

Light Review Comments on Sandoval County August 2016 First Draft Oil and Gas Ordinance

Prepared by Sandoval Citizens for a Good Oil and Gas Ordinance -- August 27, 2016

We've made a relatively quick review of the draft ordinance. At the bottom line, we find that it needs a huge amount of work to become adequate. The draft is not ready for prime time. As written, this regulatory ordinance draft does virtually nothing to protect the health, welfare and safety of Sandoval citizens or to protect the financial and economic well-being of the County government. This creates an exposure, legal and electoral, we believe the County should not want to incur.

We have listed some specific flaws in the August 2016 draft. However, we believe a more thorough and precise review should await a radically improved draft. That new draft should, at least, take full cognizance of the 14 Major Flaws and the 12 Medium Level Flaws we have listed.

A. Major Flaws

- A1. The findings as written (1.7, 2.1(f)) are backward and meaningless. In order to survive legal scrutiny, the findings should contain the rationale or justification for the requirements in the ordinance, based upon research, submissions, and testimony. The findings, as written, simply tout the requirements.
- A2. Abandoned wells, even properly abandoned wells, have a track record of developing leaks over the long term. The lack of post abandonment monitoring and remediation in the ordinance tags County taxpayers for problems as they occur. Monitoring and remediation bonds are needed
- A3. Most requirements in the ordinance defer to weak OCD regulations (egregious example 5.12, no enforced air quality regulations). That is equivalent to total deregulation. OCD regulation and enforcement of potential surface impacts ranges from trivial to zero.
- A4. Ads written, there are no requirements for pre-drilling baseline measurements to be reported to the County during the application process (for air, noise, water, etc.). Such measurements protect the industry as well as the citizenry from legal debates when something questionable is detected. The baseline measurements are also needed as references to make ongoing monitoring meaningful. And without meaningful ongoing monitoring, the requirements of the ordinance and promises by the applicant are useless.
- A5. Water degradation limits (5.19) are qualitative, not measurable. There should be quantitative thresholds for key impurities like no more than 5% over the baseline measurement. A similar comment applies for other possible degradations such as air, noise, dust, light. Also see some potential language in comment C7. It should be recognized that water degradation is not just a remote possibility. Staff quoted NM Tech saying, ¼ of 1% likelihood of an oil well causing aquifer pollution. For the not unlikely drilling of 1000 wells, that would predict 5 cases of aquifer pollution.
- A6. No criteria for P&Z or County Commission approval/disapproval of applications. There should be stated conditions that allow P&Z or County Commissioners in their judgment to reject an application that is seen to be adverse to the County or to the health, welfare, and safety of the citizenry.
- A7. Minimal inspection or enforcement, and no mechanism to cover costs of enforcement (6.6), such as periodic fees imposed on the operator. There should specific requirements for the County to enter upon and inspect oil and gas facilities (frequent, unannounced) as well as to review data from monitoring sensors. Concomitantly, there should be requirements for the operator to pay fees to cover the costs of such inspection and monitoring.
- A8. No meaningful penalties for violations. Dollar penalties, no matter how high, are pocket change to this industry and are viewed as a simple cost of doing business. Penalties for un-remediated violations, repeated violations, and egregious violations should, at least, include suspension or revocation of the permit to operate.

- A9. There is no zoning for different parts of the County - Rio Rancho Estates and Placitas have the same "regulations" as the region north of Regina/Cuba where there already are O&G wells. This is counter to the intent stated by staff at public meetings.
- A10. One of the primary purposes of the ordinance should be to give the operator a strong incentive to put safety above profits, and thus not to cut corners. As written, the draft ordinance does not do that. A combination of missing elements is needed – detailed, clear and enforceable promises by the developer during the application process, clear measurable thresholds for violations during operations, frequent unannounced on-site inspections by varied individuals, close ongoing monitoring of measurement sensors, and penalties that will be seen by the operator to be significant.
- A11. There is no mechanism to cover the costs of the more elaborate emergency response facilities and specially trained personnel to deal with O&G emergencies. These are costs that should be paid by the developer /operator or recognized to be imposed upon County taxpayer. The choice should be made explicit in the ordinance.
- A12. Who pays for the increased requirements for sheriffs, schools, hospitals, and drug treatment? Again, these are costs that should be paid by the developer /operator or recognized to be imposed upon County taxpayer. The choice should be made explicit in the ordinance.
- A13. Why isn't there an environmental impact report required? The oil and gas industry is significantly more intrusive than cell towers which place small antennas in spattered locations or gravel mines which are tightly localized within a few acres. Oil and gas placed heavy industrial equipment and operations throughout the countryside. Impacts can be substantial to all aspects of the environment, both natural and human. The applicant should be required to explain these potential impacts for his proposed project and promise exactly how they will be eliminated or mitigated.
- A14. No Special Protection for the Albuquerque Basin Aquifer. The Rio Grande basin is the major groundwater source for a vast number of people in Sandoval and in adjacent Counties, as well as for sovereign nations. Without strong protections for that groundwater as it flows through Sandoval, the County will create substantial legal exposure.

B. Medium Level Flaws

- B1. The ordinance, as written, ordinance exempts virtually all lands in the County (top eight lines on page 2). Like Santa Fe and San Miguel, the ordinance can and should regulate surface behavior on all non-tribal and non-incorporated lands in the County.
- B2. Exploratory drilling (4.2) has the same, and in some cases more extensive, surface impacts as compared to production. The application and approval process for exploratory wells should be no simpler than for production. The County should not risk the implication that approval of an exploratory well carries and implied promise that production will later be allowed.
- B3. Most setbacks are trivial (5.3.(D)). The setbacks, for the most part, are even lower than Rio Arriba's. Again, oil and gas facilities are heavy industrial operations, carrying incendiary and pollution accident hazards as well as community disruptive nuisances. The setbacks from all sensitive entities should be big enough hold the non-industry entities harmless from potential hazards.
- B4. There is no requirement to vet the track record of the original or of replacement operators. The P&Z and County Commissioners should be able to veto an operator whose record, both in and out of state, shows a disrespect for safety or regulations.
- B5. Are there regulations somewhere addressing the nature and location of "temporary" man-camps for oil and gas workers? Frequently, the industry builds extensive temporary housing for its imported workers. The County should have appropriate regulations to govern such developments, either within or elsewhere from, the oil and gas ordinance.

- B6. “State and Federal Pre-emption” (1.8). The title should be changed to remove “Preemption” or the introductory text should be clarified. The listed state and federal statutes do not preempt the requirements of ordinance.
- B7. The County should have the ability to reject an applicant or operator who cannot show it has sufficient fiscal resources to meet its promises – bonding, safe equipment, trained personnel, etc. The applicant’s or operator’s track record of performance and compliance inside and outside of New Mexico can serve as a primary set of facts to provide this assurance.
- B8. Notification requirements as written are insufficient (6.4.(A).(3)): There should be a broad notification as soon as an application is received by the County. A 15 day public notice of hearing, impacted landowners, homeowners and other interested parties have only two weeks to pull together the expertise they need to evaluate the application. Why no pre-application hearing? Because of the intense potential impact of oil and gas industrial facilities, a limit of 300 feet for owner notification is far insufficient. A mile would be more appropriate.
- B9. We find it odd that there are no application processing requirements - how many days for review, when the application is deemed complete. The County staff orally described a process of going through P&Z Commission and County Commission for approval/disapproval of an application. Whatever the process is, it should appear explicitly in the ordinance. In addition, because of the intense potential impact of this industry, the process should be more extensive than it would be for a cell tower or a gas station.
- B10. The tasks assigned to New Mexico Tech by the ordinance and the tasks in the Scope of Work in the New Mexico Tech contract are not consistent. The ordinance and staff oral words appear to promise much more from NM Tech than appears in the Scope of Work
- B11. No Water Availability Assessment to determine the availability of and impacts to fresh water surface and subsurface resources. The oil and gas industry takes and makes unusable relatively large quantities of water. The ordinance should require the County to be assured of the legal and physical availability of water for the proposed operations, and to be assured of an acceptable level of impact to other current and potential future users of that water.
- B12. In order to be legally defensible the ordinance should be consistent with the Comprehensive Plans and with the Area Plans in the zoning ordinance. The ordinance should explicitly address that consistency, and which takes precedence in the event of a conflict.

C. Detail Level Flaws

- C1. The text as written appears to allow oil and gas operations to totally bypass the permitting process. Consider the meaning of the undefined words "or prior authorization" in the first two lines of the second paragraph in 1.4. That phrase should be removed.
- C2. "Oil and Gas Facilities" definition (page 11) should include transmission pipelines. What is not in this ordinance are the permitting of pipelines, and gas processing plants.
- C3. Exhibit B Fees (referenced on page 15) is important and does not appear in the draft.
- C4. Listing of authority as set forth in various laws (1.2). Need to add “but not limited to” the list of laws, etc.
- C5. Throughout the document there are referrals to the county zoning ordinance. However, that ordinance is under revision so it’s not clear exactly what is being referenced. See 4.2B3, 4.3C, 6.2, 6.3 and 6.6.
- C6. There is no mention of fracking or acidizing. While flaring is only permitted within a prescribed time the EPA will be finalizing rules on flaring and venting.

C7. Following is some alternative detailed ordinance language that, in part, might be used to address water quality limits in support comments A4 and A5.

- (A) No oil and gas shall degrade the quality of the ground water pollution, beyond the standards defined by the N.M. WQCC in section 20.6 N.M. AC st seq.
- (B) (1) A drilling plan for oil and gas wells shall require that monitoring wells be drilled as described in section 5.1. These wells shall be monitored initially before the start of the drilling the exploratory well (if no other wells have been drilled). If a production well is drilled (or fracked) in the same location as the exploratory well, then the monitoring wells already drilled can be used for monitoring the production well. Using these monitoring wells, measurements shall be made for the preexistence of toxic chemicals that are present in the sediment, soil, and groundwater, if it is encountered (baseline measurements). These samples will then be sent to the NM OCD for use as a baseline level of pollution at this location.
- (B) (2) The monitoring wells will be used for the further checks on pollutants at 2 months following the initial start of the exploratory well. If chemicals like benzene were found in the ground water, it would be a violation of the standards for ground water if the water contained less than 10,000 mg/l TDS concentration, and if it exceeded 0.0l mg/l benzene. This is listed in the standards for ground water, 20.6.2.3103 and covers many chemicals that need to be monitored.
- (B) (3) Baseline measurements of air quality shall also be made at measurement stations which are installed at 200 feet and 400 feet on a radius around the well. These would measure the amount of hydrogen sulfide and other toxic gases.