

Erie's oil and gas agreements could serve as statewide model

Operators required to go beyond Colo. regulations on drilling

By John Aguilar *Camera Staff Writer*

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Longmont took a hard-nosed approach to oil and gas drilling in town, enacting a set of rules that went above and beyond what the state requires of operators.

Erie chose a more subdued route, crafting agreements with two drilling companies that get them to voluntarily adopt operational measures and safeguards not required by the Colorado Oil and Gas Conservation Commission.

Longmont is now embroiled in a legal battle with the state, which sued the city in July for attempting to exercise powers it says exclusively belong to COGCC. The commission, meanwhile, lauded Erie for the memoranda of understanding, or MOUs, the town signed with Encana Oil & Gas and Anadarko Petroleum Corp. last week.

"Erie chose to sit down with the operators and come to an agreement," COGCC Director Matt Lepore said Thursday. "By doing that, they achieved what they wanted to achieve without ordinances."

Specialized contracts between local governments and oil and gas operators aren't new in Colorado -- La Plata County has been entering into MOUs with operators for years -- but Lepore said what was once done on a well-by-well basis is now, with Erie's Aug. 28 vote, being done on a company-by-company basis.

Erie Trustee Mark Gruber, who voted to sign the agreements, said coming to an understanding with operators was the town's only choice in the face of a legal landscape where court case after court case has made it clear that oil and gas extraction is the purview of the state and not local governments.

"We're very aware of the state's reluctance to give up its control of oil and gas drilling activity in the state," Gruber said. "We have a responsibility to the taxpayers not to waste their money in litigation."

The cooperative approach Erie took on an issue that has caused heartburn for communities throughout Colorado, Lepore said, could be a lesson for others in how to navigate the

regulatory landscape in which municipalities warily watch oil and gas companies punching drills into the ground near homes and schools.

"I think it can serve as a model, and it's a very viable model," he said. "We thought what Erie, Encana and Anadarko did was a win-win."

MOUs take effect this week

Requirements of the MOUs -- which took effect this week after Erie allowed its six-month moratorium on new drilling permits to expire -- include the use of steel-rim berms around tanks and separators, closed-loop systems for drilling and completion operations, and a more effective vapor recovery unit for new wells. The companies also agreed not to use hydraulic fracturing fluid products that contain diesel, 2-Butoxyethanol or benzene.

The agreements are valid for three years.

"The state regulations allow for a 5 percent pollution level at the well while the vapor recovery units in our agreements get us (nearly to) 100 percent capture of volatile organic compounds," Gruber said. "This is state-of-the-art."

Encana spokeswoman Wendy Wiedenbeck wrote in an email Thursday that the agreement is unique and "an example of what is possible when operators and local officials choose to sit down together to discuss how best to address community concerns."

She said Encana plans to submit for additional permits in Erie -- specifically a five-well pad -- now that the moratorium has expired. She also said the best management practices outlined in the MOU would be added to operations at five previously approved well sites in Erie.

Since the moratorium ended Monday, Erie hasn't received any applications for new drilling sites, according to the town.

'It really is a smokescreen'

Jen Palazzolo, a leader of the anti-drilling group Erie Rising, said the town should have extended its moratorium another two months so it could get back results from a Colorado Department of Public Health and Environment air quality monitoring study that was recently conducted near an Encana well site north of Red Hawk Elementary School.

Drilling opponents say emissions from the hundreds of wells around Erie, which sits on the edge of the highly productive Wattenberg Gas Field, haven't been proven safe and are likely causing health problems among residents. The industry challenges those claims.

"I think that signing the MOUs has locked Erie into fast-tracking oil and gas development in a 48-square-mile town," Palazzolo said, referring to a provision in the agreement that states that the town will try to process all permits within 30 days. "The MOUs really favor the industry."

Erie, she said, isn't getting much in the deal because most of what is spelled out in the agreements the operators are already doing. The exception, she said, is the requirement that Encana and Anadarko install more efficient vapor recovery units on their equipment.

"It really is a smokescreen and not even close to a monumental event," Palazzolo said.

Longmont chose regs

Longmont Councilman Brian Bagley said his city did the right thing by passing tough regulations on oil and gas operators earlier this summer, despite the litigation that has followed.

While he doesn't see anything wrong with MOUs, he said they are not as ironclad or as universal as a city ordinance is. In Erie, Noble Energy opted out of signing an MOU with the town. It is the only other oil and gas operator with wells in Erie.

"MOUs are only as good as your ability to contract with all drilling operators," Bagley said.

He said gas company TOP Operating, which is active in Longmont, was satisfied with the regulations the city set forth in July -- including mandatory water monitoring and a 750-foot separation from the company's wells and any occupied buildings -- but the COGCC wasn't.

"Other than being sued by the state, everyone was happy," Bagley said.

Tisha Schuller, president of the Colorado Oil and Gas Association, said MOUs can be a compromise that address "the interests of the local government without infringing on state primacy."

But she sounded a caution Thursday.

"Wide use of MOUs could create a tricky patchwork of operating conditions and so the Colorado Oil and Gas Association still emphasizes and encourages jurisdictions to work through the state system and the local government designee process," Schuller wrote.

Lepore, head of the COGCC, said the use of agreements between municipalities and oil and gas operators may grow now that Erie has paved the way. He said his office recently received inquiries from Arapahoe and Elbert counties regarding the use of MOUs.

"All due credit to Erie for getting it done because it's not easy getting it done," he said.

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