

**Mining and Energy Commission**  
**Local Government Regulation Study Group**  
**Summary of Recommendations**

The following summarizes the Local Government Regulation Study Group recommendations, acknowledging that local authority should be maintained where appropriate, but should not be exercised to exclusively prohibit oil or gas operations.

**Setbacks**

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.

The Mining and Energy Commission should adopt 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 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.

**Noise, Light, and Odor Restrictions**

Local governments should continue addressing odor, noise, and light-related issues under their current police power authority. However, an operator could request a time-limited variance to exceed local odor, noise, and light ordinances. Additionally, oil and gas companies should provide local liaisons to coordinate efforts with local government officials.

Local governments should 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.

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**Water and Air Quality**

The Study Group has no recommendations for water or air testing beyond current sampling programs. The implementation of the new baseline sampling rule set, as well as the Division of Air Quality's future monitoring programs will provide additional needed monitoring.

Any wastewater that is discharged to a municipal wastewater collection system for treatment should 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**

Local emergency response organizations should 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 local community college system should 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.

**Local Zoning Authority**

The Study Group recommends:

- 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;

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- 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; and
- g. Appeals to zoning decisions should be adjudicated through existing local and judicial processes.

**Infrastructure Impacts**

The Study Group recommends that municipalities 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;
- c. Truck routes and timing of truck operations; and
- d. Entering into Excess Maintenance Agreements with oil and gas companies to ensure that municipal roads are maintained.

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 Statute 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.

**Reimbursements for Infrastructure Cost Impacts**

Local authorities should consider the following items related to cost recovery:

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- 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.

**Chemical Disclosure**

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**

The study group recommends bonding to provide financial assurance, through the same types of assurances that the Mining Program accepts, for the following:

- a. Protection of surface owners;
- b. Geophysical exploration;
- c. Well plugging and abandonment; and
- d. Site Reclamation.