

Monitoring, Compliance, Violations, Enforcement Issues

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Mr. Chairman, Commissioners:

Introduction

My name is Bob Wessely, 270 County Road A3, Las Vegas. Again, my background is small business owner and systems engineer. A major part of my systems engineering career involved developing and applying techniques for defining requirements, and in verifying that those requirements were actually met. I'm here to identify some of the key ingredients in making an oil and gas regulatory ordinance work for the County. Those ingredients are coupled in that all work together in order to achieve the necessary protections.

Monitoring, inspection, and enforcement of state and federal regulations across the nation are woefully inadequate. Ex post facto reports from virtually all publicized failures - from Carlsbad to Macondo - cite this inadequacy. New Mexico OCD reports fewer than 10 inspectors for some 100,000 wells. NM PRC cites 5 inspectors for some 23,000 miles of O&G pipelines within the state.

After identifying two fundamental guiding principles which are necessary to protect health, welfare, and safety, I plan to address seven points. Two key ingredients are proper cost reimbursement and baseline measurements. Then I want to discuss three ongoing County operations – monitoring, inspections, and reporting. Finally, violation penalties and post-operation requirements deserve a brief mention.

The fundamentals

There are two fundamental ingredients for the County to have a competent ordinance.

First, the ordinance will not work by itself. In order to have a chance of being effective in protecting the health, welfare, and safety of the County and its citizens, the ordinance must, and I

O&G Inspection in New Mexico

- 100,000 wells: Fewer than 10 Inspectors (NM OCD)
- 23,000 miles pipeline: 5 Inspectors (NM PRC)

Outline – Monitoring, Compliance, Violations and Enforcement Issues

- The Fundamentals
- Cost Reimbursement
- Baseline Measurements
- Monitoring
- Inspections
- Reporting
- Enforcement Penalties
- After Operations Issues
- Conclusion

repeat must, impose significant ongoing duties and responsibilities upon the County, to be performed at industry expense

The County must commit to a rigorous, properly-funded program for inspections, monitoring, and enforcement. This will require adequate administrative and technical resources to closely follow O&G operations, and the will and resources to identify violations and enforce penalties.

Second, reports from across the nation indicate that industry behaves much better when industry has a strong incentive to do that. The incentive can only come from the operators seeing a high probability of getting caught and seriously penalized for improper behavior. And that means the County must maintain cops on the beat, and do that at industry expense.

Cost reimbursement

For an industry on the anticipated scale of the oil and gas industry, the County will have far more obligations and need far more staff than it currently has. As the Task Force unanimously declared, costs to meet those obligations must be borne by the industry, not the taxpayers. A fee and/or reimbursement system must be put in place.

The obvious need is a County cost reporting and cost accounting system, acquired and staffed at industry expense. Such a system should record and identify costs (both in-house and contracted). It should identify which of those costs should be assigned to a particular operator (such as reviews and inspections), and which costs (like the accounting system itself) should be apportioned for reimbursement among all operators in the County. Pre-set, estimated fees without such a cost accounting system will surely result in either the industry or the County, bearing an unfair burden, more likely the County.

Baseline measurements

Experience around the country has shown that it has been difficult to demonstrate whether contamination or pollution problems at a site are were caused by O&G operations, or the hazard was always there naturally. Therefore, as a part of the application process, the County should require an independent pre-operation or baseline measurement of each relevant pollutant or hazard (for water, air, noise, light, etc.). Thresholds for pollution that trigger enforcement action by the County must be set in the ordinance – for example, increases greater than five percent above natural, pre-operation conditions at the site.

Monitoring and Inspections

The County must set up, at industry expense, a high frequency, independent inspection and

Example Inspection and Monitoring Targets

- Air quality
- Water quality and quantity
- Land disturbances
- O&G extraction and injection well sites
- Compressor and gathering stations
- Several classes of roads
- All stages of pipelines
- Noise, light and dust levels
- Operator records and logs
- State and federal regulations

monitoring program to catch missteps promptly. To do this, baseline (pre-operations) measurements of all relevant parameters must be established as a part of the permitting process. By submitting an application, the operator must agree to all terms and conditions of the ordinance (such as unannounced inspections of facilities and records). The permit application submissions (plans, studies, and other promises) should be enforceable requirements upon the operator.

Monitoring

Sensors measuring the various hazard risks (water, air, noise, light, etc.) will have to be emplaced and observed. Some will be permanently installed and some will be placed just for the duration of the measurement. The County should have a thorough mechanism to observe the reports from such sensors frequently enough for the County to demand prompt remedial action in response to any aberrant detections.

Inspections

The operators should understand that improper operations (public safety, worker safety, pollution, etc.) cannot be swept under the rug or otherwise go unnoticed. This, by itself, will induce good behaviors. The County should establish a close observation of industry operations, at industry expense. This observation should include frequent unannounced inspections of industry sites. It should include frequent review of industry records and logs. It should include regular observation of industry behavior in public (roadways and pipelines). And it should include, as noted earlier, frequent review of automated sensor data.

Reporting

The monitoring and inspections should look for violations of not only County, but all State, and Federal oil and gas regulations. The County should keep publically accessible records of all violation detections, along with records of follow-up remediation. The County should report any violation of State or Federal requirements to the appropriate agency. Violations of County requirements should be reported to the operator for prompt remediation and re-inspection.

Enforcement penalties

Even if the State didn't have a ceiling on allowable amounts of fines, there is no dollar amount of fines that would have any visibility to an industry of this magnitude. Financial penalties are irrelevant. The only leverage the County has is suspension or revocation of the permit to operate. Frequently repeated, un-remediated and egregious violations should result in suspension or revocation of an offending operator's site permit. And in extreme cases, it should include suspension or revocation of all permits of the offending operator at all sites in the County.

After operations issues

After operations at a well or other facility cease, the possible penalties become irrelevant. However, the needs for monitoring, inspection and remediation do not cease. Old plugged wells are known to develop leaks. And the operator is not around to fund or to take remedial action. As

a part of the permitting process, the County should require the applicant to provide an irrevocable bond, sufficient to cover costs of very long term post-operation inspection, monitoring, and possible remediation of abandoned sites.

Conclusion

The onus of good behavior should be unequivocally placed upon the industry. The costs of placing that onus should be on the industry. The operator should know that the County is regularly looking over its shoulder. And finally, the operator should understand that the County has a real option of imposing noticeable penalties.

Thank you.