

NOVEMBER 13, 2008

COMMENTS ON REVISED DRAFT OIL AND GAS ORDINANCE

SUBMITTED BY NM ENVIRONMENTAL LAW CENTER
ON BEHALF OF DRILLING SANTA FE

Page **Section**¹

3 §5 (1st sentence, 2nd paragraph):

The phrase, “No oil or gas facility is permitted as of right in the County” should be explained to mean “*no oil or gas facility shall be constructed or operated in the County except as approved and permitted in accordance with this Ordinance.*”

Although it appears that “oil and gas *facility*” has largely replaced “oil and gas *project*” in the Ordinance, “project” still occurs throughout the Ordinance and is still not defined. Facility should be used throughout unless “project” has a different specified definition.

_____ In section 9.6(1), for example, speaks of a “project area.” The continued use of both “project” and “facility” causes several ambiguities, for example:

- Can a project consist of several facilities?
- Can a proposed overlay zone encompass properties under multiple ownerships? (Section 9.6(2) still appears to require “same ownership.”)
- Can several different facilities be located within one overlay zone, and must the applicant know the types and locations of the facilities at the time it applies for an overlay zone (which is before any APD has been submitted)?

10 §7: As used in the definition of “Applicant,” it is unclear whether “premises” refers to land, the Facility, or some other interest.

- An applicant for an SUDP should have to show all necessary state approvals and property rights necessary to enter land and construct and operate the Facility at issue.

- OCD’s special rules for the Galisteo Basin require the “operator” to be the applicant. To be consistent with OCD, consider adopting OCD’s definition of “operator”:

Operator shall mean a person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of a facility's operation or management. (19.15.1.7 NMAC).

- A separate SUDP should be required for each separate Facility unless otherwise allowed by the County (and if this is already the case, it is unclear).

¹ Refers to section or subsection of the Ordinance on the referenced page.

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(Consider making the ordinance’s definitions of oil and gas terms consistent or even identical with the definitions in the Oil and Gas Act and the OCD regulations to avoid the appearance of conflict.)

17 Since “fracing” includes injection of solids, injection of solids should be included in the definition.

18 “Geohydrologic report” should include baseline studies and not be limited to just describing potential adverse effects.

 Sec. 11.17.4 should be stricken in its entirety. There should be no provision for self-insurance under any circumstances.

20 The definition of “Facility” is still ambiguous.

- For example, it is unclear whether a “Facility” will include wells drilled for oil and gas exploration if there is no structure or building or casing.
- The “and” at the end of (x) should be changed to “or,” unless all of the conditions specified in (i) through (x) must be present to constitute a “Facility.”
- The first sentence of the definition of “Facility” should specify that a “Facility includes but is not limited to the following: ... ”
- It should be made clear whether a separate SUDP is required for each separate Facility within a given overlay zone (and whether only one facility per overlay zone is allowed).

21 “Owner” is now defined to include owners of land, leases, or facilities, and therefore, has little meaning.

23 The definition of “Same ownership” specifies “as of the date of enactment” of the Ordinance. This seems unnecessary. Why does it matter when the “same ownership” was obtained?

26 §8(a) Change “... is extended to the owner/applicant’s property” to “*is extended to the land on which the facility will be constructed.*”

§8a & § 9.1:

Section 8(a) correctly provides that “no oil and gas facility is permissible ...,” whereas Section 9.1 provides that Section 9 only applies to “facilities that have *adverse effects* and impacts” and this creates an unnecessary ambiguity. All “facilities” should be required to apply for an overlay zone, and then the County can determine whether a particular facility has “no adverse effects” and treat it accordingly. Also, at the overlay application phase, one will not necessarily know all the types of facilities will be constructed in the zone.

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31 (C): Change “Light” to “Low”.

79 §11.1: Delete “work” and replace with: “*No person shall commence construction of or operate any Oil and Gas Facility*”