

**Stakeholder Group on Oil and Gas Management
Recommendations from the September 13, 2013 Meeting**

At the September 13, 2013 meeting of the Stakeholder Group on Oil and Gas Management, the following members of the stakeholder group were present:

- Victor Czar, City of Sanford
- Nancy Deal, N.C. Department of Health and Human Services
- Keith Duncan, Rockingham County
- Star Hodge, N.C. DENR
- Terrell Jones, Lee County Health Director
- David Kelly, Environmental Defense Fund
- Benny Lee, Chatham County Landowner
- Ryke Longest, Duke University School of Law
- David McGowan, N.C. Petroleum Council
- John Monaghan, Piedmont Natural Gas
- Kevin O'Barr, N.C. Department of Labor
- Trina Matta, N.C. DENR
- James Robinson, RAFI-USA
- Paul Sherman, N.C. Farm Bureau
- Vann Stancil, Wildlife Resources Commission

The following staff of the Division of Energy, Mineral and Land Resources was available to answer questions about the draft rule set:

- Walt Haven, Energy Program Supervisor
- Katherine Marciniak, Senior Specialist

At the meeting, the stakeholder group discussed components of a draft rule on setbacks. As part of this discussion, the group made the following recommendations for the Environmental Standards Committee of the N.C. Mining and Energy Commission (MEC) to consider in the course of its deliberations.

1. The group recommended revising the definition of “occupied dwelling” to clarify exactly what is included and excluded. From reading the draft rule set, stakeholders were not sure if this definition applies to all land that is a state park, or just buildings on state park land.
2. If the Environmental Standards Committee does intend to include state parks in its setback rule set, the Stakeholder Group recommends creating a separate definition for such lands, because a state park has different characteristics than a residence. However, the group noted that if the setback would be the same for both occupied dwellings and state park land, there is no reason to separate them into two categories.

3. The stakeholder group inquired as to whether the Mining and Energy Commission would be considering areas where they would not allow any oil or gas activity at all, for example, state parks or water supply watersheds.
4. The group recommended that setbacks be added for structures that are occupied by animals for long periods of the year, such as hen houses and milking parlors.
5. The group recommended that the Environmental Standards Committee clarify the distinction between setback variances and waivers. The group noted that a variance is issued by the Department for a setback standard, whereas a waiver is consent given by individual land owners for setbacks on their own property. Because the waiver impacts the land owner and the drilling operator, whereas the variance impacts the general public, as currently drafted, the Stakeholder Group felt that the variance procedure undermines having a setback. The Group felt that an individual property owner may wish to waive part of his or her protection, but the protection of a water course is an environmental issue that impacts the public, and there should be a more formal and more public variance process to alter that setback. Some stakeholders recommended that this waiver be notarized. The group recommended that the same standards for obtaining a variance should apply for all of the MEC's rules, and that the option currently in the draft rule set, for the Chairman or his designee to grant a variance, should not be allowed for setbacks if it is not allowed for other rules of the MEC.
6. In addition, the stakeholders felt that it was important for the MEC to review variance requests, rather than the Chairman or his designee, at least while the rules are new. This allows the MEC to learn what errors may exist in the variance process and then revise the rules before delegating the administration of variances to staff.
7. The stakeholders also recommended that rather than referencing waivers and variances throughout the sections of the rule set, there should be a freestanding section on waivers and one on variances that refers back to individual rules.
8. The stakeholders recommended that the Environmental Standards Committee consider distinguishing between occupied residences, outdoor recreational facilities, and high occupancy buildings.
9. Some stakeholders recommended the provision of the North Carolina Swine Farm Siting Act, which requires "A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds." Stakeholders liked that this information would be recorded for the information of potential future property owners.
10. The group recommended that instead of measuring the start of the setback at the well head, the setback should be measured from the limit of disturbance of the well pad. This would be in line

with the recommendations of a May 2013 study by the West Virginia Department of Environmental Protection's Office of Oil and Gas at the request of the West Virginia Legislature on noise, light, dust and volatile organic compounds and their relationship to well setbacks. The report concludes,

“While the statutorily-specified location restriction is defined to be from the center of the well pad, there are a wide variety of pad sizes and configurations that may allow an occupied dwelling to be close to a well pad. Because of the potential for different well pad geometries, DEP recommends that the Legislature reconsider the reference point (i.e., from the center of the well pad) for the location restriction to occupied dwellings to reduce potential exposures. One option to consider would be to establish a location restriction from the Limit of Disturbance (LOD) of the well pad to provide for a more consistent and protective safeguard for residents in affected areas. The outermost sediment control barrier establishes the LOD around the well pad.”¹

The Stakeholder Group thought that there may be some issues using sediment control barriers to define the limit of disturbance of a well pad, but in general felt that using the edge of the disturbed area on a well pad as the starting point for a measurement of a setback, however that is defined, was more protective and more consistent than using the location of the well head. One suggestion was to use the term the “nearest edge of the well pad to the feature.”

11. Some stakeholders felt that there should be a minimum state standard for setbacks but that local governments should be allowed to set larger setbacks for special circumstances such as daycares, nursing homes, schools, etc. This would allow local governments to resolve disputes rather than the courts. However, other stakeholders disagreed and expressed concern that local governments might use setbacks to limit oil and gas operations. No consensus was reached on this issue.
12. Stakeholders suggested that the Environmental Standards Committee consider requiring operators to use mitigation to achieve certain setbacks, specifically the framework used by Colorado. After conducting a stakeholder process devoted to the issue of setbacks, Colorado developed setback rules that require the use of best management practices and protective measures to eliminate, minimize or mitigate potential nuisances and other adverse impacts for oil and gas operations. Colorado prohibits oil and gas operations within 1,000 feet of a building unit until the operator certifies that it has held an informational meeting with the owners of

¹ The West Virginia Department of Environmental Protection Office of Oil and Gas, “Noise, Light, Dust, and Volatile Organic Compounds Generated by the Drilling of Horizontal Wells Related to the Well Location Restriction Regarding Occupied Dwelling Structures,” Retrieved from <http://www.dep.wv.gov/oil-and-gas/Horizontal-Permits/legislativeStudies/Documents/FINAL%20OOG%20Noise%20Light%20Dust%20and%20VOCs%20Report%205-28-2013.pdf> (September 17, 2013).

buildings within a specified area,² and further prohibits oil and gas operations within 500 feet of a building unit “unless protective measures are put in place that are sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.”³ In addition, activities are prohibited within 1,000 feet of “High Occupancy Buildings,” such as schools, day cares, hospitals, nursing homes and correction facilities, “without Commission approval following a public hearing, and such approval will be contingent on extensive mitigation measures.”

13. Stakeholders felt that 150 feet was too small of a setback from an occupied dwelling. They recommended using at least 500 feet, and the stakeholders recommend required mitigation (see recommendation 11). Some stakeholders recommended requiring mitigation to achieve the 500 foot setback, whereas others recommended requiring mitigation to reduce the setback lower than 500 feet.
14. For setbacks from a property boundary outside the leased drilling unit (meaning the property boundary of a nonparticipating landowner), the stakeholders recommended 500 feet. This would be consistent with the Swine Farm Siting Act and would protect neighboring landowners from the potential for having their gas extracted in addition to providing abatement of noise and light.
15. The stakeholder group said that the Environmental Standards Committee should ensure that setbacks for utility rights-of-way do not interfere with the operator’s need to transfer the natural gas it produces to the natural gas utility via a pipeline (the change of custody).
16. The stakeholder group deferred to the opinion of DOT on setbacks from public roads and highways. Brandon Jones, the stakeholders’ representative from DOT, was unable to attend the meeting but sent an email stating, “All of the pad would have to be located off the right of way and that alone would create a minimum setback.” Mr. Jones recommended a 50 foot minimum and a 100 foot preferable setback from public roads.
17. However, some stakeholders raised a concern about access for first responders during an emergency and thought setbacks from public roads should be wide enough to allow for emergency vehicles. Some stakeholders noted that if alternate routes are available, the setback could be less wide. If there is only one route, the setback should be wide enough to safely allow traffic to pass by in the case of an emergency at the well pad.

² Colorado Final Setback Rules, 2 C.C.R. 404-1-305.c.(2) Buffer Zone Notice. Retrieved from http://cogcc.state.co.us/RR_HF2012/Setbacks/FinalRules/Final_SetbackRules.pdf (September 17, 2013).

³ Colorado Oil and Gas Conservation Commission. “Statement of Basis, Specific Statutory Authority, and Purpose New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1.” Retrieved from http://cogcc.state.co.us/RR_HF2012/Setbacks/FinalRules/Final_SetbackRules-StatementOfBasisAndPurpose.pdf (September 17, 2013).

18. The Stakeholder Group deferred to the opinion of utilities and railroads on those particular setbacks.
19. For water courses, stakeholders recommended a 500 foot setback. The stakeholders felt that a waiver might be useful for owners of farm ponds or ephemeral stream channels and ditches, but in no case should the setback be less than a minimum standard. Minimum standards for ephemeral streams might be different than those set for farm ponds, as ephemeral stream channels lead to intermittent or perennial streams are public resources.
20. Stakeholders also felt that no activity should be permitted in the 100-year floodplain, and that an additional 500 foot setback from the edge of the 100-year floodplain was needed.
21. Stakeholders recommended a setback of 1,000 feet for public and private water supply wells.
22. Assuming that the MEC adopts the stakeholders' recommendation to measure setbacks from the limit of disturbance (rather than from the well head), the stakeholders recommended that the setbacks for a standalone tank that lies outside the well pad could be reduced in size from those recommended for the well pad.
23. The stakeholders recommended that the definition of pits be clarified. Stakeholders were not sure if this referred to wastewater pits or fresh water holding pits.
24. For wastewater pits that lie outside the well pad, the stakeholders felt that setbacks should be at least as stringent as the setback standards for the well pad area, and perhaps even more stringent.
25. Some stakeholders felt that the rules should address those who do not benefit from the gas operations and perhaps give them greater setbacks than those who are receiving benefits. One of those parties are state parks, game lands, etc. Some stakeholders felt that the setback for certain lands, such as state parks, game lands, national parks, local parks and Significant Natural Heritage Areas, should be 1,000 feet, while others felt it should be 500 feet.