

NESQUEHONING BOROUGH
ORDINANCE NO. 2013-4

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF NESQUEHONING BOROUGH, PROVIDING FOR THE REGULATION OF OIL AND GAS DEVELOPMENT.

This Ordinance shall be hereafter known and cited as the “Nesquehoning Borough Oil and Gas Development” Ordinance.

NOW THEREFORE, be it enacted and ordained by the Council of the Borough of Nesquehoning, Carbon County, Pennsylvania and it is hereby enacted and ordained by the authority of the same as follows:

ARTICLE I. PURPOSE AND DEFINITIONS

SECTION 1 Purpose.

It is hereby declared to be the purpose of this Ordinance to declare the development of Oil and Gas Development as authorized by zoning permit in certain zoning districts with the Borough. Nesquehoning Borough recognizes that the regulation of oil and gas operations within the Commonwealth of Pennsylvania is the primary responsibility of the regulatory agencies of the Commonwealth of Pennsylvania, but that the Borough maintains it’s Zoning powers as set for th in Pennsylvania Statute Title 53, Municipality Planning Code (“MPC”) and through the Nesquehoning Borough Zoning and Subdivision and Land Development Ordinances. It is therefore in the Borough’s best interest to address the Zoning districts where such activities will be permitted, to have information concerning oil and gas exploration, development and production taking place with in the Borough and to ensure certain security and safety measures related to oil and gas drilling are in place in certain areas.

SECTION 2. Definitions

As used in this Ordinance, the following terms shall be interpreted or defined as follows:

OIL AND GAS DEVELOPMENT AND PRODUCTION. The well site preparation, well site construction, drilling, hydraulic fracturing and/or site restoration associated with an Oil and Gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities and the installation and use of all associated equipment, including tanks, meters, and other equipment and structures whether permanent or temporary and the site preparation, construction, installation, maintenance and repair of Oil and Gas pipelines and associated equipment and other equipment and activities associated with the exploration for, production and transportation of Oil and Gas other than Natural Gas Compressor Stations and Natural Gas Processing Plants or facilities performing the equivalent functions that operate as midstream facilities are only authorized consistent with this Ordinance.

OIL AND GAS DRILLING SUBSURFACE FACILITIES. Activities performed under the surface of the ground that are part of the operation of oil and gas drilling, as defined herein, located on properties within the unit for a particular drill site, but that are not included in the drill site, including, but not limited to: horizontal drilling and hydraulic fracturing zones, underground gathering and transmission pipelines and similar underground facilities incidental to oil and gas drilling.

OIL AND GAS DRILLING SURFACE FACILITIES. The conduct on a property of oil and gas drilling, as defined herein, that involves activities performed on or above the surface of the ground, including but not limited to: location of the well head and accessory structures, operation of the drilling rig, construction of an access drive and above ground storage and/or treatment of water and fluids used in the drilling process and which also includes related activities performed under the surface of the ground, such as horizontal drilling and hydrofrac zones, underground gathering and transmission pipelines and similar underground facilities related to oil and gas drilling, when they are located on the same property where the surface facilities are located.

BOROUGH. Nesquehoning Borough, Carbon County, Pennsylvania.

DRILLING. Means any digging or boring of a new well to explore, develop or produce oil, gas or other hydrocarbons, or to inject gas, water or any other fluid or substance into the earth.

DRILLING EQUIPMENT. Means the derrick, all parts and appurtenances to such structure, and every piece of apparatus, machinery or equipment used, erected or maintained for use in connection with drilling.

OIL AND GAS. Crude Oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents, hydrocarbons or similar substances that are produced by drilling a well of any depth into, through and below the surface of the earth.

OPERATOR. Any person, partnership, company, corporation and its subcontractors and agents who have an interest in real estate for the purpose of developing, exploring or drilling for, producing or transporting Oil or Gas.

PROTECTED STRUCTURE. Any occupied residence, commercial business, school, religious institution or other public building located within 1,000 feet of the surface location of a well that may be impacted by noise generated from drilling or hydraulic fracturing activity at a Well Site. The term shall not include any structure owned by an oil and gas lessor who has signed a lease or agreement with the Operator granting surface rights to drill the subject well or whose owner(or occupants) has (have) signed a waiver relieving the Operator from implementation of the measures established in this Ordinance for the owner's(occupant's) benefit.

WELL SITE. A graded pad designed and constructed for the drilling of one or more Oil and Gas wells.

NATURAL GAS COMPRESSOR STATION. A facility designed and constructed to compress natural gas that originates from an Oil and Gas well or collection of such wells operating as a midstream facility for the delivery of Oil and Gas to a transmission pipeline, distribution pipeline, Natural Gas Processing Plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.

NATURAL GAS PROCESSING PLANT. A facility designed and constructed to remove materials such as ethane, propane and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets but not including facilities or equipment that are/is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from natural gas.

OIL AND GAS DRILL SITE. The oil and gas drill site shall consist or the area occupied by the facilities, structures and equipment necessary for or incidental to the drilling, production or operation of an oil or gas well.

ARTICLE II. Zoning, Permitting, Conditions/Standards and Penalties, conditional uses

SECTION 1. Zoning

Nesquehoning Borough hereby declares that Oil and Gas Development is authorized by zoning permit in the Borough, subject to the following prohibitions, conditions and standards:

1. Oil and Gas drilling surface activities shall only be permitted to be drilled on property that is a minimum of ten(10) acres or larger on the surface;
2. Oil and Gas drilling surface activities are prohibited in the CO-1, R-1, R-2, C-1 and C-2 Zoning Districts.
3. Oil and Gas drilling subsurface activities are authorized in N-R Zoning District as a Special Use.
4. Natural gas compressor stations and natural gas processing facilities are authorized as a special use in the N-R Zoning District pursuant to the criteria set forth in this Ordinance.

SECTION 2. Zoning Permits.

1. At least thirty(30) days prior to the initial development activities within the Borough, the operator shall submit an application for zoning permit, with the required fee, on a form prescribed by the Borough, to include but not limited to, the following information:
 - a. A copy of the well location plat submitted to the Pennsylvania Department of Environmental Protection showing the location(s) of the planned wells;

- b. A general description of the planned operation of the planned well(s) and associated equipment used in development of the well(s)
- c. A copy of the drilling permit issued by the Pennsylvania Department of Environmental Protection(DEP);
- d. Written permission, i.e., lease or agreement, from the property owner(s) who have legal or equitable title in and to the surface property of the drill site;
- e. A map showing the planned access route(s) to the well sites on public roads;
- f. Information on the status of road bonding;
- g. The Operator's Erosion and Sedimentation Plan;
- h. Planned hours of construction activities involving excavation of or alteration to the repair work on any access road or well site;
- i. Procedure and method of compliance with the noise control provisions of this Ordinance;
- j. Plan to control spill, leak or malfunction and to remove or cause to be removed all waste materials from any public or private property affected by such spill, leak or malfunction;
- k. The name of the person supervising the drilling operation and and toll free number where such person can be reached twenty-four(24) hours a day;
- l. The identity, address and contact numbers for all subcontractors associated with the development or production facility. The Borough will be notified by the Operator within forty-eight(48) hours of any subcontractor change.
- m. Verification that the Operator and all subcontractors have read and will comply with all provisions of this Ordinance.

SECTION 3. Conditions/Standards.

1. At least thirty(30) days prior to initial Development activities in the Borough, the Operator shall attend a public meeting to present general information about the Operator's Development plans in the Borough and allow for questions and answer related thereto. The Operator shall notify owners of real estate within 1000' of contemplated drilling within the Borough, the date, time and location of the meeting, and the

approximate location of the proposed Well Site, Well Sites and Compressor Stations at least once, not more than thirty(3) days and not less than seven(7) days in advance of the meeting. If requested by the Borough, and if drilling activities continue for more than twelve (12) months, the Operator shall attend additional meetings, and present information, but shall not be required to do so more often than annually, unless additional Well Sites not previously discussed at a public hearing are proposed;

2. Operator shall comply with any general applicable bonding and permitting requirements for Borough roads that are to be used by overweight vehicles and equipment for Development activities.

3. Operator shall take the necessary safeguards to ensure that the Borough roads utilized remain free of dirt, mud and debris resulting from the Development activities and/or shall ensure such roads are promptly swept or cleaned if dirt, mud and debris occur.

4. Operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossing and/or adjacent to roadways(for example, persons waiting for the public or school transportation). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with the Development, Operator will provide flagmen to ensure the safety of children at or near schools or school bus stops and include adequate signs and/or other warning measures for truck traffic and vehicular traffic.

5. The access driveway off the public road to the drill site shall be gated at the entrance to prevent illegal access into the drill site. The drill site assigned address shall be clearly visible on the access gate for emergency 911 purposes. In addition, the sign shall include the well name and number, name of the Operator and the telephone number for a person responsible who may be contacted in case of emergency.

6. Access directly to State roads shall require Pennsylvania Department of Transportation(PADOT) Highway Occupancy Permit approval. Prior to initiating any work at a drill site, the Borough shall be provided a copy of the Highway Occupancy Permit.

7. Operator shall not clear brush or trees by way of burning and shall chip, grind or remove all tree stumps from properties it clears for Development purposes. However, Operator shall be permitted to, consistent with Nesquehoning Borough's Burning Ordinance(s), to burn any brush, trees or stumps that have been removed from the ground and collected into a pile or piles on the properties where the Operator is engaging in Development.

8. Prior to Development, Operator shall provide to the Borough's First Responders, and Zoning Officer, a copy of its Preparedness, Prevention and Contingency ("PPC") Plan.

9. Before drilling, the Borough shall ascertain whether the Borough's First Responders have secured adequate information to deal with any potential dangerous conditions that may result due to Development activities. First Responders shall have on site orientation and be provided adequate awareness information. Upon request from the Borough, Operator will, prior to drilling of an Oil and Gas well, make available with at least thirty(30) days notice, at its sole cost and expense, an appropriate site orientation for First Responders. Such site orientation shall be made available at least annually during the period when the Operator anticipates drilling activities in the Borough.

10. Operator shall take the necessary safeguards to ensure appropriate dust control measures are in place.

11. Recognizing that the specific location of equipment and facilities is an important and integral part of the Oil and Gas Development, and as part of the planning process, Operator shall strive to consider location of its temporary and permanent operations, where prudent and possible, so as to minimize interference with Borough residents' enjoyment of their property and future Borough development activities as authorized by the Nesquehoning Borough Zoning Ordinance and Subdivision and Land Development Ordinance.

12. Recognizing that adequate and appropriate lighting is essential to the safety of those involved in the Development of Oil and Gas, the Operator shall take steps, to the extent practicable, to direct site lighting downward and inward toward the drill site, wellhead or other area being developed so as to attempt to minimize glare on public roads, and adjacent buildings within three hundred(300) feet of the drill site, wellhead or other area being developed.

13. Prior to drilling an Oil and Gas well or multiple Oil and Gas wells at a location, but no later than two(2) weeks before hand, the Operator shall provide the following information to both the Borough Zoning Officer and each resident within 1,000 feet of the planned surface location of the well(s):

- a. A copy of the well survey plat showing the location(s) of the planned well(s);
- b. A general description of the planned operations at the planned well(s) and associated equipment used in the Development of the well(s);
- c. The contact information for the Operator; and,
- d. The availability of the Operator to hold a meeting with such residents to present Operator's plans for the well(s) and to allow for questions and answers. The meeting(s) shall be held prior to Well Site construction.

14. In addition to the requirements in subsections 1-13 above, for any Oil and Gas well where the planned surface location of the well will be within 1,000 feet of a Protected Structure, the Operator shall:

- a. Install temporary safety fencing at least six(6) feet in height, around the established drilling pad containing drilling and hydraulic fracturing equipment and install permanent fall protection fencing meeting OSHA requirements around any pits that contain or could contain water or other liquids at depths greater than two(2) feet.
- b. Install warning signs providing notice of the potential dangers at the well Site;
- c. Provide at least one(1) security guard 24/7 at all times when a drilling rig or hydraulic fracturing equipment is on the well Site.

15. In addition to the requirements in subsections 1-14 above, prior to drilling an Oil and Gas well or multiple Oil and Gas wells at a location, no later than two(2) weeks beforehand, the Operator shall notify each resident where horizontal drilling will take place under their property for informational purposes.

16. Prior to the commencement of drilling activities, no construction activities involving excavation of, alteration to, or repair work on any access road or Well Site shall be performed during the hours of 10:00 PM to 6:00 AM.

17. The Borough recognizes and acknowledges that Oil and Gas Development is accomplished by inherent noise. However, the Operator shall take the following steps to minimize, to the extent practicable, the noise resulting from the Development:

- a. Prior to drilling of an Oil and Gas well, the Operator shall establish a continuous seventy-two(72) hour ambient noise level at the nearest Protected Structure property line or one hundred(100) feet from the nearest Protected Structure(as measured to the closest exterior point of the building), whichever is closer to the Protected Structure or, alternatively, and in lieu of establishing the above seventy-two(72) hour ambient noise level, the Operator may assume and use, for the purposes of compliance with this Ordinance, a default ambience noise level of fifty-five(55) dBA. The sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data;
- b. The Operator shall provide documentation of any established, seventy-two(72) hour evaluation, relied upon to establish an ambient noise level

greater than 55 dBA to the Borough's Zoning Officer within three(3) business days of such request from the Zoning Officer;

- c. The noise generated during drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line or one hundred(100) feet from the nearest Protected Structure property(as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the average ambient noise level(as determined by the seventy-two(72) hour evaluation or default level, whichever is higher:
 - i. during drilling activities by more than seven(7) decibels during the hours of 6:00 AM to 10:00 PM;
 - ii. during drilling activities by more than five(5) decibels during the hours of 10:00 PM to 6:00AM; or,
 - iii. by more than ten(10) decibels during hydraulic fracturing operations.

The Operator shall inform the Borough of which level(average ambient noise level or default level) is being used.

In addition, the Borough may require acoustical blankets, sound walls mufflers or other alternative methods to ensure compliance depending on the location of a proposed drill site to adjacent residential properties.

- d. Adjustments to the foregoing noise limits may be permitted in accordance with the following:

| Permitted increase (DBA) | Duration of Increase (Minutes)* |
|-----------------------------|------------------------------------|
| 5..... | 15 |
| 10..... | 5 |
| 15..... | 1 |
| 20..... | 1 |

* Cumulative minutes during any one hour.

- e. If a complaint is received by the Borough from any person, whether a

resident or otherwise using the Protected Structure as defined herein for any lawful purpose, regarding noise generated during drilling or hydraulic fracturing activities, the Operator shall, within twenty-four(24) hours of receipt of the complaint from the Borough, continuously monitor for a forty-eight(48) hour period at a point which is closer to the complainant's building:

- i. the complainant's Protected Structure property line nearest to the well site or equipment generating the noise; or,
 - ii. One hundred(100) feet from the Protected Structure.
- f. If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary date to the Borough no later than ten(1) business days following completion of the noise testing. Once the monitoring is complete, Operator will meet with the Borough's representatives and affected residents to discuss whether possible noise abatement measures are warranted, if the permitted levels set forth herein are exceeded.
- g. Exhaust from any internal combustion engine or compressor used in connection with the drilling of any well or for any use on any production equipment or used in Development shall not be discharged into the open air unless it is equipped with (1) an exhaust muffler or (2) an exhaust box. The exhaust muffler or exhaust box shall be constructed of non-combustible materials designed and installed to suppress noise and disruptive vibrations. Moreover, all such equipment with an exhaust muffler or exhaust box shall be maintained in good operating condition according to manufacturer's specifications.
- h. All workover operations shall be restricted to the hours of 6:00 AM to 10:00 PM, except in the event of an emergency, as reasonably determined by the Operator. "Workover operations" shall mean work performed in a well after its completion in an effort to secure production where there has been non, restore production that has ceased, or increase production.
- i. Operator will ensure that any and all vehicles servicing Oil and Gas well sites, whether owned by the Operator or not, are equipped with mufflers and other equipment to minimize the noise generated by the use of these vehicles.

18. Paragraphs 1, 14, 16 and 17 of this Ordinance shall not apply to coal bed methane and conventional Oil and Gas well drilling and completion activities, i.e., those wells drilled to depths shallower than the base of the Elk Sandstone or its stratigraphic

equivalent, and such Oil and Gas well drilling of a single well on a Well Site for no more than seven(7) consecutive days total in any calendar year.

19. The Borough reserves the right to review and approve all temporary housing arrangements for employees of Operator and any subcontractors working on the oil and gas well site and during the duration of drilling operations.

20. All permanent surface facilities shall be painted an earth tone color to blend in with the surrounding area. The Borough may require fencing and or landscaping to buffer the facilities from adjacent properties.

SECTION 4. Application procedure for Special Uses

All applications for special uses for natural gas compressor stations and natural gas processing facilities shall be submitted to the Borough Zoning Officer pursuant to the procedures set forth in Nesquehoning Borough Zoning Ordinance. All applications for special use approval shall be submitted in writing on forms provided by the Borough and shall include the required fee, a land development plan and a written statement indicating compliance with the applicable expressed standards and criteria of Section 4 of this Ordinance. Public hearings by the Borough Zoning Hearing Board, Borough Planning Commission and Borough Council, if applicable, shall be conducted in accordance with the procedure set forth in the Borough Zoning Ordinance.

Standards and Criteria

1. The minimum site required for a Natural Gas Processing Facility shall be fifty(50) acres and site location limited to N-R Zoning District.
2. Natural Gas Compressor Stations shall be limited to the N-R Zoning Districts. There is no minimum site requirement.
3. Compressors shall be located within a completely enclosed building. During periods of normal operations, doors, windows and similar operations shall remain closed to ensure maximum noise suppression.
4. Compressors and other power driven equipment shall utilize electric motors, where feasible, rather than internal combustion engines. No electric power shall be generated on the site. All electrical installations shall conform to local, State and National Codes.
5. All property lines adjoining property in an N-R Zoning District shall be screened by a buffer area for the distance necessary to screen buildings, structures, parking areas, storage areas and equipment.
6. First Responder shall be provided with a complete, detailed list of all gases,

chemicals and waste products produced, stored or distributed on the site.

7. All waste disposal and storage of gases or by-products shall be in accordance with the rules and regulations of the Pennsylvania Department of Environmental Protection (PA DEP) and any other applicable Federal, State or local agency.
8. No person shall place, deposit, discharge or cause to be placed, deposited or discharged any oil, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any natural gas processing facility or the contents of any container used in connection with any public right-of-way, alley, street, lot, storm drain, ditch or sewer, sanitary drain, lake, pond, creek or similar body of water or any private property without permits from the appropriate regulatory agencies.
9. Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections and any other areas or structures that could potentially leak, discharge or spill hazardous liquids, semi-liquids or solid waste materials, including hazardous waste that is inseparable by simple mechanical removal processes and is made up primarily of natural material.
10. All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain and facilitate rapid remediation and clean-up of any accidental spill, leak or discharge of a hazardous material. The operator shall have all material safety data sheets(MSDSs) for all hazardous materials on site. All applicable Federal and State regulatory requirements for the proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to : chemical and materials raised from the ground(e.g. wooden pallets), bulk storage, installation and maintenance of secondary containment systems, and protection from stormwater and weather elements.

SECTION 5. Penalties.

Any Operator or person performing work at their direction who violates or permits a violation of this Ordinance shall, upon being found liable therefore in an enforcement proceeding commenced by the Borough before a Magisterial District Judge, pay a fine of not more than \$500 plus all court costs, including reasonable attorney's fees incurred by the Borough. No judgment shall be commenced or imposed, levied or payable until the date of the determination of a violation by the Magisterial District Judge. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Borough are hereby authorized to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith. No Bond will be required if injunctive relief is sought by the Borough.

SECTION 6. Repealer.

Any ordinances, or part of ordinances or resolutions inconsistent herewith are hereby repealed.

SECTION 7. Severability.

If any section, subsection, sentence, or clause of this ordinance is held, for any reason, to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. Effective Date.

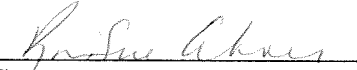
This Ordinance shall become effective upon adoption by Borough Council.

DULY ORDAINED AND ENACTED BY THE COUNCIL OF THE BOROUGH OF NESQUEHONING, CARBON COUNTY, PENNSYLVANIA, THIS 18th DAY OF December, 2013.

BOROUGH OF NESQUEHONING:

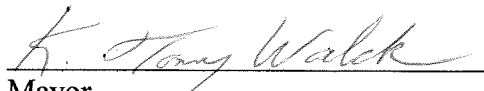


President of Council

ATTEST: 

Secretary

AND NOW, this 18th day of December, 2013, the foregoing ordinance is approved.



Mayor