The Study Group approved the minutes from the following meetings: April 26, May 10, and June 7, 2013.

Director Taylor explained that the purpose of this meeting was to continue development of the Study Group report and that the Group would be discussing previously identified issues related to the report outline.

5. Discussion of previously identified issues

Katherine Marciniak provided information concerning horizontal separation distances in relation to oil and gas activities. Specifically, she presented data (see attached table) from Alabama, Arkansas, Colorado, Ohio, Pennsylvania, California, Texas, West Virginia Wyoming, and New York and compared and contrasted setbacks from these states. Using the data she had

compiled, the Group discussed setback distances from wellheads, tank batteries, storage tanks, mechanical separators, pits and pumps, and water supply wells.

Ms. Marcniak also provided information regarding setback distances which address the following North Carolina rules:

- a. Water Well Construction Rules (15A NCAC 02C);
- b. Waste Not Discharged to Surface Waters (15A NCAC 02T); and
- c. Reclaimed Water Rules (15A NCAC 02U).

The Study Group noted that a setback of 100 feet seemed to be a typical distance which balanced both public protection and industry operations. Additionally, the Group adopted a general philosophy that some setbacks should be established by the State, while others should remain under local jurisdiction. The Study Group developed the following recommendations related to setbacks:

- a. The State should adopt minimum distances, but local governments should have the ability to change a given setback to make it more restrictive;
- b. Despite (a), a local government should not implement a setback distance for the exclusive purpose of preventing oil or gas operations from occurring;
- c. The Mining and Energy Commission (MEC) should have the authority to grant variances to setback distances. However, anyone wanting a setback variance would have to send a written appeal to the MEC to present his/her argument for requesting the variance. Additionally, any variance request would be reviewed by staff and a staff recommendation would then be made to the MEC.
- d. Despite (a), a local land owner should have the ability to petition the Mining and Energy Commission to reduce a setback distance;
- e. Despite (a), an oil or gas operator should have the ability to request a variance for a more restrictive locally imposed setback; and
- f. Setbacks would no longer apply once a well were plugged and abandoned in accordance with State rules;

The Group discussed the need to route permit applications to local governments as part of the approval process. Doing so would help ensure that local setback and land use requirements were properly addressed as part of permit approval. The Study Group suggested the following rule language, "A permit shall not be issued unless the oil or gas plans are consistent with local land use requirements." The members also recommended that a permit applicant should be required to have a letter from a local government stating that the proposed operation meets local requirements. The respective letter should be issued by the executive (i.e. county or city manager) of a given jurisdiction.

The Study Group discussed local government jurisdiction related to noise, light, and odor control, as well as the need for time-limiting variances to these nuisances to allow for hydraulic fracturing or other temporary activities. Additionally, the Group asked staff to research decibel levels related to drilling and hydraulic fracturing operations.

The Study Group discussed the pros and cons of the MEC establishing standards for odor, as opposed to allowing local governments to establish odor requirements. MEC Chairman Womack stated a desire for the MEC to establish uniform nuisance provisions, while allowing local authorities some flexibility in implementing standards for noise, light, and odor.

Study Group Director Taylor recommended that the report include a section related to health and safety, which would include light, noise, and odor control. The other members agreed. Additionally, the Study Group developed these recommendations for health and safety:

- a. Local governments should retain the legal authority that they currently have, as it applies to oil and gas operations;
- b. North Carolina Statute already prohibits a local government from using its health and safety authority for the exclusive purpose of preventing oil and gas activities. As a result, a local government should not single out oil or gas operations and apply special health or safety rules to that industry;
- c. The MEC should establish a process whereby an owner or operator could appeal a local rule to the Commission. The decision as to whether or not to grant the appeal would rest with the MEC;

After developing recommendations related to health and safety, the Study Group also recognized these principles related to local and state response authority:

- a. The local health director has the authority to enter an oil or gas site and can proclaim it a nuisance;
- b. A health director can shut down an oil or gas site for health and safety purposes;
- c. No rule should prohibit a state or local health director from performing his or her duties; and
- d. No rule should prohibit any state or local law enforcement or emergency response official from performing his or her duties.

The Study Group developed these recommendations relating to infrastructure:

- a. Local ordinances related to transportation should apply to all industries, where a given local government has respective authority;
- b. Wherever possible, existing easements should be used for oil and gas infrastructure, so as to limit the governmental seizing of real property for infrastructure purposes;
- c. A typical county Register of Deeds Office should experience no direct impact related to oil or gas operations or property transfers, as deed recording is already within the Register's scope of duties; and
- d. Any impact to the local Tax Assessors Office could be offset through ad valorem taxation.

The Study Group discussed whether or not local governments should have the authority to establish zoning restrictions specific to oil and gas operations, or if locals could limit oil or gas operations to industrially zoned areas. Director Taylor noted that topics related to zoning would be addressed during a future meeting.

6. Written Questions from the Audience

The following written questions were received from audience members:

Where would the decibel level be measured within a drilling unit? Mr. Womack responded that a decibel level should be measured at a property line, which adjoins a drilling unit. Measuring the level along this line would help to assess noise impact to neighbors.

How will the appropriate decibel level be set? Mr. Womack responded that standards used by the State's Mining Program should be applied to the oil and gas industry. The Group also recognized that the N.C. Department of Health and Human Services should also have standards.

What about compatible uses versus non-compatible uses? (This question related to the potential for an oil or gas site to be located within a residential area or near a daycare center.) The Study Group recognized that setbacks should be established for health and safety reasons, and not for aesthetic purposes.

Would nuisance rules apply to the well pad or to all areas (i.e. underground drilling) involved with oil and gas operations? The Study Group noted that noise resulting from underground activities should not be heard on the land surface.

7. Concluding Remarks

The next Study Group meeting dates were determined as follows:

- a. July 12, 2013, in Room 504-Q of the Archdale Building, 512 N. Salisbury Street, Raleigh, NC, from 1:00 pm until 4:00 pm.
- b. July 19, 2013, in Room 504-Q of the Archdale Building, 512 N. Salisbury Street, Raleigh, NC, from 1:00 pm until 4:00 pm.

Director Taylor thanked the public for attending and then moved to adjourn. All Study Group members voted in favor of the motion.

The Study Group adjourned at 4:16 pm.

DEMLR staff contact for these minutes: William E. Vinson, Jr., Chief Engineer, Land Quality Section.