

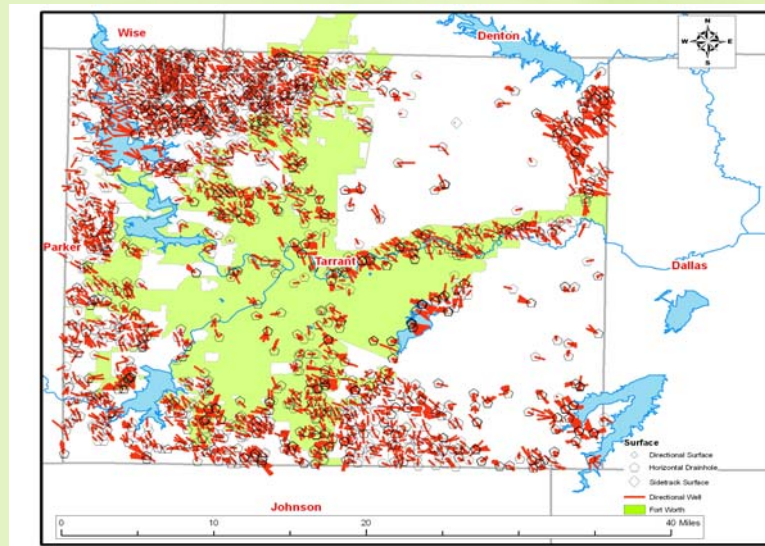
Legal Issues with Municipal Environmental Regulation of Oil and Gas Activities

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Gas Wells in Tarrant County






Topics

- Powers & Limits: Railroad Commission
- Powers & Limits: Cities
- Potential Litigation: Cities Exercising Powers
- Potential Opportunities: Texas Legislature



Dual Role of the Railroad Commission

- 1) Promotion and Regulation to Maximize Production
The RRC does regulate the exploration, development, production, and some transportation of oil and natural gas .
- 2) Regulation to prevent pollution & protect the public health, safety and welfare.



*Texas Citizens for a Safe Future and Clean Water
& James G. Popp, v. Railroad Commission of
Texas & Pioneer Exploration, Ltd.*

Section 27.051 (b) The railroad commission may grant an application in whole or part and may issue the permit [for the injection well] if it finds:

- (1) **that the use or installation of the injection well is in the public interest;**
- (2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
- (3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
- (4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 of this code.



Framework for Regulation of Oil & Gas Activities

RRC does not have all the regulatory responsibilities

For protection of the environment and public health, safety, and welfare, there are

Federal laws

State laws granting authority to other Texas agencies, and

Local government authority.



Federal Laws & Federal Agencies

Clean Water Act
Pollution – Oil & Gas Activities - EPA
Wetlands - Dredge and Fill - COE

Safe Drinking Water Act
Injection Wells - EPA

Resource Conservation & Recovery Act (Solid Waste Act)
Hazardous Wastes - EPA

Clean Air Act
Stationary & Mobile Sources - EPA

Endangered Species & Other Wildlife Protection Laws - FWS



Texas Law & the Division of Authority between State Agencies

Texas Clean Water Act
Water Pollution– TCEQ & RRC

Texas Injection Well Act
Injection Wells – TCEQ & RRC

Texas Solid Waste Act
Hazardous Wastes – TCEQ

Texas Clean Air Act
Stationary & Mobile Sources - TCEQ

Example: Truck Idling

TCEQ Rule: Sections 114.510-512 & 517

- a) No person shall cause, ... permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle...is not in motion [from April 1 - Oct. 31].
- (b) No driver using the vehicle's sleeper berth may idle the vehicle in a residential area ...in a school zone, within 1,000 feet of a hospital or ... a public school during its hours of operation.

Austin-Round Rock MSA (Central Texas) Heavy Duty Motor Vehicle Idling Limitations



RRC Resource Limitations


Funding and staff issues:

Limited RRC inspectors

Limited RRC enforcement personnel in Austin

Even limited clerk and document managers in Austin

Historic problems



Example of Results of RRC Resource Problems

- In a report to the Legislature in 1987, the RRC used industry estimates to conclude that there were 1.3 million oil and gas wells in Texas by then.
- RRC admitted it had records for less than half or about 600,000, as many files were lost or records never obtained.
- Of that half that it had records that only 400,000 were plugged
- It also estimated that as many as half of the wells with records were not adequately plugged to 1987 standards
- Thus, RRC admitted that there could be as many as 1 million wells that were not properly plugged as of 1987. Yet the number of wells the RRC now uses is about 10% of that 1987 estimate.



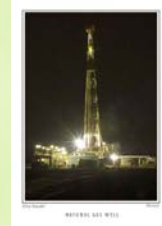
Authority of on Limitations on Home Rule Cities

The Local Government Code provides every home rule city with broad powers, including the authority to regulate oil and gas activities within its jurisdiction.

There are, however, significant limitations in the law and in practice.

Examples

- Well-Density Ordinances
- Pooling Ordinances
- Zoning
- Routing of Trucks
- Regulation of Nuisances



There are Significant Limits on Cities Abilities to Regulate

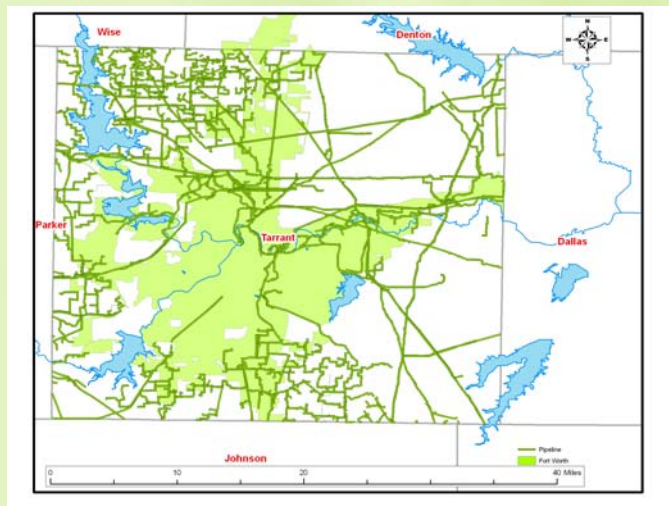
- **Constitutional:** Takings issues.
- **Statutory:**
Example: Sec. 382.118 Health & Safety Code:
Must be consistent with statute and TCEQ rules
- **Practical:** Not a normal area of regulation for may cities.
- **Financial:** Taxes or fees

Potential Litigation

Cities have to assume any creative action will lead to litigation, where the O&G industry will claim:

- 1) Exclusive jurisdiction in the RRC,
- 2) Lack of local government authority, &
- 3) A takings by the local government

Texas Midstream Gas Services v. City of Grand Prairie et al.





Legislative Opportunities

- RRC authority – expand, limit, transfer
- RRC funding – Why is it a problem
- Cities: Authority & Funding
- Other entities: TCEQ, Counties, Ground Water Districts, etc.
- New requirements for O&G operators



2007: House Bill 630

- Requires certain gas or oil well operators to notify surface owners before they enter property to drill.
- The operator must give notice within 15 days of receiving a permit from RRC.