

**§ 113-391. Jurisdiction and authority; rules and orders.**

(a) The Oil and Gas Commission, created by G.S. 143B-293.1, in conjunction with rule-making authority specifically reserved to the Environmental Management Commission under subsection (a3) of this section, shall establish a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing treatments for that purpose. The program shall be designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. To establish the program, the Commission shall adopt rules for all of the following purposes:

- (1) Regulation of pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing.
- (2) Regulation of drilling, operation, casing, plugging, completion, and abandonment of wells.
- (3) Prevention of pollution of water supplies by oil, gas, or other fluids used in oil and gas exploration and development.
- (4) Protection of the quality of the water, air, soil, or any other environmental resource against injury or damage or impairment.
- (5) Regulation of horizontal drilling and hydraulic fracturing treatments for the purpose of oil and gas exploration. Such rules shall, at a minimum, include standards or requirements related to the following:
  - a. Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments, which may include submission of hydrogeological investigations and identification of mechanisms to prevent and diagnose sources of groundwater contamination in the area of drilling sites. In formulating these requirements, the Commission shall consider (i) how North Carolina's geology differs from other states where oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments are common and (ii) the routes of possible groundwater contamination resulting from these activities and the potential role of vertical geological structures such as dikes and faults as conduits for groundwater contamination.
  - b. Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed. With regard to rules applicable to baseline data for groundwater and surface water, the Commission shall adopt rules that, at a minimum, establish standards to satisfy the pre-drilling testing requirement established under G.S. 113-421(a), including contaminants for which an operator or developer must test and necessary qualifications for persons conducting such tests.
  - c. Appropriate construction standards for oil and gas wells, which shall address the additional pressures of horizontal drilling and hydraulic fracturing treatments. These rules, at a minimum, shall include standards for casing and cementing sufficient to handle highly pressurized injection of hydraulic fracturing fluids into a well for purposes of fracturing bedrock and extraction of gas, and

- construction standards for other gas production infrastructure, such as storage pits and tanks.
- d. Appropriate siting standards for wells and other gas production infrastructure, such as storage pits and tanks, including appropriate setback requirements and identification of areas, such as floodplains, where oil and gas exploration and production activities should be prohibited. Siting standards adopted shall be consistent with any applicable water quality standards adopted by the Environmental Management Commission or by local governments pursuant to water quality statutes, including standards for development in water supply watersheds.
  - e. Limits on water use, including, but not limited to, a requirement that oil and gas operators prepare and have a water and wastewater management plan approved by the Department, which, among other things, limits water withdrawals during times of drought and periods of low flows. Rules adopted shall be (i) developed in light of water supply in the areas of proposed activity, competing water uses in those areas, and expected environmental impacts from such water withdrawals and (ii) consistent with statutes, and rules adopted by the Environmental Management Commission pursuant to those statutes, which govern water quality and management of water resources, including, but not limited to, statutes and rules applicable to water withdrawal registration, interbasin transfer requirements, and water quality standards related to wastewater discharges.
  - f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission to implement RCRA requirements in the State.
  - g. Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel.
  - h. Disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production, including hydraulic fracturing fluids, to State regulatory agencies and to local government emergency response officials, and, with the exception of those items constituting trade secrets, as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2,

requirements for disclosure of those chemicals and constituents to the public.

- i. Installation of appropriate safety devices and development of protocols for response to well blowouts, chemical spills, and other emergencies, including requirements for approved emergency response plans and certified personnel to implement these plans as needed.
  - j. Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment, in areas where oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies are proposed to occur.
  - k. Notice, record keeping, and reporting.
  - l. Proper well closure, site reclamation, post-closure monitoring, and financial assurance. Rules for financial assurance shall require that an oil or gas developer or operator establish financial assurance that will ensure that sufficient funds are available for well closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident involving a drilling operation, even if the developer or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.
- (6) Repealed by Session Laws 2014-4, s. 9, effective June 4, 2014.
  - (7) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records.
  - (8) To prevent "blowouts," "caving," and "seepage," as such terms are generally understood in the oil and gas industry.
  - (9) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities.
  - (10) To regulate the "shooting," perforating, and chemical treatment of wells.
  - (11) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations.
  - (12) To regulate the spacing of wells and to establish drilling units.
  - (13) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil, or any other environmental resource against injury, damage, or impairment.
  - (13a) Criteria to set the amount of a bond required pursuant to G.S. 113-421(a3), including, at a minimum, the number of wells proposed at a site, the pre-drilling condition of the property, the amount of acreage that would be impacted by the proposed oil and gas activities, and other factors designed to enable establishment of bonds on a site-by-site basis.
  - (14) Any other matter the Commission deems necessary for implementation of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose.

(a1) The regulatory program required to be established and the rules required to be adopted pursuant to subsection (a) of this section shall not include a program or rules for the

regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and the coastal sounds as defined in G.S. 113A-103.

(a2) In addition to the matters for which the Commission is required to adopt rules pursuant to subsection (a) of this section, the Commission may adopt rules as it deems necessary for any of the following purposes:

- (1) To require the operation of wells with efficient gas-oil ratios and to fix such ratios.
- (2) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules adopted thereunder.
- (3) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.
- (4) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(a3) The Environmental Management Commission shall adopt rules, after consideration of recommendations from the Oil and Gas Commission, for all of the following purposes:

- (1) Stormwater control for sites on which oil and gas exploration and development activities are conducted.
- (2) Regulation of toxic air emissions from drilling operations, if it determines that the State's current air toxics program and any federal regulations governing toxic air emissions from drilling operations to be adopted by the State by reference are inadequate to protect public health, safety, welfare, and the environment. In formulating appropriate standards, the Department shall assess emissions from oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies, including emissions from associated truck traffic, in order to (i) determine the adequacy of the State's current air toxics program to protect landowners who lease their property to drilling operations and (ii) determine the impact on ozone levels in the area in order to determine measures needed to maintain compliance with federal ozone standards.

(a4) The Department shall administer and enforce the provisions of this Article, and rules adopted thereunder, and all other laws relating to the conservation of oil and gas, except for jurisdiction and authority reserved to the Department of Labor and the Oil and Gas Commission, as otherwise provided. The Commission and the Department may issue orders as may be necessary from time to time in the proper administration and enforcement of this Article and rules adopted thereunder.

(a5) Entry of rules in the North Carolina Administrative Code that address the areas identified by subsections (a) and (a3) of this section by July 1, 2015, create a rebuttable presumption that the rules are sufficient to meet the requirements for development of a modern regulatory program pursuant to this section.

(a6) The Commission shall have the authority to develop rules addressing requirements for: permit applications; permit modifications; permit conditions; denial of applications for permits; permit transfers from one person to another; and permit durations, suspensions, revocations, and release.

(b) The Commission and the Department, as appropriate, shall have the authority and it shall be their duty to make such inquiries as may be proper to implement the provisions of this Article. In the exercise of such power the Commission and the Department, as appropriate, shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the

keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(b1) In the exercise of their respective authority over oil and gas exploration and development activities, the Commission and the Department, as applicable, shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public. The State Geologist, or the State Geologist's designee, shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection, including information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, and shall ensure that all of the information, including information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, is maintained securely as provided in G.S. 132-7.

(c) Repealed by Session Laws 2012-143, s. 2(c), effective August 1, 2012.

(d) The Department of Labor shall develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

(e) The Department shall submit an annual report on its activities conducted pursuant to this Article and rules adopted under it to the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year. (1945, c. 702, s. 11; 1971, c. 813, ss. 5, 6; 1973, c. 1262, s. 86; 1987, c. 827, s. 111; 1989, c. 727, s. 120; 2012-143, s. 2(c); 2013-365, s. 5(b); 2014-4, ss. 4(c), 7(a), 8(b), 9; 2014-122, s. 11(j); 2015-1, s. 6(a); 2017-57, s. 14.1(qq).)