

**Meeting Minutes of the Local Government Regulation Study Group of the
North Carolina Mining and Energy Commission
February 15, 2013**

1. Preliminary Matters

Chairman Charles Taylor called the meeting to order at 9:05 am and welcomed all 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. Chairman Taylor explained that the Local Government Regulation Study Group would be meeting in different locations within Chatham County, Moore County, and Raleigh to ensure the best opportunities for public attendance.

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

Study Group Members

Charles Taylor
James Womack
Charles Holbrook
Dr. Marva Price
Erin Wynia
Becki Gray
Richard Whisnant
Ginger Warner

DENR Staff Members

W.E. "Toby" Vinson
Walt Haven

Others in Attendance

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

2. Legislative Update – James Womack

Mr. Womack talked about pending legislation in the North Carolina Senate. Specifically, he addressed Senate Bill (SB) 10 and SB 76. He explained that SB 10 would change the makeup of the Environmental Management Commission (EMC) and would impact the seats of EMC members who are also part of the Mining and Energy Commission (MEC).

Mr. Womack also described how SB 76 would modify Session Law 2012-143 (also called "SB 820") and eliminate the MEC positions for the State Geologist and the

Assistant Secretary of Commerce for Energy. Additionally, SB 76 establishes March 01, 2015 as the date that DENR would be authorized to issue permits for horizontal oil and gas wells. Finally, this bill creates the Energy Jobs Council and encourages the Governor to work toward offshore oil and gas development.

3. Approval of Meeting Minutes – Chairman Charles Taylor

At the request of Chairman Taylor, Dr. Price moved to approve the minutes from the last Study Group meeting. Mr. Holbrook seconded the motion, with the minutes being approved unanimously.

4. Comparison of Local Government Regulations in Other States – Erin Wynia (NCLM) and Sarah Collins (NCLM Intern), student with Campbell Law School (see attached handouts). Ms. Wynia explained that local governments must balance safety, health and welfare of citizens against property rights, mineral and economic rights, and the ability to enjoy one's private property. She stated that the North Carolina League of Municipalities (NCLM) supports local governments retaining as much authority and autonomy as possible. Ms. Wynia specifically described the need for local authorities to have the ability to address these matters:

- a. Compatible land uses;
- b. Industrial noise;
- c. Odors;
- d. Road impacts;
- e. Public safety;
- f. Compliance with State and Federal environmental laws;
- g. Taxing authority;
- h. Placement of infrastructure (electrical, gas, cable, water lines, etc.);
- i. Right-of-Ways;
- j. Competing land uses;
- k. Residential, commercial, and industrial zoning; and
- l. Setbacks.

She also described how federal and state laws are often delegated to the local governments for enforcement purposes. For instance, some federal environmental laws are delegated to North Carolina for enforcement. North Carolina in turn, will work with local authorities to ensure that enforcement is properly accomplished. Examples include floodplain management, hazardous waste management, and air quality programs. Additionally, state governments frequently produce their own legislation and then delegate implementation to the local level, as noted with storm water and sedimentation rules.

Ms. Wynia then explained that taxation and bonding through local governments provide counties and municipalities with needed financial assurance.

Sarah Collins described state and local authority over oil and gas operations by comparing the similarities and differences between several states. She explained that some states have set standards related to setbacks and industrial impacts, while others have allowed local authorities to make these regulatory decisions. She specifically addressed these states:

- a. Texas: Local governments have the authority to determine setbacks and (to some extent) to regulate industrial impacts such as noise and odors;
- b. New York: The State is responsible for establishing regulations related to noise and transportation impacts;
- c. Louisiana: The State is responsible for establishing regulations related to water use, trash disposal, dust, vibration, odors, and times of day for certain work;
- d. Ohio: The State is responsible for regulating noise mitigation standards;
- e. West Virginia: Some municipalities had passed ordinances to ban hydraulic fracturing within their town limits. However, the West Virginia State Court overturned these ordinances.
- f. Pennsylvania: The State Court overturned local zoning ordinances which had been used to regulate oil and gas operations. Additionally, State legislation known as “Act 13” outlined the authority of local control over oil and gas activities. However, the State Court system overturned the zoning aspects of this statute as the act took away too much local authority.
- g. North Carolina: Session Law 2012-143 (also called “SB 820”) recommends a reasonable control of local governments over hydraulic fracturing operations.

5. Discussion – Chairman Taylor

Mr. Womack recommended that the Study Group categorize its recommendations on issues in its report that are Regulated and Enforced as follows:

- a. Federal Level Requirements;
- b. State Level Requirements;
- c. Local Level Requirements ; and to further delineate local authority as recommending where that authority is vested in City and/or County Levels.

Mr. Womack also stated that setbacks are useful for safety purposes, but if used for aesthetic purposes, the local authority could potentially curb oil and gas development too much.

Mr. Whisnant mentioned that impacts from oil and gas operations would be perceived as different between different property owners and communities. Mr. Womack responded that the State should prescribe certain setbacks, but then allow waivers of these setbacks at the local level. Thus, each county or community could make its own decisions regarding setback requirements.

Mr. Womack additionally added that a number of states where horizontal drilling occurs are re-visiting setback regulations (i.e. Pennsylvania, California, and New York). He suggested that the Study Group look at those states which have had to re-address their setbacks rules to help the Group produce its recommendations. Chairman Taylor agreed and mentioned the possibility that local officials from Moore or Chatham County could provide information about their current setbacks requirements to discuss at the next meeting.

Mr. Womack returned the discussion to SB 76, stating that the bill only established a sliding scale State severance tax related to oil and gas operations. Additionally, this tax would apportion no monies to local governments and would make no provision for an impact fee or an ad valorem tax. However, he expects objections about this proposed tax structure to be raised within the legislature and for modifications to be made allowing for more local taxing authority (Ad Valorem Taxes). Nevertheless, Mr. Womack encouraged audience members to petition local legislators to appropriately modify the bill.

6. Discussion of Previously Identified Issues – W.E. “Toby” Vinson (Mr. Vinson provided a list of these issues with real-time notes via screen projection. See attached list.) Mr. Whisnant recommended that these previously identified issues be used as a model to address matters of local authority versus state authority. For instance, mineral rights, surface owner rights, and severance taxes may not be local authority issues. Thus, items which are not under local jurisdiction should be removed from the list. Listed items, along with respective discussion are presented as follows:

- a. Setbacks: Should setbacks be recommended for state or local control? Mr. Womack recommended that the state establish a uniform setback, but allow for local waivers to make the setbacks either less or more stringent. The State would need to write requirements into either statute or rules. However, local governments would not be allowed to abuse waivers to prevent oil and gas operations from occurring. Ms. Gray provided the idea to allow local governments to seek a waiver in lieu of having direct authority. Ms. Wynia suggested that criteria be established to allow for waivers, but that local governments should not have to go through the State for waiver approval. Mr. Whisnant also disagreed with Ms. Gray’s take, but does agree in setting limits on this authority as it can’t be used to ban the industry. He also recommended that Land Use Planning continue to be done as it is now. Mr. Womack recommended

that setbacks be specific to address horizontal separation distances from roads, water bodies, occupied buildings, wells, etc. for reasons of health and safety. Mr. Whisnant expressed concern over needing more information for setting setbacks. Mr. Womack recommended keeping this discussion and the recommendations of this group more granular and identify the needs and types of setbacks and allow the Environmental Standards Committee to determine the technical part of that (set the standard). Mr. Womack also explained that the Environmental Standards Committee would be establishing setbacks, but would consider this Study Group's recommendations.

- b. Noise and light restrictions. Mr. Womack stated that local flexibility is important and that waivers for these restrictions would have to be allowed for certain drilling processes. He explained that hydraulic fracturing operations were especially noisy, but had to be conducted around the clock during a given 24 to 36 hour time period. Thus, a waiver could be granted for short blocks of time to accommodate reasonable industry operations. Mr. Whisnant stated that local governments already had the authority to regulate noise and light.

Discussion diverted to gas collection transport and infrastructure. Specifically, Mr. Whisnant offered that federal regulations still apply to gas lines which cross interstate boundaries. Additionally, he explained that Texas allows local authorities to determine the routing of intrastate lines. He asked DENR to investigate whether or not North Carolina would be able to delegate this authority to a local level. However, Mr. Whisnant understands that clear answers may not be available and that respective legislation may be needed to properly address the matter. Mr. Womack added that the regulation of gas and water lines within right-of-ways needed to be clarified. Thus, determining how to establish or coordinate these right-of-ways would need to be addressed in the rules.

The remaining items on the list of "Previously Identified Issues" are as follows:

c. Infrastructure Placement/Impacts - Postponed for future meetings.

d. Unfunded Mandates - Postponed for future meetings.

e. Environmental Concerns - Postponed for future meetings.

f. Property Rights - Postponed for future meetings.

7. Answering of Submitted Questions – Chairman Charles Taylor. The Study Group allowed audience members to submit questions or comments in writing. Each question or comment was collected and read aloud by Dr. Price. Questions and comments are underlined, with respective responses shown in plain text. (The original hand-written audience remarks are attached.)

- a. The Study Group needs to consider how runoff from a well pad would be regulated by storm water rules. NC has not yet determined how storm water rules would apply. Mr. Womack stated that EPA is developing new rules which should cover this area. He also explained that in Pennsylvania, company practices already ensure the capture of runoff and are self-regulating.
- b. Chatham County has limited well water resources. Thus, what would be the source of water that would be used for hydraulic fracturing? Mr. Womack stated that the source of water (as described in the Shale Gas report) would be from the Deep River. However, use of the water source would be subject to limitations based on drought conditions and would not be allowed to impact the availability of water supply to Chatham or Lee Counties.
- c. Drilling operations can take as long as 30 days for a typical well. Would a noise waiver last that long? Messrs. Womack and Holbrook distinguished between “drilling operations” and fracturing operations and explained that the latter would involve a limited period lasting normally 24 to 36 hours. The noise waiver would only apply to that period needed for hydraulic fracturing.
- d. Would a noise waiver just apply to oil and gas operations or would it also apply to other industries? Mr. Taylor said that it would depend on the authority granting the waiver.
- e. How do other states handle waivers to noise and light when more than one well is in operation? Ms. Collins (NCLM) stated that she would research this matter.
- f. Are setbacks forever? What happens to the setbacks when the well is no longer active? Mr. Womack stated that if the setback was established for safety reasons and if a capped well were still present, the setback could still apply. However, after site reclamation (including the well being cut off below ground surface) setbacks could probably be rescinded. Ms. Wynia added that setbacks are intended to address specific land uses. Thus, if a given land use were to change, the respective setbacks would no longer apply.
- g. If minimal setbacks are set by the state based on health and safety, on what grounds would a local authority grant variances? Dr. Price noted that this issue had already been addressed. Mr. Vinson added that under current North Carolina rules, legally abandoned water wells negate setbacks related to the original water well construction.
- h. Well sites produce emissions such as noise, light, benzene, hydrogen, sulfide, gases, etc. These emissions should make setbacks greater when hospitals, homes, or schools, are downwind. Mr. Holbrook stated that proper well construction prevents emissions from the actual well. Mr. Womack added that at oil and gas sites, air emissions typically occur from diesel trucks and other engines. He explained that the MEC was considering requiring the industry to use natural gas as an operating fuel to reduce emissions. Additionally, Mr.

Womack stated that air quality monitoring would be addressed by the Environmental Standards Committee. Finally, he offered that the U.S. Environmental Protection Agency was now requiring the industry to capture released gas, as opposed to allowing flare offs.

8. Concluding Remarks – Chairman Taylor

Future meetings were scheduled as follows:

- a. March 22, 2013: McSwain Agricultural Center, 2420 Tramway Road, Sanford, NC from 1:30 to 3:30 pm;
- b. April 12, 2013: Moore County from 1:30 to 3:30 pm (location to be determined);
and
- c. April 26, 2013: Fifth Floor Conference Room in the Archdale Building, 512 North Salisbury Street, Raleigh, NC from 1:30 to 3:30 pm.

Chairman Taylor asked for a motion to adjourn. Ms. Wynia made the respective motion, which was seconded by Mr. Holbrook. All members voted in favor of the motion.

The Study Group adjourned at 11:11 am.

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