

Editor's Comment: This is the second in a series of articles addressing issues associated with oil and gas development in San Miguel County. The articles were written by participants in PROTECT San Miguel county, a local all-volunteer grass-roots organization. The group has been working with the county's oil and gas task force for three years, has toured several existing oil and gas producing facilities, and has been collecting extensive research on the issues. More information is at <http://PROTECTsmc.org>.

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Oil and Gas Cost and Enforcement Issues

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San Miguel County should not subsidize the oil and gas industry. The county's oil and gas task force unanimously agreed that all costs imposed by the industry's presence should be paid by the industry. Unless strong requirements are vigorously enforced, safety of oil and gas operations is unlikely.

Costs - The county will need far more staff and financial resources than it currently has to meet its new or significantly expanded service obligations. Pre-permit costs will include research, studies, and reviews. Post-permit costs will include inspections, monitoring, and prosecutions. Expanded facilities and services costs will include road building and maintenance, law enforcement, justice systems, emergency services, educational services, medical care and drug treatment, housing permitting, post-abandonment remediation, etc. Dollars to meet those costs must be provided by the industry, not the taxpayers.

A mechanism is needed for the County to recover all of these costs. With costs hard to predict, pre-set, fixed impact fees will surely cause either the industry or the county to bear an unfair burden, more likely the county. Better, the ordinance should have an industry-paid mechanism to record actual costs of new and expanded county services (both in-house and contracted). Those actual costs would then be prorated and periodically billed to the operators.

Enforcement –The ordinance should make the likelihood of a violation going undetected or unreported very small. And it should make the consequences of violations very large. Only when the county establishes both of these conditions will the ordinance be useful.

Reports from across the nation indicate that industry behaves more safely only when required. Safe behavior will only happen when the operators expect they will get caught. The county must maintain "cops on the beat", again at industry expense.

Besides the obvious strong protective requirements, the ordinance should direct the county to conduct a rigorous program of inspection, monitoring, and prosecution. This will require sufficient administrative and technical resources to closely follow O&G operations, plus the political will and resources to identify violations and actually impose the specified penalties.

The operator should understand that operating in San Miguel County is a privilege, not a right. Applicants for permit must agree to all terms and conditions of the ordinance (such as unannounced inspections of facilities and records). Besides the ordinance itself, the applicant's submissions (plans, studies, and other promises) should be made enforceable requirements upon the operator.

Whether detected contamination was natural or caused by O&G operations can cause debate, diluting enforcement. Therefore, as a part of the permitting process, the county should require an independent pre-operation - or baseline - measurement of each regulated pollutant (for water, air, noise, light, etc.). Measurable absolute, or relative-to-baseline, thresholds for violation should be stated in the ordinance.

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

The county's monitoring and inspection process should look for violations not only of county regulations, but state and federal oil and gas regulations. The county should keep records publically accessible of all violation detections, along with records of follow-up remediation. The county should report all detected violations to the operator and require prompt remediation and re-inspection. The county should also report violations of state and federal requirements to the appropriate agency.

The operators should understand that improper operations (public safety, worker safety, pollution, etc.) cannot be swept under the rug. The required county 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 frequent testing, monitoring, and review of automated sensor data. That way the county can demand prompt remedial action to correct small problems before they become large.

Oil and gas accidents can have severe human and environmental consequences. The county should require billions in insurance and bonds sufficient to pay for complete remediation and consequential damages from accidents or malfeasance - during operations and for decades after.

There is no dollar amount of fines that would hurt an industry of this size. The only leverage the county has is suspension or revocation of the permission to operate. Repeated and un-remediated violations should result in severe penalties - suspension or revocation of an offending operator's site permit. Egregious violations and company behavior should result in county-wide suspension or revocation of all permits of the offending operator.

Summary - The onus of good behavior should be placed upon the operator, at industry expense. The operator should know that the county is regularly looking over his shoulder. And finally, the operator should understand that the county has a genuine ability to impose impactful penalties.