

Local Government Study Group chaired by Charles Taylor. May 10, June 21, July 19 meetings (MEC members: Jim Womack, Charles Holbrook)

NOTE: NC Session Law 2012-143 prohibits local zoning ordinances from EXCLUDING the industry in a town or county. However, there are recent successful court cases in PA (2010) and NY (2012) that gave local municipal governments control over their zoning ordinances to restrict this industry within their jurisdiction. All Study Groups report to full Mining & Energy Commission and are "finalizing" their recommendations to present to the Legislature by October 2013. Study Groups have numerous "invited" members representing various government sectors, public and private interests.

- A) Draft Content of Final Report, work-in-progress. This report should focus on Local Government concerns, areas of authority, and needed legislation.
- a. Zoning authority: separation of uses, setbacks, allowable/compatible uses
 - b. Industrial impacts: Health-safety-welfare (noise, light, odors); and local streets (weight limits-truck routes-right-of-way)
 - c. Environmental: Flood plain and storm water management, sedimentation/erosion control are local
 - d. Setback distances: horizontal separation distance from habitable structures, such as homes, schools, etc.
 - e. Setback variances: Granted by...MEC? if operator still at odds after completing local appeal process, or surface landowner
 - f. Noise, Light & Odor: Controlled by local ordinances and cannot be LESS than federal safety law (OSHA) requirements
 - g. Local health director: Limited scope unless wellhead activities pose an immediate health or safety hazard
 - h. Local governments can HAVE more stringent ordinances: *unless State legislation EXEMPTS this industry*
 - i. Extra Territorial Jurisdiction (ETJ): County nuisance ordinances (odor, light, noise) apply, not the Town's. Time-limited variances for noise: Drilling operators can apply for variance from...MEC? Local govt?
 - j. Municipal wastewater treatment plants: Can require pretreatment BEFORE accepting fracking wastewater
 - k. Emergency Response: Material Safety Data Sheets required on all chemicals (Trade Secret chemicals exempt?) Regional emergency response teams: Should be established and trained by industry.

- l. “Gathering lines” that crisscross properties and rights of way: Who has jurisdiction, state, public utilities commission, or local?
 - m. Eminent domain: Local government has the power to create easements, but suggest use of existing rights-of-way.
 - n. Trade secrets OK: Disclosure to appropriate authorities (who?) to extent that health, safety, environmental concerns are properly addressed
 - o. More requests expected for local services: well testing, register of deeds, school capacity, human services, and inspections.
 - p. Taxing of surface rights and subsurface (mineral) rights, separately; land revaluation.
 - q. Local cost recovery: Either through impact fees or portion of severance tax.
 - r. NC League of Municipalities and NC Association of County Commissioners opposed to any legislation that “pre-empts” city/county authority.
- B) Zoning, the big issue. Who decides if this is an allowable “use”? Institute of Government says that zoning is right of locals. Womack says operators can’t take the 60-90 days to go before local planning boards/commissioners prior to drilling, and should be covered in comprehensive oil & gas permit. Womack’s math: less than 4% of the 25-year lifecycle of a well is the active drilling & truck traffic, therefore no “consequence” to zoning. Womack says Legislature has problem with local government “gaming” the system with moratoriums against this industry, therefore Legislature not want to give local government any authority. He said just track “health and safety” under prohibitions, and not nuisance provisions. Institute of Government suggested that local governments continue to enforce their local ordinances (short of prohibiting the industry) and industry can appeal to MEC for variance/waiver on the local ordinance. Womack said it should work the other way with local governments appealing to MEC, not the industry. Institute of Government said that would create rules for this industry that are different from all other industries. Womack said this should be part of “permitting” since MEC will set the drilling unit, first, with no discussion about local land use. However, there is an alternative approach for local/state cooperation: The 20 coastal counties involved in CAMA permits (20 coastal counties) allow local governments to “create” their land-use plan, then permitting goes thru DENR.
- C) Setbacks. Catherine Marciniak (DENR) compared and contrasted data from numerous fracking states on setback distances from wellheads, tank batteries, storage tanks, mechanical separators, pits and pumps, and water supply wells. OH has established setbacks in numerous categories of property lines, structures, water resources, and individual wellhead components; PA is minimal and only requires a 200-ft setback

from dwellings, 200-ft from water supply intakes, and 100-ft from streams. She also provided information on NC rules regarding setback distances from water supply wells and “potential sources of groundwater contamination,” such as drain fields (100’), sewage collection (50’), animal feedlots (100’), sanitary landfills (500’), building perimeters (25’); surface water bodies (50’), and chemical/petroleum fuel UST systems (50-100’). Womack said setbacks should consider health/safety only.

Odor: Apparently the smell is bad, as in the case of Nobel Oil operations in Lee County. Odor is not legally actionable because it is subjective (like the hog industry) and gets really nasty when there is an atmospheric inversion (summers & winters). NOTE: Chatham Co. passed a health ordinance on large hog operations relating to health nuisance (noise, odors) that was overturned in NC Supreme Court.

- D) Noise and Odors. There are variations in decibel levels allowed at property boundaries, and around places of assembly. Institute of Government member, Richard Whisnant, said noise should be a local call, not State. Drilling noise levels are very loud (over 100-120 decibels) lasting 24-36 hours. Note: 134 decibels can structurally damage buildings. Rules should set a decibel level, then let operator ask for a variance/waiver, per Womack. In NC mining rules, the decibel measurement occurs at the closest property line. Operators should put up vegetative screening to dampen noise. Leases generally do NOT deal with noise.
- E) Discussion about split estates when mineral rights are not owned by surface owner. Title searches alone will not reveal a “split” estate...must do deed research, since title searches just go back 30 years. Don Kovasckitz, Lee County GIS, said it took 5 individuals in the county’s land records office hundreds of hours over a period of two years to “find” the split estates...they thought they had 35, but have 155. Tax Assessors from Lee, Chatham, Montgomery and Richmond Counties were present at May 10 meeting to discuss level of activity in each county related to oil and gas leases. Leases will have to be recorded as result of Session Law 2012-143 and property owners MUST disclose to potential buyer if mineral rights have been severed.

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