North Carolina Mining and Energy Commission
Local Government Regulation Study Group Report

INTRODUCTION

Session Law 2012-143 Clean Energy and Economic Security Act states, "The Mining and Energy Commission (MEC), in conjunction with the Department of Environment and Natural Resources, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall examine the issue of local government regulation of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission shall formulate recommendations that maintain a uniform system for the management of such activities, which allow for reasonable local regulations, including required setbacks, infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect of prohibiting oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission…" The Local Government Regulation Study Group was established to fulfill these legal obligations on behalf of the MEC. Results of Study Group goals, research, and findings are summarized in this report.

LOCAL GOVERNMENT REGULATION STUDY GROUP GOALS

The Local Government Regulation Study Group defined the following goals to target its research efforts:

1. Identify needs and impacts of local municipalities and counties taking into account the legal charter outlined under Section 6(a).

2. Acknowledgement of inputs from associations that govern counties and municipalities, without limiting study focus to the Triassic Basin areas, so that findings would apply to statewide oil and gas operations.

3. Identification of items or situations financially impacting local municipalities, counties, and funding while maintaining local authority.

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ABBREVIATIONS:

CFR: Code of Federal Regulations

DEMLR: Division of Energy, Mineral, and Land Resources

DENR: North Carolina Department of Environment and Natural Resources

DWM: Division of Waste Management

DWR: Division of Water Resources

ETJ: Extraterritorial Jurisdiction

FLPFSSG: Funding Level Potential Funding Sources Study Group

LGRSG: Local Government Regulation Study Group

MEC: North Carolina Mining and Energy Commission

NCACC*:* North Carolina Association of County Commissioners

NCLM: North Carolina League of Municipalities

NCDOT*:* North Carolina Department of Transportation

TRC: Texas Railroad Commission

DEFINITIONS:

Ad valorem Tax – a tax determined according to the value of respective property.

Setback - horizontal separation between surface features of an oil or gas operation and a defined entity.

Variance – an exception to an established rule

SUMMARY OF MEETINGS:

The Local Government Regulation Study Group Study Group convened the following meetings, many of which were in areas expected would be primarily affected by oil and gas operations. Meeting dates and locations were as follows:

1. LGR Meeting December 18, 2012. Raleigh, NC
2. LGR Meeting January 16, 2013. Sanford, NC
3. LGR Meeting February 15, 2013. Pittsboro, NC
4. LGR Meeting March 22, 2013. Sanford, NC
5. LGR Meeting April 12, 2013. Pinehurst, NC
6. LGR Meeting April 26, 2013. Sanford, NC
7. LGR Meeting May 10, 2013. Sanford, NC
8. LGR Meeting June 7, 2013. Raleigh, NC
9. LGR Meeting June 21, 2013. Raleigh, NC
10. LGR Meeting July 12, 2013. Raleigh, NC
11. LGR Meeting July 19, 2013. Raleigh, NC

See http://portal.ncdenr.org/web/mining-and-energy-commission/local-government-regulation-agendas for complete records of each meeting.

EXISTING COUNTY AND MUNICIPAL CONTROLS

Setbacks

Examples of setback requirements are best illustrated in North Carolina's water well construction standards (15A NCAC 02C .0107) and are described as "horizontal separation distances." Thus, a given setback refers to the required horizontal separation distance between a well and municipal water supply intakes and reservoirs, private water wells, private property lines, drilling unit limits, protected lands, floodplains, other valuable land uses, habitable structures (places of worship, day care centers, residences, institutional, industrial and commercial centers); parks and other areas of public assembly.

Setbacks for oil and gas development and hydraulic fracturing need to be detailed for well head, well lateral lines, gathering lines and transmission lines. Setbacks should be used only for environmental, health and safety purposes. As a result, local governments cannot implement setbacks to exclusively prevent oil and gas development and exploration.

Setback requirements from various states, such as North Carolina, Pennsylvania, Ohio, Texas, and New York were reviewed. Typical setbacks defined by 15A NCAC 02C .0107 include horizontal separation distances ranging from septic tank and drain fields to animal barns. Other North Carolina rules delineate setbacks for waste not discharged to surface waters (15A NCAC 02T), which include sewer systems, disposal systems, treatment works, residual and residue disposal/utilization systems, animal waste management systems and some storm water management systems. Additional setback requirements are found in North Carolina's rules related to reclaimed water treatment works (15A NCAC 02U).

The study group discussed setbacks and how they would apply to oil or gas development sites and adjacent property and appurtenances. Review of horizontal separation requirements within North Carolina and other states' rules indicated that a 100 foot setback would generally provide a practical balance between public protection and industry operations. Group members expressed concern over needing more information for establishing setbacks. Therefore, members defer to the Administration of Oil and Gas and the Environmental Standards Committees for determination of setback standards.

The study group discussed which setbacks should be determined by the state, as opposed to being defined by local governments. The group also recognized that any community could not use setback requirements as a means to exclusively prevent oil or gas operations from occurring. Thus, any setback standards should reflect this requirement in respective rules.

The study group recommends that the Commission adopt state setback rules based on the following criteria:

a. 15A NCAC 02C .0107 rules should be considered when developing setback standards;
b. The state should establish setback standards, but should also allow for variances;
c. Local governments, oil and gas developers, and adjacent property owners (well site land owners) should have the ability to request setback variances (both prior, during, and post oil and gas development) by petition to the MEC;
d. Any person requesting a variance to a setback rule should send a written petition to the MEC to present his or her case for review;
e. Variance requests should be reviewed by staff personnel, who would provide recommendations to the MEC, which would then render a final decision;
f. Oil and gas well setbacks would no longer apply once a well was plugged and abandoned in accordance with state rules for permanent closure; and
g. If a well were to be reactivated, a variance request might be appropriate.

Health and Safety

<u>Noise, Light & Odor Restrictions</u>

The Local Government Regulation Study Group conducted research related to noise, light and odor restriction requirements from oil and gas producing states such as Louisiana, Alabama, Ohio, and Texas. Additionally, nuisance source and abatement technologies were also studied.

The group found that the Texas Railroad Commission (TRC), which oversees oil and gas operations, does not have jurisdiction over roads, traffic, noise, or odors. As a result, permits issued by TRC for oil and gas exploration, production, and waste disposal do not limit any independent authority, such as a municipality, county or other state agency, with respect to

regulating road use. Additionally, TRC has no statutory authority over noise or nuisance related issues, which are governed by local ordinances. Finally, it does not have regulatory authority over odors, allowing municipalities to enact respective ordinances for operations occurring within their jurisdiction.

Ohio does not set standards for noise mitigation, but instead addresses sound abatement through permit conditions.

When the State of North Carolina comprehensively regulates a specific industry, such as, the hog industry, a local government cannot pass its own odor ordinances. However, in cases where the state or federal government does not implement comprehensive regulations, a local government may implement its own rules for odor, noise, and light nuisances. However, local governments may not use noise, light, or odor ordinances to exclusively prohibit oil and gas operations. Additionally, existing federal safety laws take precedent over state and local jurisdiction regarding noise, light and odor, with the only exception being when state or local laws are more stringent than federal requirements. As a result, state or local ordinances generally cannot be less stringent than federal safety laws.

In North Carolina, federal and state safety requirements relevant to oil and gas operations will be enforced by the N.C. Department of Labor under the authority of 29 CFR 1926 (construction site standards) and 29 CFR 1910 (general industry standards). Within these restrictions, North Carolina local governments have authority under state law to enforce nuisance ordinances pertaining to noise, light and odor.

The study group recommends that local governments continue addressing odor, noise, and light-related issues under their current police power authority. For instance, a given county or municipality may enforce specified decibel levels with respect to given distances from the oil or gas site. However, an operator could request a time-limited variance to exceed local odor, noise, and light ordinances.

The study group recommends that local governments offer a variance option for industries, such as oil and gas, to address time-limited needs to deviate from the local ordinance. A typical variance might be granted for short blocks of time to accommodate reasonable industry operations. Nevertheless, an operator should be able to appeal a variance decision to the MEC for review.

In addition to the general recommendation for local jurisdictions to maintain regulatory authority over odor, noise, and light matters, the study group recognizes the following strategies that will be employed to address these concerns.

a. Odor: Air contaminants will be monitored and regulated by the Division of Air Quality, which could have a side effect of reducing odor emissions;

b. Noise: The oil and gas industry routinely use noise baffles, modular walls, berms, and noise-reducing blankets. Standards for noise reduction should be based on 29 CFR 1910.95(b)(1) (Guidelines for Noise Enforcement);
c. Light: Typical strategies involve construction of berms, as well as directing well pad lighting downward and inward; and
d. Oil and gas companies should provide local liaisons to coordinate efforts with local government officials.

Water and Air Quality

Counties which encompass parts of the Deep River Triassic Basin, such as Chatham and Wake have been performing water sampling and testing of private drinking water wells at least since the mid-1980s. Additionally, since the July 1, 2008 implementation of 15A NCAC 02C .0300 ("Permitting and Inspection of Private Drinking Water Wells") and 15A NCAC 18A .3800 ("Private Drinking Water Well Sampling"), all county health departments are required to inspect and sample newly constructed private drinking water wells. Additionally, county health departments typically perform additional private well sampling at the request of a respective owner. Local environmental health specialists receive training, oversight, and technical assistance from the N.C. Department of Health and Human Services. Other local health department activities involve testing of publically used surface water bodies and may also involve environmental sampling in response to contaminant releases.

Sampling of public drinking water supplies is governed by 15A NCAC 18C .0100 through .2200 (Rules Governing Public Water Systems). Under these rules, owners of public water supply systems are required to sample and test respective waters and report results to DENR's Division of Water Resources.

Water sampling programs performed by DENR entities include the following programs within the Division of Water Resources (DWR):

a. Groundwater Planning Unit, which establishes research stations for ambient groundwater quality;
b. Environmental Science Section, which works with the surface water planning group to sample streams and lakes from established monitoring stations, as well as at random stream locations; and
c. Private collection programs, which work with a DWR representative to sample specific stream reaches.

Finally, DENR's Division of Waste Management (DWM) collects water samples for oversight of environmental contractor activities at contaminated sites or in response to sudden contaminant releases to the environment.

Groundwater and surface water monitoring activities will continue to be performed by local health departments, DWR, DWM, and eventually by DEMLR. Additionally, a "baseline" sampling and testing rule set has been developed by DEMLR staff, in consultation with the MEC's Environmental Standards Committee, which will require oil and gas companies to sample and test private drinking water wells in the vicinity of operations. The new rule also has requirements for follow-up testing after operations have been completed. The study group has no recommendations for water testing beyond continuing current sampling programs and implementing the new baseline sampling rule set.

DENR's Division of Air Quality (DAQ) plans to continue its program of collecting sampling data using its current ambient air monitoring network. DAQ also plans to install a new monitoring network near an area where initial shale gas operations are expected to occur.

The study group also researched waste generation from oil and gas operations and recommends that any wastewater that is discharged to a municipal wastewater collection system for treatment must meet local standards for industrial pretreatment. Additionally, other waste materials such as drill cuttings, pit liners, etc. which are disposed of in landfills must meet disposal standards in accordance with the DWM, DEMLR, and respective landfill policies.

Emergency Preparedness

The study group recognizes the need for emergency response infrastructure beyond current standards. As a result, the group recommends that local emergency response organizations consider establishing a regional response team to address oil and gas related emergencies. Additionally, this team should consist of members trained specifically to contain and limit emergency situations, until specialized industry response personnel arrive at the scene.

In an effort to properly train team members, the group recommends that the local community college system provide training and instruction specific to oil and gas emergencies. However, prior to local industry activity, advanced training for respective Emergency Operational Services directors should be provided through industry-sponsored schools or certification programs located in other oil and gas producing states. Finally, all emergency personnel should be able to obtain access to Material Safety Data Sheets (MSDS), as well as physical site locations.

OIL AND GAS OPERATIONS WITHIN OTHER COUNTIES AND MUNICIPALITIES

Session Law 2012-143 restricts the LGRSG from recommending that local governments may enforce ordinances designed to prohibit oil and gas operations. To survey the extent to which local governments regulate oil and gas operations in other states, the group studied various local government rules as applied in shale-gas resource areas throughout the United States. Cited examples follow:

Morgantown, West Virginia

The town of Morgantown, WV passed an ordinance prohibiting all drilling using horizontal methods or hydraulic fracturing within city limits. However, the ordinance was overturned on June 21, 2011 by court of appropriate jurisdiction, which held that the municipality did not have the authority to pre-empt the drilling regulations of the WV Department of Environmental Protection.

Pittsburgh, Pennsylvania

Pittsburgh currently prohibits corporations from extracting natural gas within city limits. The Marcellus Drilling Act (Act 13) included provisions preventing localities from using their zoning powers to restrict oil and natural gas leasing or development. It also prohibited local ordinances that were stricter than state standards for environmental protection. However, a Pennsylvania (December 1, 2010) court found that Act 13 (58 Pa.C.S. § 3304) was unconstitutional, because it required municipalities to violate their comprehensive plans for development. It also violated substantive due process by allowing incompatible uses in zoning districts.

New York

Ordinances banning oil and gas leasing or development within municipal jurisdictions were upheld by New York courts in 2012. The courts found these bans, which had previously been passed by the towns of Dryden and Middlefield, did not violate the applicable New York state laws.

North Carolina

Prior to passage of Session Law 2012-143, local municipalities including Creedmoor (January 2012) and Raleigh (May 2012) issued bans on hydraulic fracturing. Resolutions opposing the practice within municipal limits were passed by Butner (April 2012), Carrboro (March 2012), Cary (March 2012), and Durham (April 2012). Additionally, Anson County passed a five-year hydraulic fracturing moratorium on May 8, 2013. Other municipalities are considering similar

resolutions, so this summary of actions taken by local governments is not intended to be comprehensive.

LOCAL ZONING AUTHORITY

The study group researched whether or not a local government could or should apply its zoning ordinances to the oil and gas industry and developed these recommendations:

a. Local zoning ordinances should only apply to surface land use, not to subsurface use;
b. Local governments should retain their existing zoning and land use authorities and be able to apply these ordinances to the oil and gas industry;
c. Local governments should not be allowed to apply zoning ordinances to exclusively prohibit oil or gas operations;
d. Local governments could implement special use permitting for specific properties, such as forestry districts, agricultural areas, and family farms, while also allowing other land uses, such as development of resources (e.g. shale gas) on these same properties;
e. A special use permit could include a provision for oil and gas operations, so that these operations could still occur within designated special use permitted lands;
f. Local governments implementing a special use permitting program should be aware of the potential for land-owner abuse of a "present use value" designation to avoid taxation on the production of subsurface resources;
g. Appeals to zoning decisions should be adjudicated through existing local and judicial processes.

While a local government may not apply its zoning ordinances to exclusively prohibit oil or gas operations from occurring, analogies may be drawn between well installation and the present day placement of mobile phone towers. For instance, Section 704(a) of the federal 1996 Telecommunications Act states that the regulation of the placement, construction, and modification of personal wireless service facilities by any local government shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Additionally, 47 U.S.C. §332(c)(7)(B)(i) explains that local governments can regulate the location of cell towers using their traditional zoning and land use powers, but cannot exclude the towers altogether from their jurisdictions. Nevertheless, the study group also recommends that all local authority should be maintained where appropriate.

NORTH CAROLINA INFRASTRUCTURE IMPACTS

The study group requested input from NCDOT regarding potential infrastructure impacts. NCDOT personnel traveled to Pennsylvania to study infrastructure costs within that state and

noted the following potential impacts related to oil and gas operations: roads, bridges, safety, schools, trucking, public transportation, and manpower.

Specific observations from NCDOT regarding Pennsylvania impacts include:

Pad Development, Drilling, and Fracturing

A typical well pad covers three to five acres and has six to eight wells per pad. Pad activities include drilling operations, hydraulic fracturing, and site reclamation. Road impacts include about 1450 trucks trips per well. Initial pad development takes about four to six weeks.

Drilling Operations at the Well Pad

These activities last about four to five weeks and involve around 150 to 200 truck trips to provide equipment, water, and cement.

Hydraulic Fracturing Process

This procedure lasts about seven to 10 days and involves around 800-1000 truck trips to provide sand, along with 6,000,000 gallons of water.

Site Reclamation

Reclamation activities typically occur over a three to four week period and involve 40 to 50 truck trips to reduce pad size and remove equipment.

NCDOT objectives are to maintain a safe transportation network, protect infrastructure, recover costs, and show consistency across the state. In an effort to achieve these goals, NCDOT has established the following action items:

a. Develop a process for maintaining infrastructure during heavy hauling operations
b. Develop maintenance agreements
c. Develop business operation
d. Develop assessment processes
e. Develop tracking tools
f. Develop accountability structure

In North Carolina, counties do not have responsibility for roads. However, municipalities maintain control and responsibility over municipal-maintained roads in their jurisdiction. To the extent that truck traffic related to development of the oil and gas industry uses municipal-

maintained roads, the group recognizes that municipalities would experience similar impacts as those noted by NCDOT. Therefore, when working with oil or gas operators, municipalities should consider the following issues related to road maintenance and use:

a. Weight limits on city-owned roads;
b. Placement of infrastructure in municipal rights-of-way; and
c. Truck routes and timing of truck operations.

The study group also encourages industry to re-use water on site, to reduce hauling traffic and to mitigate total site impact.

Gathering Lines

Current statutes and ordinances do not properly address responsibility for and jurisdiction over gathering lines. Therefore, the group has developed the following recommendations regarding gathering lines:

a. Location of gathering lines by industry should be coordinated with local governments, local services, and utilities;
b. Oil and gas companies will also need to coordinate with respective real estate interests; and
c. General Statue 62-50(d) (part of the public utilities statutes) does not address gathering lines. Thus, it should be broadened to include gathering lines, which would also apply safety standards from U.S. Code of Federal Regulations Title 49, Chapter 1, parts 191 and 192 to these lines.

Spill and Damage Response

Industry is legally responsible for responding to its own spills. Additionally, damage from materials thrown from an unsecured truck load directly onto another vehicle is the responsibility of the respective hauling company. However, projectiles that are resting on the road, that strike another vehicle after becoming airborne due to a passing truck, are legally considered to be a "road hazards." According to NCDOT, damage resulting from road hazards is the responsibility of the owner of the damaged vehicle.

Reimbursements for Infrastructure Cost Impacts

The MEC's Funding Levels and Potential Funding Sources Study Group is quantitatively researching strategies to recover infrastructure related costs. To complement that group's work, the Local Government Regulation Study Group recommends that local authorities consider the following items related to cost recovery.

a. Use of ad valorem taxation;
b. Implementing a standard approach for the taxation of severed mineral rights;
c. Taxing of mineral rights only when resources are exploited;

d. Taxing of oil and gas operational equipment being stored on-site; and
e. Taxing of joint surface and mineral rights at the time of property sale.

PROPERTY AND MINERAL RIGHTS

Research was conducted on mineral rights and the recording of severed estate information through local registers of deeds and tax assessors offices. Specifically, members from these offices in Lee, Chatham, Montgomery, and Richmond counties attended study group meetings where they discussed the level of activity in each county related to oil and gas leases.

Leases would have to be recorded in accordance with G.S. 113-423(g) (as amended by S.L. 2012-143), and property owners would have to disclose to a potential buyer if mineral rights had been severed from the estate in accordance with G.S. 47E-4(b2) (as amended by S.L. 2012-143). Additionally, the North Carolina Machinery Act requires severed mineral rights to be registered with the local tax assessors office to allow for county taxation opportunities on those rights.

Mr. Tom Morgan from the NC Department of the Secretary of State, Certification and Filing Division explained to the study group that the responsibility of the register of deeds office was to check a given deed for proper formatting and archiving. Mr. Morgan recommended that "agents" buying or selling mineral rights in North Carolina should have the proper certification or license and the verification of these "agents" must be managed by the Department of the Secretary of State Securities Division.

A diversity of language often used in deeds results in a lack of consistency when identifying severed estates. Nevertheless, appropriate statues are already in place to address matters related to severed estates, estate taxing, and property deed recording.

EXTRATERRITORIAL JURISDICTION (ETJ)

An Extraterritorial Jurisdiction (ETJ) refers to an extension of certain regulatory authorities beyond municipal limits, under the procedures detailed in N.C. Gen. Stat. 160A-362. ETJ areas play critical roles in ensuring a smooth transition from urban to undeveloped land use, to ensure consistency with standards and quality of a respective local government. ETJ areas, coupled with municipal zoning and other applicable authorities, support economic development and provide high-quality, business-ready areas. Cities and towns should demonstrate wise land development under this authority as allowed by the state.

Typical municipal authority exercised throughout an ETJ area includes urban planning and development rules. Other regulatory concerns that may apply to an ETJ area are zoning, subdivision standards, flood hazard protections, building and housing codes, historic

preservation, open space acquisition, community development, and sedimentation/erosion control. However, it is important to note that if a municipality exercises authorities in an ETJ, it cannot apply any ordinance based on the authority to regulate nuisances. Therefore, no municipal ordinance related to noise, light, and odor would apply in an ETJ area. In those areas, only applicable county ordinances would be enforceable.

Chemical Disclosure

It is the desire of the NCLM as well as the NCACC to have full disclosure of all chemicals used in the hydraulic fracturing process. Such disclosures are important for local emergency responders and public water suppliers. The Study Group, in consultation with NCLM and NCACC submits the following recommendations related to chemical disclosure:

a. Chemical disclosure to appropriate authorities should be made to the extent that health, safety, and environmental concerns are properly addressed;
b. Trade secret and intellectual property rights are essential to protect innovation and creativity and should be protected;
c. As long as health, safety, and environmental concerns are properly addressed through disclosure, actual percentages of hydraulic fracturing fluid constituents do not need to be known.

BONDING

Within the general statutes of the Oil and Gas Conservation Act, amended and rewritten by Session Law 2012-143, there are a number of areas where an oil or gas permittee is required to furnish a bond or provide compensation for damages incurred to surface land owners. The operator is required under G.S. 113-378 to furnish a bond for well plugging and abandonment. Under G.S. 113-421 an operator is to provide compensation for damages to a water supply, personal property, and to market resources like timber, livestock, and crops if the land owner is not also the permittee. The study group reviewed different types of bonding typically used within other oil and gas producing states.

Surface Owner Bonding

Under G.S. 113-421 (a1)(1-3) the permittee is to provide compensation for damages to a water supply, personal property, and to market resources such as timber, livestock, and crops.

The study group determined that protection for affected land owners and should be addressed in lease negotiations.

Geophysical Exploration Bonding

DEMLR staff researched and provided information related to bonding for geophysical activities in North Carolina and in other states. Overall, geophysical bonding addresses two primary classifications, designated as explosive and non-explosive exploration.

Well Plugging and Abandonment Bonding

Currently under G.S. 113-378 an operator is required to submit a bond in the amount of $5,000, plus $1.00 for each linear foot proposed to be drilled for the well. Proper plugging, cementing, and abandonment of an oil or gas well is a complex procedure that should only be performed by competent oil and gas professionals.

Site Reclamation Bonding

Currently, the Mining Section of DEMLR employs calculations where the acreage of different land uses associated with a mine are used to determine the appropriate bond needed to secure a mining permit.

The recommendation of the study group is to accept the same types of bonds, or assurances, that the Mining Programs accepts, which are delineated below:

1. Assignment of Savings Account:
   A. These are issued by an acceptable banking institution licensed to do business in North Carolina. The applicant and an authorized agent for the bank must sign the form and both signatures must be notarized.
   B. “Savings account" refers to any savings instrument, including a passbook account, a money market account, or a certificate of deposit. Whatever savings instrument is chosen, the original or photocopy of the document issued by the bank (passbook, deposit receipt, actual certificate of deposit) must be attached to the original assignment form and both forwarded to the DENR-LQS Central Office.
   C. The account numbers and dollar amounts listed on the assignment form must match those on the savings instrument.

2. Surety Bonds: These are issued by an issuance company licensed to do business in North Carolina. A Power of Attorney must accompany the completed original standard bond form provided by DENR to substantiate that the issuing agent has authorization to act on behalf of the insurance company.

3. Bank Guaranty: These guaranties of payment must be issued from an acceptable bank licensed to do business in North Carolina.

4. Cash Deposits: Cashiers or certified checks must be made payable to DENR. A cover letter specifying the intended function of the money being submitted to the department must accompany the check.

PERIPHERAL ISSUES:

Local Government Membership Concerns

The N.C. League of Municipalities is a membership organization of over 540 N.C. cities, towns, and affiliate organizations. The League exists to advocate for the state's municipalities at the state and federal level, provide a forum for the exchange of ideas among municipal officials, promote excellence and efficiency in municipal government, and provide services and information that will help municipal officials meet the needs of their citizens.

Position: Support legislation in the area of hydraulic fracturing and natural resource extraction that protects the health, safety and welfare of the citizens and environment, while facilitating necessary economic development for the overall well-being of North Carolina. *(Municipal Advocacy Goals)…also…*The League stands opposed to legislation preempting municipal authority and to measures designed to otherwise erode local control of significant municipal issues. *(Core Municipal Principles)*

Maintenance of Municipal Roads: 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.

<u>Balancing Act on Hydraulic Fracturing</u>

- Local officials are responsible for the health, safety, and welfare of their citizens.
- They must balance some property owners' right to quiet enjoyment of their property versus the other property owners' right to extract natural gas from their property.

Local Concerns

- Compatible land uses
- Water supply contamination
- Side effects of industrial operations
- Ability to follow federal rules

Areas Of Traditional Local Control Over Heavy Industry

- **Zoning**: separation of uses, setbacks, allowable uses
- **Industrial impacts**
    - Health/safety/welfare: noise/light/odors
    - Streets: weight limits on city-owned roads, placement of infrastructure in municipal right-of-way, truck routes and timing of truck operations
- **Federal/state environmental laws**
    - Federal-state: flood plain management, stormwater, hazardous waste, air quality
    - State: sedimentation/erosion control, Water Supply Watershed
- **Taxation/financial assurance requirements**

North Carolina Association of County Commissioners:

The North Carolina Association of County Commissioners represents all 100 counties in the state. Only five to ten counties are affected by this issue, and there are varying levels of support for hydraulic fracturing in those counties.

While this isn't strictly a legislative matter, the association's legislative guiding principles and goals drove our participation in the process. Our core values state, "The Association promotes strengthening of local decision-making to respond to local needs." In addition, two of our guiding principles are "State agencies issuing permits for activities that affect the environment should give local governments ample opportunity to comment on proposed permits for consistency with local plans and policies," and "The State should seek input from counties while developing rules and regulations that impact counties, particularly concerning property rights." Finally, one of our environment goals is "Monitor and protect counties from negative fiscal impacts caused by natural resource extraction."

POSITION: All of our counties want to maintain local authority to regulate matters over which they already have control, and all want local government participation in regulatory development. While counties understand they cannot establish ordinances that prohibit

hydraulic fracturing, they want to have flexibility to set regulations that meet the unique needs of individual communities in the basin.

STAKEHOLDER INPUT:

The Local Government Regulation Study Group was composed of the following members:

- Charles Taylor, MEC
- Charles Holbrook, MEC
- James Womack, Chairman, MEC
- Dr. Marva Price, MEC
- Charlotte Mitchell, MEC
- Richard Whisnant, UNC School of Government
- Johanna Reese, North Carolina Association of County Commissioners
- Erin Wynia, North Carolina League of Municipalities
- Becki Gray, John Locke Foundation
- Mack Paul, Morningstar Law
- Ginger Warner, Impact Properties Group

Study Group meetings were held on the following dates. A list of meeting attendees is included along with each meeting date. Names and affiliations are shown as can best be determined from meeting sign-in sheets. Considerable effort was expended to ensure the below listed names were properly spelled.

December 18th, 2012
Martha Girolami, Chatham Research Group
Ginger Warner, Study Group Member
Rufus Allen, NCDOT
Lib Hutchley, WILPF
Sally Kost, Chatham County Commission
Charles Taylor, MEC
Johanna Reese, NCACC
Erin Wynia, NCLM
Luis Martinez, NRDC
Jim Joyce, K&L Gates
Brooks Rainey Pearson, SELC
Jeffrey Starkweather, Chatham County EPC Board
Jim Womack, MEC
Richard Whisnant, UNC School of Government

Mack Paul, Morningstar Law
Cameron Hewley, MVA
Becki Gray, John Locke Foundation
Jerry Cole, Chatham County
Robin Smith, DENR
Jackson Cozort, NSS
Walt Haven, DEMLR

January 16th, 2013
Deb McManus, NC House of Representatives
Marty Tillman, NCDOT
Anita LeVeaux, Assistant Attorney General
Martha Oldham, Lee County Resident
Charles Oldham, Lee County Resident
Will Doran, Sanford Herald
Sally Kost, Chatham County
Jim Joyce, K&L Gates
Diana Hales, Chatham County
Mack Paul, Morningstar Law
Crystal Collins, NC Trucking Association
Bob Taylor, NC Rural Center
Toby Vinson, NCDENR
Jeannie Ambrose, Chatham County
Maribel Sierra, Clean Water for NC
Sharon Sanbutt, Chatham County
Walt Haven, NCDENR
Martha Girolami, Chatham County
James Womack, MEC
Victor Czar, City of Sanford
Bob Bridwell, Sanford/Lee County Planning Division
Sharon Martin, Sanford City Attorney's Office
Marva Price, MEC
Teri Danner, Durham City-County Planning
Carolyn McLain, NCDOT
Sarah Collins, NCLM
Johanna Reese, NCACC
Becki Gray, John Locke Foundation
Brooks Rainey Pearson, SELC

Erin Wynia, NCLM
Richard Whisnant, UNC School of Government
Emily McGraw, NCDOT
Ray Snead, NCSHP
Allen Hook, NCSHP
Scott Mooneyham, The Inside/Capitol Press Association
Robert Green, self
Julie Fertig, News 14 Carolina
Jim Foster, self
Laura Young, self
George McRae, self
Benny Lee, self

<u>February 15, 2013</u>
Charles Taylor, MEC
James Womack, MEC Chairman
Charles Holbrook, MEC
Dr. Marva Price, MEC
Erin Wynia, North Carolina League of Municipalities
Becki Gray, John Locke Foundation
Richard Whisnant, UNC School of Government
Ginger Warner, Impact Properties Group
Toby Vinson, DEMLR
Walt Haven, DEMLR
Sally Kost, self
Jerry Kole, self
Jeannie Ambrose, Chatham County
Martha Girolami, Chatham County

<u>March 22nd, 2013</u>
Jeannie Ambrose, Chatham County
Diana Hales, Chatham County
Kirk Smith, Lee County Commission
Jennifer Nearhood, Duke Environmental Law Clinic
Jim Joyce, K&L Gates
Robert Green, Self
Lib Hutchley, Wake County
Victor Czar, City of Sanford

Hal Hegwer, City of Sanford
Brian DiCiankia, Sanford ERAC
Carolyn McLain, NCDOT
Jerry Cole, Chatham County
Debbie Hall, CPA for Lee County
Steve DeVane, Fayetteville Observer
Richard Whisnant, UNC School of Government
Carmen Battle, NCDOT
Becki Gray, John Locke Foundation
Johanna Reese, NCACC
Mack Paul, Morningstar Law
Jim Womack, MEC
Charles Holbrook, MEC
Toby Vinson, DENR
Walt Haven, DENR
Charles Oldham, Lee County Resident
Martha Oldham, Lee County Resident
Terica Luxton, Lee County Landowner

April 12th, 2013
Jeannie Ambrose, Chatham County
Marshall Downey, City of Sanford/Lee County
Cornelia Olwe, Sanford
Martha Girolami, Chatham County
Steve DeVane, Fayetteville Observer
Charles Oldham Jr., Lee County
Charles Holbrook, MEC
Jennifer Nearhood, Duke Environmental Law Clinic
Diana Hales, Chatham County
Carolyn McLain, NCDOT
Carmen Battle, NCDOT
Sally Kost, Chatham County
Sharon Sanbutt, Chatham County
Walt Haven, DEMLR

April 26th, 2013
Jeannie Ambrose, Chatham County
Charles Holbrook, MEC

Martha Girolami, Chatham County
Walt Haven, DEMLR
Marva Price, MEC
Carmen Battle, NCDOT
Charles Oldham, Lee County
Martha Oldham, Lee County
Deb Arnason, Anson County

May 10th, 2013
Jeannie Ambrose, Chatham County
Martha Girolami, Chatham County
Anita Leveaux, Assistant Attorney General for NC
Don Kovasckitz, Lee County Strategic Services
Mollie McInnis, Lee County Register of Deeds
Ryan Channell, DEMLR
Karen Joner, Chatham County
Margaret Goldston, Chatham County Paralegal
Treva Seagroves, Chatham County Register of Deeds
Kirk Smith, Vice Chair Lee County Commission
Lynda Hall, Chatham County Taxes
Sharon Sanbutt, Chatham County
Kaye Norris, Montgomery County Register of Deeds
Vickie Mames, Montgomery County Tax
John Baucom, Montgomery County Tax
Sarah Gitt, Chatham County
Marshall Downey, Sanford/Lee County
Carolyn McLain, NCDOT
John Bridgers, NC Secretary of State

June 7th, 2013
Katherine Marciniak, DEMLR
Jeannie Ambrose, Chatham County
Marva Price, MEC
Martha Girolami, Chatham County
Charles Holbrook, MEC

June 21st, 2013
Jeannie Ambrose, Chatham County

Diana Hales, Chatham County
Katherine Marciniak, DEMLR
Colleen Brophy, DEMLR
Mack Paul, Morningstar Law
Walt Haven, DEMLR
Ryan Channell, DEMLR
Layla Cummings, DENR
Jim Morris, Durham City-County Planning
Jim Womack, MEC

July 12, 2013
Charles Taylor, MEC
Charles Holbrook, MEC
James Womack, MEC Chairman
Erin Wynia, North Carolina League of Municipalities
Mack Paul, Morning Star Law
Becki Gray, John Locke Foundation
Tracy Davis, DEMLR
Toby Vinson, DEMLR
Ryan Channell, DEMLR
Katherine Marciniak, DEMLR
Rosalind Harris, DEMLR
Colleen Brophy, DEMLR
Franklin Wolfe, DEMLR
Martha Girolami, Chatham County
Jeannie Ambrose, Chatham County

July 19th, 2013
Richard Whisnant, UNC School of Government
Walt Haven, DEMLR
Ryan Channell, DEMLR
Charles Holbrook, MEC
Rosalind Harris, DEMLR
Jim Joyce, K&L Gates
Diana Hales, Chatham County
Johanna Reese, NCACC
Becki Gray, John Locke Foundation
Jim Womack, MEC Chairman