

**GEM COUNTY  
OIL & GAS OPERATIONS ORDINANCE**

*(w/proposed changes/additions submitted to Commissioners by citizens of Gem County on 5/23/16 – most new language from Southlake & Dallas TX, some from West Bloomfield MI & Weatherford TX)*

**OIL AND GAS OPERATIONS**

**Gem County Code Amendment – Title 11 (New Chapter)**

**NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

**SECTION 1. PURPOSE AND FINDINGS.**

The purpose of this ordinance is to provide, through zoning provisions, for the reasonable use of land for oil and gas drilling while providing health, safety and general welfare protections for Gem County residents. Idaho State rules mandate the allowance of oil and gas drilling, but allow counties local permitting rights and regulations. Accordingly, it is necessary and appropriate to adopt this ordinance for oil and gas resource development so that these resources can be obtained in a manner that is economically beneficial for all stakeholders and to minimize the adverse impacts on the residents of Gem County.

Local governments are preempted from regulating the same features of oil and gas well operations or accomplishing the same purposes regulated under Idaho Statute 47-317. Local zoning regulates surface land use as authorized under the Local Land Use Planning Act (I.C. 67-65).

**FINDINGS:**

- A. Gem County is a primarily agricultural community with significant environmentally sensitive areas that is home to lakes, reservoirs, ponds, wetlands, and the Montour Wildlife Management Area.
- B. The county is unique because of its four (4) major watersheds (Lower Boise, Payette, North Fork Payette and Weiser) and the dependence, in a semi-arid region, on this natural abundance of water used primarily for agriculture, domestic drinking, and ground water recharge.
- C. The Payette River is a major tributary to the Snake River, draining a three thousand three hundred twenty (3,320) square-mile watershed in west-central Idaho. Approximately four thousand (4,000) stream miles delineate the Payette River Basin. Three major branches, the North, Middle, and South

Forks, conveying water from the mountainous headwaters, converge at the southwestern edge of Idaho to form the Payette River.

- D. The Payette River Basin is characterized by approximately sixty thousand (60,000) surface acres of navigable rivers, lakes and reservoirs, comprising nine and one tenth percent (9.1%) of the state's total. In a real sense, Gem County is the gatekeeper of the Payette River Basin, which supplies other areas downstream. The Payette River itself serves a critical function to our downstream neighbor, the city of Fruitland, as its public drinking water supply.
- E. Ground water is also highly critical in Gem County. According to Idaho DEQ, approximately ninety-five percent (95%) of Idaho's drinking water comes from aquifers and shallow ground water supplies.
- F. The county's natural resources will be negatively impacted unless land uses are harmonious with the existing natural environment. The Payette River and its various tributaries comprise a sensitive natural resource and will require stewardship to minimize encroachment by industrial development.
- G. Measures must be taken to ensure the quality of the Payette River, Squaw Creek, Black Canyon Reservoir, and the many other creeks and wetlands which are found within Gem County. These natural assets, as well as the elderly Black Canyon Dam, are vital to Gem County and must be treated with caution to ensure they remain as important resources.
- H. Gem County has a total area of (five hundred sixty-six) 566 square miles. Approximately seventy-five percent (75%) is privately owned, the remainder owned by cities, the County, the State, and federal entities. The need to protect private property, and private property rights, is paramount.
- I. A major portion of Gem County is already subject to problematic air quality that is conditional on weather patterns. Air pollutants are trapped by an inversion layer that tends to form within the box canyon walls surrounding the city of Emmett and its environs, where the majority of Gem County's population lives. Cumulative effects from producers of polluting emissions within the Emmett Valley and further west are a public health concern.
- J. Gem County's Comprehensive Plan has a long-standing tradition of protecting environmentally sensitive areas as well as community resources. Gem County is one of the first of Idaho's communities to adopt and implement baseline groundwater studies for the purpose of preserving our natural resources.
- K. The development of innovative methods of gas and oil exploration and extraction, such as directional drilling and high volume hydraulic fracturing, has

resulted in oil and gas development activities appearing in areas that traditionally have not been subject to oil and gas activities, such as densely populated, largely residential, and primarily agricultural areas in Idaho.

- L. Residents in states adjoining Idaho and in towns and cities across the nation have experienced adverse secondary impacts of oil and gas activities where such activities have occurred near or adjacent to residential property.
- M. Adverse secondary impacts of gas and oil exploration and extraction-related activities experienced by residents living nearby or adjacent to the oil and gas development activities include obnoxious odors, vibration and lights; excessive dust and debris; off pad soil erosion; excessive noise and traffic; local road deterioration; air, soil and water contamination, including contaminated drinking wells; withdrawal of groundwater resulting in reducing the volume or amount of well water serving residential properties; wildlife habitat impacts; mortgage and property value impacts; increased demand for emergency services. All of these adversely affect the residential quality of life as well as the natural and shared financial resources of the community.
- N. State statutes and regulations do not adequately protect the health, safety and welfare of county and city residents, local natural resources, and communities from the adverse impacts of oil and gas activities, thereby necessitating local regulation of the secondary impacts by the County under the Local Land Use Planning Act.
- O. The State Constitution and statutes authorize and obligate counties and cities to adopt local regulations to protect the public health, safety and welfare of their residents and to regulate activities that cause nuisances.

## **SECTION 2. ADOPTION OF NEW CHAPTER ## TO ZONING ORDINANCE.**

The Gem County Zoning Ordinance is hereby amended to add the following new Chapter:

## **SECTION 3. DEFINITIONS. [not revised]**

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Administrative:** A regulatory review and/or action performed by an employee or contractor of Gem County and not deemed a legislative or quasi-judicial action.

**Applicant:** That person, corporation, or other legal entity possessing the legal right to develop the mineral resource or any other use proposed in connection thereof for the site in question; generally, the applicant will be the owner or lessee of the mineral estate.

**Development:** Any land use involving the drilling or extracting, of oil or gas.

**Development Services Department:** Gem County Development Services Department

**Domestic Water Source:** Water from a well or spring routinely used for human or livestock consumption.

**Drilling Pad:** The area of surface operations surrounding a proposed or existing well or wells and accessory structures and equipment necessary for drilling, completion, recompletion, work over, development and production activities.

**Local Road:** A public road designed to provide access to abutting lots and to discourage through traffic.

**Oil and Gas:** Crude oil, natural gas, methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

**Oil and Gas Well:** A hole drilled into the earth for the purpose of exploring for or extracting oil, gas, or other hydrocarbon substances.

**Operator:** The person of record, that is responsible for and actually in charge and control of drilling, maintaining, operating, pumping or controlling any well including, without limitation, a unit operator. If the "operator", as defined herein, for any well is not the lessee of any premises affected by the provisions of this chapter, then such lessee shall also be deemed to be an operator. In the event there is no oil and gas lease relating to any premises affected by this chapter, the owner of the fee mineral estate in the premises shall also be deemed an operator.

**Pit:** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, or other fluids used in oil and gas operations, or produced water. This does not include enclosed, mobile, or portable tanks used to contain fluids.

**Produced water:** The water brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process. (Source: e-CFR)

**Residence:** a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.

**Road Mitigation Agreement:** A written agreement between the applicant and the Gem County Road and Bridge Department obligating the applicant to repair damage, excluding ordinary wear and tear, if any, to public roads, bridges, right-of-ways, or any other infrastructure within Gem County jurisdiction, caused by the operator or its employees, agents, contractors, subcontractors or representatives in the performance of drilling or production of any wells authorized by Gem County.

**School:** School means any public or private, primary or secondary educational facilities whose primary purpose is providing education up through and including twelfth grade level.

**State Road:** Roads under the jurisdiction of Idaho Transportation Department (ITD).

**Well:** An oil and gas well or an injection well, including but not limited to directional drilling wells (for example, any well hole drilled into the ground).

**Wellhead:** The equipment installed at the surface of the well.

#### **Section 4. ZONING CLASSIFICATION.**

Subject to the provisions of this ordinance, an oil or gas well site shall be considered a permitted use by right within any Zoning District(s), subject to the standards listed herein.

#### **Section 5. PERMIT REQUIREMENT.**

- A. An administrative zoning permit must be issued by the Development Services Department before the construction, development, or material modification of a proposed or existing well in Gem County.
- B. Each application shall be submitted with the fee established pursuant to resolution of Gem County as adopted. Such fee shall be reasonable as related to the cost of administering this Title 11.
- C. Any modification to an existing and/or permitted oil or gas well site that materially alters the size, location, number of wells or accessory equipment or structures, shall require **consideration of** a modification of the permit under this ordinance. Like-kind replacements shall not require a permit modification.
- D. Wells that were permitted and constructed prior to the adoption of this ordinance shall not be required to meet the requirements of this ordinance. Any modification to an existing or permitted oil or gas well site that occurs after the effective date of this ordinance and materially alters the size, type,

location, number of wells and/or other accessory equipment or structures, shall require compliance with this ordinance.

- E. Upon receiving notice from the Idaho Department of Lands that an application has been submitted and within fourteen (14) days, the Development Services Department will notify all property owners within one (1) mile of the tax parcel that an application for a new oil or gas operation has been filed. The notice is for informational purposes only and will not solicit any public comments to the County on the application, but will alert owners to the short period available to provide public comments to the Idaho Department of Lands.
- F. It is the responsibility of the applicant to verify any associated permit(s) that may also be required by Gem County and to comply with all other state and federal laws and permitting requirements.
- G. If an applicant does not conduct said business for a period of one (1) year, the permit shall be null and void. Permits issued under this ordinance shall not be transferable to any other applicant, except by a majority vote of the Gem County Board of Commissioners, and the filing of an a new application by the applicant to whom such permit is, or may be, transferred or assigned. In case of such transfer, the transferee must agree to:
  - 1. Be bound by the terms and conditions of the current well permit and road repair agreement and gathering line/pipeline regulations set forth in this Article; and
  - 2. Update all information previously provided to the county to reflect any changes; and
  - 3. Provide the insurance and security required by this Article; and
  - 4. Otherwise comply with all applicable governmental ordinances and regulations.
- H. The operator shall provide a copy of any “incident reports” or written complaints submitted to the Idaho Department of Lands, the Idaho Oil and Gas Conservation Commission, or any other state or federal agency within fifteen (15) days after the operator has notice of the existence of such reports or complaints.

## **Section 6. PERMIT APPLICATION.**

The applicant shall provide to the Development Services Department at the time of permit application: [corrected section’s letter/number formatting]

~~4-~~ A. A narrative describing an overview of the project including the number of acres to be disturbed for development, the number of wells to be drilled including the Idaho Department of Lands permit number(s) for all wells, ~~if available, at the time of submittal and provided when issued later,~~ and the location, number and description of equipment and structures to the extent known ~~and permitted~~. In addition to the narrative statement, each application shall contain the following: ~~[should all required “plans” below be capitalized?]~~

1. Tax parcel number(s) of the real property impacted by the drilling pad;
2. A map showing the proposed transportation ~~and transmission~~ route(s) for the oil and gas operation, identifying all public and private roads/routes intended for use within Gem County ~~(which the county reserves the right to modify)~~;
3. The surface owner’s name(s), address and phone number;
4. The mineral owner’s name(s), address and phone number (if different than surface owner);
5. The name of the operator representative with supervisory authority over the proposed Gem County well site and all twenty-four (24) hour contact information;
6. A plan for waste disposal ~~that addresses human, solid and drilling production waste. [This plan shall include a copy of any waste disposal permit required of the operator; the identification of the quantities and composition of the waste to be transported out of the county; and the vendor(s) and facility(ies) to be used for disposal and evidence of the applicable licenses and permits for facilities and transporters of any hazardous wastes. No treatment of hazardous wastes shall be permitted in any open-air manner in Gem County. The operation of a well site without applicable, current state and federal waste disposal permits is prohibited.]~~
7. A description of the water source to be used during drilling, well fracturing, and/or operations, along with proof of any water permit required.
8. A storm water pollution prevention plan complying with all federal, state and local storm water quality regulations, including any notice of intent and notice of termination requirements. A copy of the notice of intent shall be submitted to the county seven (7) days prior to the commencement of any onsite activity.

9. A vector control plan detailing all measures that will be taken to ensure that any fresh-water fracture pond will not become a site for mosquito harborage, and for mosquito abatement activities, including any biological or chemical control applications or water level control measures.
10. An erosion control plan complying with all requirements of the county.
11. A description of all fuel sources to be used at the proposed drill and operation site, including but not limited to all public utilities needed during drilling and operation.
12. A screening, fencing and signage plan detailing compliance with all such county and state requirements for drill sites, related facilities and gathering lines/pipelines. This shall include a proposed schedule for the timing of all installations.
13. A site lighting plan in compliance with regulations within this Article and designed to promote the safety of nighttime operations. The plan should indicate the type of light(s) to be used and demonstrate compliance with all applicable Federal Aviation Administration requirements.
14. [A pipeline/gathering line plan noting planned locations (including road, water and utility crossings), depths, materials, and methods (open trench, boring), and a proposed schedule of construction and testing of the lines. The plan shall also include proof of all necessary easements and surface property owners approvals.]
15. A copy of all applicable right-of-way encroachment agreements.
16. A copy of the approved Idaho Department of Lands permit to drill, including attachments and survey plats that are applicable to the drill and/or operation sites.
17. Pre-development from-the-ground photographs of the proposed well or off-pad facility or fresh-water containment pond, clearly documenting the condition of the terrain.

**B. The address of the oil or gas well site and/or a legal description of the parcel and information needed to gain access to the well site in the event of an emergency.**



C. All contact information of the individual or individuals responsible for the operation and activities at the oil or gas well site shall be provided and thereafter distributed by the Development Services Department to all applicable Emergency Responders. Such information shall include a phone number where such individual or individuals can be contacted twenty-four (24) hours per day, three hundred sixty-five (365) days a year. Annually, or upon any change of relevant circumstances, the applicant shall update such information and provide it to Gem County and all applicable Emergency Responders.

D. A scaled site plan of the oil or gas well site showing the drilling pad, planned access roads, the approximate location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural resources. Included in this map shall be an area within the development site for vehicles to locate while gaining access to the oil or gas well site. **The only items that may be stored and vehicles that may be parked on the operation site are those that are necessary to the everyday operation of the well [or associated facilities] and do not constitute a fire hazard.**

E. A narrative and map describing the planned access routes to the well sites on public roads including the transportation and delivery of equipment, machinery, water, chemicals and other materials used in the siting, drilling, construction, maintenance and operation of the oil or gas well site.

#### **F. Preparedness, Prevention and Contingency Plan.**

1. **The operator shall submit to the county an emergency response plan, and no drilling or other production activity shall commence until such plan has been approved by the county. The operator shall also agree to keep the plan current with any additions, modifications, and/or amendments concerning all construction-related activities, oil and/or natural gas operations and production. Updated plans shall be submitted to the county within two (2) business days after any additions, modifications and/or amendments to said plan(s). A copy of the plan shall be kept on site. [A copy shall also be filed with the fire chief.] The emergency response plan shall, at a minimum, meet the requirements outlined below:**

a. **Prompt and effective response to emergencies regarding:**

(1) **Leaks or releases that can impact public health, safety and welfare;**

(2) **Fire, explosions, loss of well control or blow out at the well or in the vicinity of an oil or gas well; and**

(3) Natural disasters;

- b. Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency, including a detailed plan that should address contacting county officials responsible for implementing county policy regarding notification and evacuation of residents, where necessary. Immediate notification to the county shall be followed by a written summary incident report to the fire chief by 5:00 p.m. on the first business day after the incident.
- c. The availability of personnel, equipment, tools and materials as necessary at the scene of an emergency;
- d. Measures to be taken to reduce public exposure to injury and the probability of accidental death and dismemberment;
- e. Fire department and HAZMAT response times;
- f. Emergency shut down of an oil or gas well and related site;
- g. [A detailed evacuation plan addressing the evacuation strategy for any public or private school, hospital, senior living facility, assisted living and/or nursing care facility or daycare facility if any such facility will be located within one-half (1/2) mile (2,640 feet) of the edge of the proposed drill site or site of a related facility; and a detailed list of all homes or habitable structures to be notified in the event of an evacuation, including, without limitation, all persons residing within one-half (1/2) mile (2,640 feet) of the edge of the proposed drill site or site of a related facility;]
- h. A gas dispersion model and a risk assessment and a blast study conducted by an unaffiliated third party with a licensed engineer on staff. The study must include a Risk Minimization Statement, which is a statement by the operator and supporting documentation by an unaffiliated licensed third party outlining the potential radius of influence and nature of impact during a potential well blowout scenario. This should consider potential explosive blast concerns to life and property and larger air quality impact due to a catastrophic event at the planned drill site. Reference to instances seen by industry operating similar equipment as that proposed should be provided as well as any supportive modeling performed. Included in the Risk Minimization Statement should be specific steps, equipment or procedures employed by the operator to reduce the risk of catastrophic failure at the drill site.
- i. The safe restoration of service and operations following an emergency or incident; and

j. A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures. The operator shall give a written follow-up report to the fire chief within thirty (30) days after the incident. The follow-up report must be signed and dated by the operator or the operator's representative and must include:

- (1) The operator's name and location of the operation site;
- (2) The phone number, address, and e-mail address of the person with supervisory authority over the operation site;
- (3) A description of the incident, including the time, date, location, and cause of the event;
- (4) The duration of the incident (an incident ends when it no longer poses a danger to persons or property);
- (5) An explanation of how the incident was brought under control and remedied; and
- (6) A full description of any internal or external investigations or inquiries related to the incident, the findings of those investigations or inquiries, and the actions taken as a result of those findings.

2. A signed statement that the applicant will make the operation's Preparedness, Prevention and Contingency Plan available to Gem County and all Emergency Responders at least **thirty (30)** days prior to drilling of an oil or gas well and at least annually thereafter while activities are taking place at the oil or gas well site.
3. An appropriate orientation of the Preparedness, Prevention and Contingency Plan will be held for all applicable Emergency Responders as determined by affected Gem County agencies. The cost and expense of the in-person orientation shall be the sole responsibility of the applicant. If multiple wells/well pads are in the same area (covered by the same emergency response agencies), evidence from the appropriate emergency response agencies that an orientation was provided in the last 12 months shall be accepted. **If the fire chief makes a written request to the operator, the operator shall provide training and instruction to the fire department and other emergency responders about well safety, emergency management protocol, and all information specific to the well operations or emergency management activities at the operation site. The training must occur within thirty (30) days after the written request is made.**
4. **The operator shall conduct a thorough testing of its work site evacuation plan on an annual basis including performing "unplanned" evacuation scenarios, to**

ensure disaster preparedness. The operator shall provide seven (7) days written notice of the time and date of each test to the fire marshal. The fire marshal, or the fire marshal's designated representative, may observe the test and may require the inclusion of certain evacuation scenarios as a component of the test. The operator shall then certify in writing to the fire marshal on an annual basis that a test of the evacuation plan has been performed.

5. An annual certification and update of the emergency response plan shall be performed in accordance with Section 9.5-242 (r) of this Article.

- G. A narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts shall be provided. Such narrative shall include a Dust Control Plan and a reforestation/ revegetation plan.
- H. A signed statement confirming that the water quality test results required in Section 9.A and 9.C will be conducted and filed within the stated timeframes.
- I. A signed statement of intent to execute a Road Mitigation Agreement with the Gem County Road and Bridge Department prior to the start of either seismic or gas or oil well drilling operations. The Agreement must be signed by the operator prior to the beginning of seismic testing or to the issuance of a drilling operations permit. The Road Mitigation Agreement shall cover permitting for any desired use of county rights of way, requirements for road revisions such as for safe driveway approaches, and fees and notice regarding damages or obstructions to county roadways used. A mud shaker for truck traffic may be required for some access roads. [The operator may also be required to pay for traffic control during times of inordinate traffic disturbances that keep people from accessing their homes and businesses.]
- J. An agreement that all Material Safety Data Sheets (MSDS) for hazardous materials that will be located, stored, transported and/or used at the pad site will be provided to the Fire Chief, or the Chief's designated representative, and will be made available to the public upon request.
- K.A Hazardous Materials Management Plan complying with all requirements of the county, to be filed with the Development Services Department and with the fire chief. It shall be kept current with any additions, modifications, and amendments concerning all construction-related activities and oil and gas operations and production. The plan shall include HAZMAT and fire department response times. Updated hazardous materials plans shall be submitted within two (2) business days of any additions, modifications, and/or amendments.

- L. A Green Completion Plan that addresses equipment, techniques, practices and programs that will be implemented to reduce emissions and toxicities. This shall include a list of green compounds that will be employed in the drilling and/or fracturing process.
- M. A Noise Management Plan complying with all requirements of the county, prepared by a noise control engineer or other qualified person approved by the county for any equipment used in the drilling, completion or production of a well. The Noise Management Plan shall address the following:
1. Description of proposed facility and potential noise impacts, including maximum noise levels anticipated at the drill site. This analysis must include a comparison of the potential noise generation with the applicable noise standards;
  2. Identify all noise mitigation techniques that will be implemented on the site;
  3. Describe best management practices used to reduce the impact of noisier operations such as pipe deliveries, use of horns for communication, tripping and fracturing, and for mitigation of pure tone and low tone frequency noise.
- N. A copy of any Seismic Operation Permit required by the State must be submitted to the county by the operator upon receipt of it from IDL.
1. The seismic survey activity shall be conducted in accordance with all applicable county ordinances.
  2. No seismic activity shall be permitted on county-owned fee property without the express consent of, and pursuant to the conditions established by, the county.
  3. No seismic activity shall be permitted within county-owned rights of way or utility easements without first entering into a license agreement with the county, prepared by the County Public Works Department.??
- K. O. Indemnification Clause: Each permit issued by the Development Services Department shall include the following: "Operator does hereby expressly release and discharge all claims, demands, actions, judgments, and executions which it ever had, now has or may have, or claim to have, against the County and/or its departments, its agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the actions or inaction of the Operator or its agents, or caused by or arising out of, that sequence of events which occur from the Operator's or its agents actions or inactions. The Operator

shall fully defend, protect, indemnify, and hold harmless the County and/or its departments, agents, officers, servants, successors, assigns, sponsors, or volunteers, or employees from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees and expenses incurred in the defense of the County and or its servants, successors, assigns, sponsors, volunteers, or employees, including, without limitations, personal injuries and death in connection therewith which may be made or asserted by Operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the Operator under any permit.

L. P. Required Insurance Coverage:

1. The applicant shall submit with the application a certificate of comprehensive general liability insurance in the amount of no less than ~~three~~ **ten** million dollars (~~\$3~~**10**,000,000.00) per occurrence with an annual general aggregate coverage of **twenty-five** million dollars (**\$25**,000,000.00). **This coverage must include premises, operations, blowout or explosion, products, completed operations, blanket contractual liability, underground property damage, underground reservoir (or resources) damage, broad form property damage, independent contractor's protective liability and personal injury.** The policy shall be written by a company authorized to do business in the state of Idaho **and with at least an "A" rating issued by the A.M. Best Company.** The certificate shall require at least thirty (30) days' notice to the county prior to termination of coverage for any reason.
2. **Automobile liability insurance: Minimum combined single limit of twenty million dollars (\$20,000,000.00) per occurrence for bodily injury and property damage. Such coverage shall include owned, non-owned and hired vehicles.**
3. **Worker's compensation insurance: In addition to the minimum statutory requirements, coverage shall include employer's liability limits of at least one million dollars (\$1,000,000.00) for each accident, one million dollars (\$1,000,000.00) for each employee, and one million dollars (\$1,000,000.00) for occupational disease, and the insurer shall agree to waive rights of subrogation against the county, its departments agents, officers, servants, employees, sponsors and volunteers, any county inspector, and each of their respective heirs, personal representatives, successors and assigns, for any work performed for the county by the operator.**
- 2 4. **Excess (or umbrella) liability insurance: Minimum limit of ~~fifteen~~ **twenty-five** million dollars (~~\$1~~**25**,000,000.00) providing excess coverage for**

each of the perils insured by the preceding liability policies. Coverage must include explosion, collapse, underground blowout, cratering, sudden and accidental pollution, handling, removal, seepage, storage, testing, transportation, and disposal of materials. A copy of the declaration page and the endorsements of the policy must be attached to the certificate of insurance.

§ 5. Control of well insurance to provide coverage for the cost of regaining control of an out-of-control well, including the cost of re-drilling and clean-up of an incident:

- a. Minimum limit of ten million dollars (\$10,000,000.00) per occurrence, with a maximum deductible of two hundred fifty thousand dollars (\$250,000.00) per occurrence. Damage to property in the operator's care, custody and control with a sub-limit of five hundred thousand dollars (\$500,000.00) may be added.
- b. Policy shall cover the controlling of a well that is out of control, re-drilling or restoration expenses, and seepage and pollution damage.
- c. The operator shall file with the county an [irrevocable] cash bond in the amount of two hundred thousand dollars (\$200,000.00) covering each pad site before the issuance of the well permit for the well. This shall secure the obligations of the operator to:
  - (1) Comply with the road maintenance agreement and the insurance provisions set forth in this Article; and
  - (2) Pay fines and penalties imposed upon the operator by the county for any breach of the well permit, this Article, or the zoning ordinance if the operator fails to pay such fines or penalties within fifteen (15) days of the assessment of such fines or penalties; and
  - (3) Comply with the conditions of the applicable specific use permit; and
  - (4) Comply with the performance obligations of this Article.

4 6. Underground reservoir (or resources) damage coverage shall be on an occurrence basis, shall not be limited to sudden and accidental occurrences, shall not have a discovery or reporting limitation and shall not exclude damage to water tables, formation or strata.



5 7. Environmental impairment (or seepage and pollution) coverage, for handling, removal, seepage, storage, testing, transportation, and disposal of materials, shall be either included in the comprehensive general liability coverage or as a separate coverage. Such coverage shall not exclude damage to the lease site. If environmental impairment (or seepage and pollution) coverage is written on a "claims-made" basis, the policy must provide that any retroactive date applicable precedes the effective date of the issuance of the permit. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, oil and gas, waste material, or other irritants, contaminants or pollutants, and to gradual pollution. Coverage must include loss of use of property, cleanup cost, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims in connection with any loss arising from the operation site. Such policy shall provide for a minimum combined single limit coverage of ten ~~ten~~ twenty-five million dollars (~~\$10~~25,000,000.00) per occurrence. A discovery period for such peril shall be for the life of the well, which is up to the time when the well is abandoned and capped, plus fifteen (15) years.

8. Subcontractors' Insurance:

a. The operator shall require each subcontractor performing work on the operation site[, or transporting product through the County,] to obtain insurance that is appropriate for the services the subcontractor is performing. This shall be obtained from a company licensed to operate in Idaho and with at least an "A" rating by A.M. Best.

b. The subcontractor's insurance must name the operator as an additional insured.

c. The operator shall ensure that the subcontractor provides evidence of insurance to the county at least thirty (30) days prior to beginning work in the county.

d. Upon request, the operator shall provide copies of any subcontractor's insurance policies and endorsements at no cost to the county.

e. All subcontractors must have current insurance coverage for well operations to continue.

9. General provisions regarding insurance:

a. All policies shall be endorsed to read substantially as follows: "This policy will not be canceled or non-renewed without thirty (30) days



advanced written notice to the owner and the County of Gem, Idaho, except when this policy is being canceled for nonpayment of premium, in which case ten (10) days advance written notice to both such parties is required.”

b. Liability policies shall name as “additional insured” the county and the other indemnified parties as defined in this Article. Waivers of subrogation shall be provided in favor of all indemnified parties.

c. The operator shall present to the county copies of the pertinent portion of the insurance policies evidencing all coverage and endorsements required by this Section before the issuance of the well permit, and the acceptance by the county of a policy without the required limits and/or coverage shall not be deemed a waiver of these requirements. The county may, in its sole discretion, accept a certificate of insurance in lieu of a copy of the pertinent portion of the policy pending receipt of such document by the county. After the issuance of the well permit, the county may require the operator to provide a copy of the most current insurance coverage and endorsements for review at any time. An administration fee in the amount set in the county’s fee schedule will be charged to cover the cost of such review.

d. Claims-made policies shall not be accepted except for excess policies and environmental impairment (or seepage and pollution) policies.

e. Insurance coverage amounts set forth shall be reviewed periodically to ensure adequacy is maintained.

f. If an insurance policy or bonding is lost for any reason, the operator will still be liable for all the obligations to meet all the requirements of the ordinance. If the operator cannot regain a suitable policy within the allowed timeframe, its permits will be forfeited and legal proceedings against the operator instituted.

Q. If an application for a well, facility or pipeline permit is denied, nothing herein contained shall prevent a new application from being submitted to the county for the same well, facility or pipeline. A new application fee is not required if the application is denied without prejudice. Applications denied with prejudice must be accompanied by a new application fee upon reapplication.

R. If the application for a well, facility or pipeline permit is approved and a permit is issued, the operator shall file notice in the Gem County real property records indicating the physical location of the permitted site and any well/bore hole.

S. If the application for a well permit is approved, prior to a permit being issued, the operator shall deposit with the county the sum of fifty thousand dollars (\$50,000.00) for

each drill site containing an approved well permit. The funds shall be maintained by the county in an interest-bearing account from which the county may reimburse itself for the actual administrative expenses, consulting fees, contracting fees or the funding of necessary position(s). All interest earned shall be credited to the fund balance or refunded to the operator if and when the minimum balance is achieved. The county shall invoice and notify the operator, in writing, of any deduction from the application fund and within fifteen (15) days of receipt thereof the operator shall pay to the county for deposit into the fund the amount necessary to return the balance to fifty thousand dollars (\$50,000.00). The operator may appeal any charge assessed against the fund by filing an appeal as provided in Section ?? of this Article. If the operator fails to maintain the fund as required by this Section, such failure shall constitute a violation of this Article, and the county may suspend or revoke the well permit and may pursue all remedies provided in this Article for such violation. Upon completion of all drilling activities, final inspection and approval by the county of a restored site, and fulfillment by the operator of all of operator's obligations under this Article, the county shall return any remaining account balance to the operator or the operator's approved assign.

#### T. Changes to Application Information.

1. Except as otherwise provided in the Article, other Gem County ordinances, or a specific use permit, the operator or the operator's agent shall notify the county in writing of any changes to the following information within seven (7) days after the changes are made:
  - a. The name, address, or phone number of the operator; and
  - b. The name, address, or phone number of the person designated to receive notices from the county.
2. Except as otherwise provided in the Article, other Gem County ordinances, or a specific use permit, the operator or the operator's agent shall notify the county in writing within one (1) business day of any changes to the name, address, or 24-hour phone number of the person with supervisory authority over the gas or oil drilling or production site.
3. Except as otherwise provided in the Article, other Gem County ordinances, or an SUP, if the conditions on the operator site or the operations of the gas or oil drilling and product use change or any other updates or changes are made that are not reflected on a required plan, the operator or the operator's agent shall provide to the county an update to each affected plan within thirty (30) days of the change.
4. The operator shall submit a yearly written report to the county identifying any other changes to the information provided in the gas or oil well permit application not previously reported to the county.

## **Section 7. ISSUANCE OF PERMIT**

- A. Within ten (10) business days after receipt of a permit application, the Development Services Department will determine whether the application is complete and advise the applicant accordingly.
- B. If the application is complete and fulfills the requirements of this ordinance, the Development Services Department shall issue a permit within twenty-one (21) days following the date the complete application was submitted.
- C. If the application is incomplete or does not fulfill the requirements of this ordinance, the Development Services Department will notify the applicant of the missing and/or inadequate material and, upon receiving said material, shall issue the permit within twenty-one (21) days following the date the complete application was submitted.
- D. As a condition of permit approval, applicant shall provide all permits and plans from the Idaho Department of Lands and all other appropriate regulatory agencies within thirty (30) days of receipt of such permits and plans.
- E. No temporary or permanent housing for well site workers is permitted at the well site.

## **Section 8. SITE DESIGN AND INSTALLATION.**

- A. Access.
  - 1. Vehicular access to a natural gas well, oil well or well pad shall require a Gem County Road Mitigation Agreement prior to the start of operations at a well site. Operator shall provide a minimum **twenty-five thousand dollars (\$25,000.00) irrevocable** security bond identifying Gem County as beneficiary for the purpose of repairing any damage caused to the public right-of-way by Operator. **The department of public works shall determine the amount of the performance bond based upon, among other factors, the estimated cost to the county restoring the right-of-way.** Additionally, operator shall be responsible for repairing any damages caused by oil and gas operations or exploration. Operator shall be required to obtain a right-of-way permit from Gem County, or the applicable jurisdiction.
  - 2. Applicant shall obtain a Driveway Approach Permit from the Gem County Road and Bridge Department for any new driveway approaches off a public road. Gem County adopted professional standards (*Manual for Use of Public Right-of-Way Standards Approach Policy*) pertaining to minimum traffic sight distances for all access points shall be adhered to.

3. Access directly to State roads from a well site may require an Idaho Transportation Department (ITD) Approach Permit. Prior to initiating any work at a drill site, the Development Services Department shall be provided a copy of any required ITD Approach Permit.

4. No operator shall excavate or construct any lines for the conveyance of fuel, water, oil, oil and gas or petroleum liquids on, under or through the streets, alleys or other properties owned by the county without an easement or right of way license from the county, at a price to be agreed upon, and then only in strict compliance with this Article, other Gem County ordinances, and all requirements of the department of public works.

B. Height.

1. There shall be an exception to the height restrictions contained in Gem County Code 11-5-7 for the temporary placement of drilling rigs, drying tanks, pad drilling and other accessory uses necessary for the actual drilling or re-drilling of an oil or gas well. The duration of such exemption shall not exceed the actual time period of drilling or re-drilling of an oil or gas well or pad drilling.

2. Any drilling activities located within the Emmett Airport Height Restriction Zone shall comply with the Code of Federal Regulations, Title 14, Part 77 (Objects Affecting Navigable Airspace) and the Idaho Airport Zoning Act (IC§ 21-5). The operator of any well to be located within the flight path of an airport must obtain Federal Aviation Administration approval and must submit a fully executed and recorded aviation easement as part of the well permit application process. Other than the aforementioned regulations, nothing in this Ordinance shall be construed as prohibiting the construction, maintenance, or growth of anything to a height that is less than fifty (50) feet above the surface of the land.

C. Setbacks/Location.

1. Setback distances shall be required between the oil or gas wellhead, or any related facility such as a compressor station, and the following things, unless written permission is given by the owner of such an affected residence:

1,500 feet from residences and/or the 100-year flood plain

2,000 feet from public or private schools and/or hospitals

300 feet from the property line of any property that contains a residence, from any existing fresh-water drinking source, and from driveways and combustible structures

500 feet from any County-owned public park, playground, golf course, or cemetery, or from any designated archeological or historical site

3,000 feet from 1924 Black Canyon Dam (including for fracturing)  
[see 9-L. Storage Tanks]

Spacing is measured from the center of the proposed well bore at the surface of the ground in a straight line, without regard to intervening structures or objects, to the closest exterior point of the use, structure or feature creating the spacing requirement.

2. Recognizing that the specific location of equipment and facilities is an integral part of the oil and gas development, and as part of the planning process, operator shall locate its temporary and permanent operations, where prudent and possible, so as to minimize interference with Gem County residents' enjoyment of their property and future Gem County development activities as authorized by Gem County applicable ordinances. The county will require that obviously achievable solutions to problems created for residents be adopted by the operator.

3. Exception from the standards established in this subsection may be granted by the Development Services Department if written consent is obtained from all affected surface property owner(s). This section does not apply to habitable structures constructed after an oil and gas well permit has been approved.

4. No portion of any pit shall be located within the boundaries of a Special Flood Hazard Area (100-year floodplain), as mapped and regulated under Gem County Code Title 13, or within one thousand (1,000) feet of a perennial or intermittent stream as identified on Exhibit A.

5. No portion of any pit shall be located within one (1) mile of any state or federal highway (as determined by the Gem County Zoning Map), or residence.

6. No drilling or production of gas or oil or other drilling or production activity of any kind shall be permitted within environmentally sensitive areas, provided that wells may have a target location or bottom-hole location that is under an environmentally sensitive area if the well is drilled directionally from a location outside the environmentally sensitive area.

7. The operation site may not have a slope greater than ten (10) degrees unless the director determines that all equipment is located and activities occur on a portion of the site that does not have a slope greater than ten (10) degrees, there is adequate erosion control, and the slope of the operation site will not be a threat to public safety or welfare. Where necessary, berms that are at least one (1) foot high and two (2) feet wide, or equivalent erosion control devices, must be installed to prevent lot-to-lot drainage. Any damages to adjacent properties from sedimentation or erosion must be repaired immediately, at the expense of the operator.

#### D. Screening, and Fencing and Signage.

DRAFT Ordinance - ZC Recommendation

1. Security fencing shall be required at oil or gas well sites during the initial drilling, or re-drilling operations, unless manned 24-hour on-site supervision and security are provided.
2. Upon completion of drilling or re-drilling, security fencing shall be promptly [**? immediately?**] installed at the oil or gas well site to secure well heads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the oil or gas well site.
3. The Development Services Department may use its discretion with input from the surface owner and operator to determine what type of fencing requirements shall be enforced for well heads, storage tanks, separation facilities, and other mechanical and production equipment and structures on the oil or gas well site. The Development Services Department may also use its discretion to determine whether fencing slats or similar screening material is not required at each site.
4. Security fencing shall be at least **six (6)** feet in height equipped with lockable gates at every access point and have openings no less than **twelve (12)** feet wide. Additional lockable gates used to access oil and gas well sites by foot may be allowed **or required**, as necessary. **The operator shall keep all gates locked at all times that the operator or the operator's employees are not within the enclosure. A "Knox Padlock" or a "Knox Box with key" shall be provided to the fire chief to access the drill site, to be used only in case of an emergency.**
5. **Signs:**
  - a. Warning signs shall be placed on the fencing surrounding the oil or gas well site providing notice of the potential dangers and the contact information in case of an emergency. During drilling, hydraulic fracturing, and any other down hole activities, clearly visible warning signage must be posted on the pad site.
  - b. **The operator shall immediately install and continuously display a sign at the gate on the temporary and permanent site fencing erected pursuant to the requirements of this Section. Such sign shall be constructed of a durable material, maintained in good condition and, unless otherwise required by the Development Services Department, shall have a surface areas of not less than two (2) square feet, or more than four (4) square feet, and shall contain the following: well name and number, name of operator, address of property, the emergency 911 number, and telephone numbers of two (2) persons**

responsible for the well who may be contacted twenty-four (24) hours a day in case of an emergency.

- c. The operator shall post and continually maintain permanent weatherproof signs reading "Danger No Smoking Allowed" immediately upon completion of the drill site fencing at the entrance of each drill site and tank batter or in any other location approved or designated by the fire chief. Each sign shall include the emergency notification numbers of the fire department and the operator, with well and lease designations.
- d. The operator shall post and continuously maintain a "Muster Point" sign at the entrance of the drill site and notify the fire chief of its location. In the event of a fire or discovery of a fire, smoke or unauthorized release of flammable or hazardous materials on any property, the operator shall immediately report such condition to the fire department, and all capable persons on the drill site shall immediately report to the muster point. The operator shall instruct all persons who enter the drill site of this emergency procedure prior to their entrance onto the drill site.
- e. A sign shall be placed at the exit to the site that reads "ALL TRUCK TRAFFIC IS REQUIRED TO FOLLOW THE APPROVED TRANSPORTATION ROUTE. VIOLATORS SUBJECT TO \$2,000 FINE. TODOS LOS CAMIONES ESTAN OBLIGADOS A SEGUIR LAS RUTAS DE TRANSPORTE APROBADAS. LOS INFRACTORES ESTAN SUJETOS A MULTAS DE\$2,000." The sign lettering, size, and background shall meet county specifications. A directional arrow shall be placed immediately below the above sign and shall indicate the proper direction of travel for exiting truck traffic. The sign shall be placed in a location that is visible to exiting truck traffic and shall not be placed within any public right of way.
- f. No other signs shall be permitted at the site other than those required by this Section or other law.??

6. In construction of oil or gas well sites, the natural surroundings shall be considered and attempts made to preserve existing trees and other native vegetation. Existing trees and respective root systems should not be disturbed whenever possible. Re-forestation/re-vegetation of the well site will be provided by the owner/operator as required by rules governing oil and gas conservation (Idaho Administrative Procedures Act 20.07.02: 310.16 and 510).

#### E. Lighting.



Lighting at the oil or gas well site, either temporary or permanent, shall be shielded fixtures directed downward and inward toward the activity to the extent practicable, so as to minimize the glare on public roads and prevent direct illumination of adjacent properties. Federal Aviation Administration approval is also required where applicable.

F. Noise.

~~Gem County recognizes that oil and gas development is accompanied by inherent noise. However, the operator shall consider, to the extent possible, mitigation of noise resulting from the oil or gas well development.~~

1. No well shall be drilled, re-drilled or any equipment operated at any location within the county in such a manner so as to create any noise which causes the exterior noise level, when measured at the either the property line of the tract upon which the nearest habitable structure is located, or 100 feet from the nearest habitable structure (as measured to the closest exterior point of the habitable structure), whichever is closer to the well, to exceed the ambient noise level:

- a. By more than ten (10) decibels during fracturing operations; and
- b. By more than five (5) decibels during daytime hours or more than three (3) decibels during nighttime hours.
- c. An operator shall not drill or re-drill a well or operate any equipment in such a manner so as to create pure tones where one-third octave band sound-pressure level in the land with the tone exceeds the arithmetic average of the sound-pressure levels of two (2) contiguous one-third (1/3) octave bands by five (5) dB for center frequencies of 500 hertz and above, and by eight (8) dB for center frequencies between 160 and 400 hertz, and by fifteen (15) dB for center frequencies less than or equal to 125 hertz.
- d. An operator shall not drill or re-drill a well or operate any equipment in such a manner so as to create low-frequency outdoor noise levels that exceed the following decibel levels:

16 hertz octave band: 65 dB

32 hertz octave band: 65 dB

64 hertz octave band: 65 dB

2. The operator shall be responsible for establishing and reporting to the county the pre-drilling ambient noise level prior to the issuance of a well permit. Once the drilling is complete, the operator shall be required to establish a new ambient noise level prior to the installation of any new noise



generating equipment. [The sound level meter used in conducting noise evaluations shall meet the American National Standard Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide the equivalent data.] In lieu of the foregoing, the county may elect to perform the required noise testing and establish the ambient noise level.

3. Adjustments to the noise standards as set forth above in subsection d. of this Section may be permitted in accordance with the following:

Permitted Increase Duration of Increase	
dBA	Minutes*
5	15
10	5
15	1
20	Less than 1

\*Cumulative minutes during any one- (1-) hour period

4. The operator shall file a noise management plan which shall detail how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible ambient noise levels of this Article. The noise management plan must be approved by the director of Development Services and must comply with the following requirements:

- a. Identify operation noise impacts; and
- b. Provide documentation, if applicable, establishing the ambient noise level prior to and after the installation of the noise-generation equipment verifying compliance with this Section; and
- c. Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
  - (1) The location, type, nature and proximity of adjacent development; and
  - (2) Seasonal and prevailing weather patterns, including wind directions; and
  - (3) Vegetative cover on or adjacent to the site; and
  - (4) Topography; and

(5) Operation and site noise management measures which may include, but not be limited to use of critical grade mufflers on generators and motors; use of structural noise curtains, walls, or enclosures; and best management practices by limiting or eliminating noisier operations, such as tripping, deliveries of pipe, casing and heavy loads, use of horns for communication and operation of vehicle audible back-up alarms during nighttime hours.

Violation of the noise management plan shall be a violation of this Article.. A citation may be issued for the failure to immediately correct the violation upon notice of violation by the county or its appointed inspector.

5. To reduce noise and emissions, electric motors must be used during gas or oil production and on any gas gathering line/pipeline compression station. Electric motors shall be used during drilling unless the county finds that electric motors cannot be used.. To reduce noise, all compressors must be fully enclosed in a building. Unless required by state or federal laws or regulations, loudspeakers are permitted during daytime hours only[, except in the case of an emergency].

6. Acoustical blankets, sound walls, mufflers or other methods of noise mitigation may be used to ensure compliance with this subsection, in compliance with accepted industry standards and as approved by the county. Noise mitigation measures will be evaluated on a case-by-case basis. The county may require the operator to use noise reduction blankets that meet a standard of STC 30 or greater, if necessary.

## **Section 9. ONSITE OPERATIONS.**

### **A. Site Maintenance:**

1. The operator shall maintain all aspects of the site and structures thereon in good operating condition and good appearance. Organic solvents, such as trichloroethylene and carbon tetrachloride, shall not be used for cleaning any equipment, structure or component of the drilling rig, platform and/or associated equipment, tools or pipes. The operator shall keep the drill site and operation site clear of debris, pools of water or other liquids, contaminated soil, brush, high grass, weeds, combustible trash and other waste material within a radius of one hundred (100) feet around a pad site and other drill site or operation site equipment not located on the pad site.

2. Within thirty (30) days of the completion of the well, or completion of re-working a well the operator shall clean up and clear the area around the well of all material and equipment, fill all holes and excavations, and grade the land and return it to its original condition, including replanting of vegetation to match the surrounding area. No equipment shall be stored on the drilling or production site,

unless it is necessary to the everyday operation of the well. The fire chief shall determine whether any equipment or material on the site constitutes a fire hazard and must be moved or removed.

3. No refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises, provided that this shall not be deemed to exclude a conventional horizontal gas separator or dehydrator.

4. The operator shall provide and maintain in good working order all fire suppression and prevention equipment required by any applicable federal, state or local law, or the operator's Preparedness, Prevention and Contingency Plan, on each drill or tank site and at the operator's cost. The operator shall keep adequate foam fire suppressant equipment and supplies at each drill site, in addition to any fire suppressant equipment and supplies deemed necessary by the fire chief. All potential off-site permanent sources of ignition shall be set back a minimum distance of 300 feet from the surface well bore. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an emergency shut-off valve to the well distribution line. The fire department shall have access to the drill site to enable it to close the shut-off valve in an emergency. The operator shall paint these valves red and post signs to show they are shut-off valves. No-bleed pneumatic valves shall be used. The operator must keep a watchman or security personnel at all times onsite during the drilling or re-working of a well when other workmen are not on the premises.

5. The operator shall store all hazardous or non-hazardous chemicals and materials in such a manner as to prevent, contain and facilitate rapid remediation and clean-up of any accidental spill, leak or discharge. The operator shall maintain all current material safety data sheets (MSDS) for all chemicals including all hazardous and non-hazardous materials and chemicals on site and shall [within a week of a change] provide the county with updated copies to address additional chemicals that may have been introduced or removed or quantities that have been changed from the previously submitted MSDS. The operator shall comply with all applicable federal and state regulatory requirements for the proper labeling of containers. The operator shall take all appropriate pollution prevention actions including but not limited to raising chemical and materials and bulk storage (e.g., placing such materials on wooden pallets), installing and maintaining secondary containment systems, and providing adequate protection from stormwater and weather elements. The operator shall only use appropriate green compounds as approved by the county as part of the Green Completion Plan submitted with the operator's application. The site shall not be used for long-term storage of additives.

6. The operator shall install drip pans and other containment devices underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections and any other areas or structures that could potentially leak, discharge or spill hazardous liquids, semi-liquids or solid waste materials, including hazardous waste. A secondary containment system shall be installed around all separators, tank batteries, and other fluid containing equipment on the drill site.

B. Clean-up.

1. After the well has been completed, or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities, and repair all damage to public property caused by such operations within thirty (30) days.

2. After any spill, leak or malfunction, the operator shall remove or cause to be removed, to the satisfaction of the fire chief and any county inspector, all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The operator shall be subject to criminal citation and a fine of up to two thousand dollars (\$2,000.00) per violation for each day the violation is permitted to continue.

3. The operator shall paint and maintain all production equipment at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the director of planning and development services shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue and brown, or other neutral colors approved by the director of planning and development services. Notwithstanding the foregoing, the county may require the use of specific paint colors, on a case-by-case basis, as part of the applicable specific use permit.

4. In the event of the loss of control of any well, the operator shall immediately take all reasonable steps to regain control regardless of any other provision of this Article and shall notify the county administrator and fire chief as soon as practicable. If the administrator or fire marshal determines that danger to persons and property exists because of such loss of well control and that the operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the administrator or fire chief may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which they deem necessary to regain control of such well, and all costs incurred by the county shall be assessed against the operator, and the operator shall pay such costs

within ten (10) days of receiving an invoice from the county. In the event that the operator fails to pay such costs as provided herein, the county may charge such costs to any fund or bond posted by the operator to secure such costs, and shall also have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the county pursuant to such action of the administrator or fire chief in gaining control of said well.

C. Closed-Loop Mud Systems.

The operator shall install and use a closed-loop mud system instead of lined reserve pits.

D. Disposal Wells.

No saltwater or other type of disposal (injection) well shall be permitted within the county.

E. Drilling Fluids.

Low toxicity glycols, synthetic hydrocarbons, polymers and esters shall be substituted for conventional oil-based drilling fluids. Appropriate green fluids shall be used to the extent possible.

~~G.~~ F. Dust Control, Vibrations and Odors.

1. To prevent injury or nuisances to persons living and working in the area surrounding the operation site, the operator shall conduct drilling and production in manner that minimizes dust, vibrations, or odors, and in accordance with industry best practices for drilling and production of gas and other hydrocarbons.
2. The operator shall adopt proven technological improvements in industry standards for drilling and production of reducing dust, vibration, and odor.
3. If the county determines that the dust, vibrations, or odors related the drilling and production use present risk of injury or have become nuisance persons living and working in the area, the county shall require the operator to adopt reasonable methods for reducing the dust, vibrations, and odors. This may include a requirement to install a mud shaker with construction of access roads for vehicles exiting the site.
4. Operator shall control fugitive dust arising from operations. Operator shall follow dust control methods approved in the dust control plan. Brine water, sulfur water, water in mixture with any type of hydrocarbon, [or used motor oil] may not be used for dust suppression.

G. Fracturing/Acidizing/Workovers.

1. The fracturing process shall not be completed until a sales line is in place to service the well.
2. The operator shall use industry best practices in [handling,] recycling and reusing hydraulic fracturing fluids and flow-back water.
3. All current material safety data sheets (MSDS) detailing all the hazardous and non-hazardous materials and chemicals that will be located, stored, transported and/or used at the drill site for fracturing or acidizing shall be provided to the fire chief so that all emergency and medical personnel know what they are encountering. The MSDS shall indicate all types, quantities, volumes and concentration of all additives used in the drilling, completion and fracturing/acidizing (or similar programs).
4. Fresh-water fracture ponds:
  - a. Fresh-water fracture ponds are permitted on an operation site where setbacks for pits are met. Except for vector control additives, no other additives, oil and gas waste by-products, or salt water are permitted in a fresh-water fracture pond.
  - b. The fresh-water fracture pond must comply with any local, state or federal rules and regulations for proper drainage and must be maintained in a manner using best management practices to ensure the integrity of the pond.
  - c. The fresh-water fracture pond must permanently hold sufficient water to prevent a nuisance or vector control problem. The operator must comply with the vector control plan approved as part of the gas or oil well permit and all county ordinances, rules, and regulations regarding mosquito larvae within a fresh-water fracturing pond or elsewhere on the operation site.
  - d. The operator shall remove the fresh-water fracture pond from the operation site within five (5) years after the date the first gas or oil well is issued. The operator may apply for a one-time, two- (2-) year extension from the county:
    - (1) The request for the extension must be made to the county in writing at least six (6) months, [and not more than twelve (12) months], before the fifth year from the date the first gas or oil well permit was issued. The county must approve or deny the extension within forty-five (45) days after receiving the extension request.

(2) As a condition of approval of the extension, the county may require additional measures, as necessary, to minimize the impact of continued use of the fresh-water fracture pond, associated with the drilling activities, upon neighboring properties. The county must approve the extension if the fresh-water fracture pond will not adversely impact the neighboring properties or if additional measures required eliminate the reasons for a denial.

(3) If the county denies the request for an extension, the county must provide the operator with a written explanation for the reasons for denial within thirty (30) days. The operator has the right to appeal the denial in accordance with Section ?? of this Article.

e. The operator is responsible for restoration of the pond site, including:

(1) Removing the fresh-water fracture pond;

(2) Grading, leveling, and restoring the area to the same surface condition, as nearly as practicable, that existed before the fresh-water fracture pond was constructed; and

(3) Restoring the vegetation in accordance with the landscape design provided in the fresh-water fracture pond design plan.

5. Notice:

a. Supplemental drilling to deepen or directionally drill a well that has not been abandoned shall be conducted in accordance with the conditions of the applicable specific use permit and associated site plan and the well permit for the well. The operator shall provide the county with a copy of additional State permits that allow drilling to a deeper depth or directionally.

b. The operator intending either to workover or re-work a well using a drilling rig, or to fracture or acidize stimulate a well after initial completion, shall give written notice to the county at least twenty (20) days before the activities begin. The notice shall identify where the activities will be conducted and shall describe the activities in reasonable detail, including but not limited to the duration of the (daytime-only) activities. The notice must also provide the address and 24-hour phone number of the person conducting the activities.

c. The operator shall also provide written notification of the date that fracturing will begin and the estimated duration of fracturing to each

property owner and registered neighborhood association within fifteen hundred (1,500) feet of the boundary of the operation site, measured from the boundary in a straight line without regard to intervening structures or objects to the nearest neighboring property, as shown by the current tax roll. The written notification must be sent by U.S. Mail at least ten (10) days before fracturing begins.

- d. The operator shall add non-radioactive tracing or tagging additives into fracturing fluids, and the county shall be notified in writing of the formula identifying such additive(s). The written formula submitted by the operator shall be unique for each permitted drill site [so that effects on water sources can be most effectively traced].

#### H. Gas Emissions/Burning:

1. No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame. No open flaring is permitted. A vapor recovery system is required.
2. Exhaust from any internal combustion engine, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler or mufflers, or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and prevent the escape of obnoxious gases, fumes, or ignited carbon or soot.
3. A thermal oxidizer shall be required to destroy air pollutants at times deemed necessary by the county or its consultant.

#### I. Hydrogen Sulfide.

If a gas or oil field in the county is identified as a Hydrogen Sulfide (H<sub>2</sub>S) field or if a well is producing Hydrogen Sulfide gas, the operator shall immediately [stabilize and] cease operation of that well or facility.

#### J. Pipe dope.

Lead-free, biodegradable pipe dope shall be substituted for American Petroleum Institute specified pipe dope. Sealant shall be used around pipe threads to ensure and maintain the integrity of the seal.

#### K. Refining.

No refining process or any process for the extraction of hydrocarbon products shall be performed at a drill site or operation site, except that a horizontal



separator may be maintained for the separation of liquids from oil and gas. Any such separator may serve more than one well. All production equipment on an operation site shall be maintained in good working order at all times

L. Storage Tanks:

1. Gas well operations must use tanks for storing liquid hydrocarbons; [underground gas storage facilities are prohibited in Gem County.] Tanks must be portable, closed, and made of steel or fiberglass. If condensate or liquid hydrocarbons are stored, the county may require that tanks have a remote foam line. All tanks must have a vent line, flame and lightning arrestor, pressure-relief valve, and a level-control device. All tanks and permanent structures shall conform to American Petroleum Institute specifications unless other specifications are approved by the fire chief.
2. All tanks shall be set back pursuant to the standards of the state and the National Fire Protection Association, but in all cases, shall be at least one hundred (100) feet from any public right of way and adjacent property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank. The county may require installation of barriers and/or other protections for any tank located within one hundred and fifty (150) feet of a public right of way or other public property. Tanks must be set back at least three hundred (300) feet from any other fuel source not related to operator's operations.
3. Meters, storage tanks, separation facilities and other aboveground facilities shall not be placed in a floodway or within a 100-year floodplain.

M. Surface Casing:

The operator shall set surface casing in full compliance with the applicable rules and regulations of the appropriate state and local authorities for groundwater protection. The operator shall provide the county with seventy-two (72) hours notice prior to setting the well casing. If the casing fails a pressure test, isolation tools must be placed in the hole to locate the leak and corrective measures must be implemented to repair the failure and ensure the pressure integrity of the casing string before conducting subsequent operations.

N. Waste Disposal:

1. No person shall place, deposit or discharge or cause or permit to be placed, deposited or discharged any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substance, refuse, wastewater, brine or hazardous substance from any production operation or the contents of any container used in connection with any production operation in, into or upon any public right of

way, storm drain, ditch or sewer, sanitary drain or sewer, any body of water, or any private property in the county.

2. Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into an above-ground self-contained tank. All disposals must be in accordance with the rules of the state and any other applicable local or federal agency. [No drilling-related wastes, including filter materials, shall be disposed of at the Gem County transfer station or dumped on or applied to any roads, verges or fields (landfarming) within Gem County.] Unless otherwise directed by the state, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than one time every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.
3. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the State, this Article, and any other applicable ordinance of the county.
4. [Waste disposal records, including dates, volumes, composition (including any NORMs or TENORMs in production water), and destinations, and any State DEQ inspection reports, shall be made available to Gem County upon request.]
5. [The operator shall inform the County of any State DEQ special conditions placed on transport of any hazardous wastes.]

#### O. Water Conservation.

The county reserves the right to prohibit fracturing and completion of wells during months of water shortage, regardless of the source of the water used.

#### P. Well Completion.

1. Within seventy-two (72) hours of a well being completed, the operator shall notify the county in writing that the well has been completed.
2. The operator shall remove the drilling rig from the site within thirty (30) days of the completion of all drilling activities indicated on the applicable well permit.

#### H. Q. Work Hours.

Site development, other than **initial** drilling, shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday. Truck deliveries of equipment and materials associated with drilling, **drill stem testing, workovers, fracturing**, well servicing, site preparation and other

related work conducted on the site shall be limited to the above work hour restrictions except in cases of an emergency. The operator may request an exception to this section for good cause shown **in cases where neighbors will not be disturbed.**

## **Section 9 10. WATER QUALITY TESTING.**

### **A. Testing Standards.**

As a condition of permit approval and to comply with the water quality policies in the Gem Community Joint Comprehensive Plan (Natural Resources and Hazardous Areas chapter) and prior to any drilling activity, the applicant shall provide to the Development Services Department documentation of baseline water testing. For the protection of public health and safety, the water tests shall be performed within a fixed radius of one-quarter (1/4) mile of the well site on a minimum of three (3) domestic water sources down gradient from the proposed drill site, or up gradient if down gradient domestic water sources do not exist. If only one (1) domestic water source is found within the one-quarter (1/4) mile radius (either up gradient or down gradient), it shall be the only one required for testing. If no domestic water source is found within the one-quarter (1/4) mile radius, then the next nearest domestic water source will be tested. No water source beyond the one (1) mile radius shall be required to be tested.

An independent, licensed third party shall be used to collect water samples under the supervision of a professional engineer or professional geologist. The water quality test shall be analyzed by a laboratory certified by the Idaho Bureau of Laboratories or certified by any other state granted primacy by the Environmental Protection Agency to provide said certification.

The applicant shall notify the Development Services Department of the laboratory doing the domestic water source baseline testing. The applicant shall cause the laboratory to send via certified mail to the Development Services Department and the owners of any domestic water source tested copies of the baseline water quality test results within 30 days of obtaining results of the baseline water testing.

### **B. Water Test Parameters.**

Water tests shall be completed for the following:

#### **1. Field parameters:**

- a. Water temperature
  - b. pH
  - c. Specific conductivity
2. Specific conductivity and total dissolved solids.
  3. Major ions: Chloride, Fluoride, Sulfate, Nitrate, Silica, Alkalinity, Calcium, Sodium, Potassium, Magnesium
  4. Trace elements: Aluminum, Arsenic, Barium, Boron, Iron, Manganese, Selenium, Uranium, Iodine
  5. Radiochemical: Gross alpha/gross beta radioactivity, in addition to uranium
  6. Organics: BTEX (benzene, toluene, ethyl benzene and xylene), Methane, MTBE (Methyl tert-butyl ether)
  7. Heavy metals, including but not limited to: Cadmium, Chromium, Lead, Mercury, Strontium, Vanadium
  8. Compounds: Formaldehyde, Hydrofluoric acid, Nitrogen oxides
- C. Post-Drill Water Testing.

While the well is in production or shut-in, water tests shall be performed using the parameters in Section 9.B and the method in 9.A above on the same domestic water well(s) as originally tested at least every twelve (12) months within a one-quarter (1/4) mile radius and at least every twenty-four (24) months for those domestic water sources beyond a one-quarter (1/4) mile radius (up to one (1) mile). The applicant shall cause that copies of the post-drilling water quality test results shall be provided by the laboratory free of charge to owners of the domestic water source tested and to the Development Services Department within thirty (30) days.

## **Section 10 11. AIR QUALITY TESTING.**

### **A. Testing Standards.**

As a condition of permit approval and to comply with the air quality policies in the Gem Community Joint Comprehensive Plan (Natural Resources and Hazardous Areas chapter), the operator shall perform regular weekly air quality readings, on a set schedule, at each well head and, if located on-site, the separator,

dehydrator, condenser, compressor, flare and tank or product loading facility, and report the results of said readings to the Development Services Department on a monthly basis. Any air sample above State and federal allowable standards must be reported to the county immediately. All readings shall be taken downwind of emissions sources. Additional site-specific parameters for sampling, such as time of day and distance from source, will be determined by the county. At a minimum, the readings shall test for and monitor levels of benzene, methane, hydrogen sulfide, xylene, formaldehyde, toluene, ethyl benzene, nitrogen oxide, sulfur dioxide and carbon dioxide. Alteration to the monitoring approach to accommodate specific compounds may be considered by the county as appropriate. All costs related to air sampling and monitoring equipment operation shall be borne by the operator.

**B. Field Inspection Monitoring.**

At the county's discretion, periodic field inspection may be performed using calibrated monitoring equipment to confirm the drill site and other equipment/infrastructure is operating in conformance with the Leak Detection Compliance Plan elements. If a specific leak is identified, discrete sampling may also be performed by the county as necessary. The operator will be notified prior to performance of a Field Inspection to allow for an operator representative to be present if desired.

**C. Multiple Facilities – Cumulative/Aggregate Impacts.**

When the cumulative aggregate affects of all the monitored gas and oil well sites/facilities located within Gem County exceed the maximum discharge allowed for a single permitted stand-alone operation, the operator will be required to provide regular weekly air quality sampling, as in Section 10.A above, from the primary receptor area of Gem County (near the city of Emmett, location to be determined by the county). If there is more than one operator within the county, each shall share pro rata in the cost of this aggregate monitoring requirement.

**Section 12. SOIL QUALITY TESTING.**

**A. Soil Sampling Requirements.**

It shall be unlawful to contaminate any soil above regulatory thresholds, and fail to expeditiously remediate such contamination, at any drill site or site of related equipment/infrastructure in the county. Soil sampling shall be subject to the following requirements:

1. Upon application for an oil and gas well permit, baseline soil sampling shall be conducted by a representative of the county prior to the commencement of any drilling activities at the proposed drill site to establish a baseline study of site

conditions. A minimum of one (1) soil sample will be taken at the location of any proposed equipment to be utilized at the site to document existing conditions at the drill site (i.e., each well, above-ground storage tank, compressor, separator).

2. A licensed third-party consultant shall be utilized to collect and analyze all "pre-drilling" and "post-drilling" soil analyses. The cost of such fees and charges assessed by the third-party contractor shall be borne by the operator.

3. Soil samples will be collected and analyzed utilizing proper sampling and laboratory protocol set forth by the EPA. The results of the analyses will be addressed to the county and a copy of the report provided to the operator. The analyses will include the following analyses at a minimum: TPH, VOCs, SVOCs, Chloride, Barium, Chromium, and Ethylene Glycol.

4. Subsequent to the drilling of each well, periodic soil samples shall be taken as determined by the county during inspection events to document soil quality data at the drill site [and analyzed in accordance with this subsection].

5. When abandonment occurs, the county will collect "post-operation" samples when equipment is removed from the drill site to document that the final conditions are within regulatory requirements.

6. [All costs related to soil sampling and testing shall be borne by the operator.]

**B. Remediation.**

If it is found that the soil contains a prohibited amount (pursuant to state or federal law) of a hazardous substance, the operator shall remediate the location within thirty (30) days, and thereafter soil sampling shall be collected and analyzed at such locations on the drill site as are necessary to determine compliance.

**Section 13. GATHERING LINES, PIPELINES**

A. No operator shall excavate or construct any lines for the conveyance of fuel, water, oil, gas, or petroleum liquids on, under, or through the streets, alleys or other properties owned by the county without first obtaining all required approvals and permits.

**B. Flow Lines and Gathering Lines.**

1. Each operator shall place an identifying sign at each point where a flow line or gas gathering line crosses any public street or road.

2. Each operator shall also place a warning sign at each point where a line carrying H<sub>2</sub>S (Hydrogen Sulfide) gas crosses any public street or road.
3. No operator shall make any excavation for any purposes or construct any lines for conveyance of fuel, water, or minerals on, under, or through the streets and alleys of the county without express permission of the Director of Development Services, in writing, and then only in strict compliance with this code and any applicable ordinance of the county; provided, however, emergency repairs may be made without such permission when in the good faith opinion of the operator, the delay required to obtain written permission would involve a hazard to person or property.
4. The gathering lines and flow lines hereinafter installed in the corporate limits of the county, for the purpose of transporting oil, gas and/or water in conjunction with the operation of any well, tank, or tank battery or gathering system are hereby limited to a maximum operating gauge pressure of 250 psi unless otherwise specifically approved by the county. The location of any such gathering lines and flow lines, if not specified in the permit, must be specifically approved by the county.
5. Testing of lines:
  - a. The pipeline shall be tested prior to being placed in service. [The operator shall submit to the county a copy of the certified third-party pressure test results showing no leakage prior to using the lines.
  - b. The operator shall also submit to the county copies of all subsequent reports of PUC and third-party tests and inspections within one week of receipt of the results.
  - c. If any internal, PUC, or third-party test results show hazardous conditions of the line, the operator or the operator's agent shall immediately notify the county fire chief, and shall report to the fire chief when the hazardous conditions are rectified.
  - d. At a minimum, the operator shall cause the lines to be tested internally with "smart pig" (pipeline inspection gauge) technology every five (5) years to verify the integrity of all gathering lines.]
6. The companies responsible for any and all pipelines now existent or hereinafter installed within the corporate limits are hereby required to furnish the county an "as built" plot plan showing the location of all their facilities for permanent record with the county.



7. All pipelines within the county corporate limits, excepting the utility lines of the county and the distribution system of any gas company that holds a franchise with the county, designed or utilized to transport oil, gas, or water in connection with the production and transportation of oil and/or gas or for repressurizing operations, shall hereafter be installed with the minimum of cover or backfill specified by the then applicable American National Safety Institute code for such pipelines.
8. The county may approve a lesser cover or specify a greater cover or backfill in special cases when such variation is advisable and/or will not increase the degree of hazard.
9. The requirements for construction in public right-of-way must conform to such ordinances of the county regulating such construction.
10. The digging up, breaking, excavating, tunneling, undermining, breaking up, damaging of any street as herein defined, or leaving upon any street any earth or other material or obstruction, shall not be permitted unless such persons shall first have obtained written permission from the Development Services Department, provided, however, that emergency repairs may be made without such permission when in the good faith opinion of the operator the delay required to obtain the written permission would involve a hazard to a person or property. The operator shall be responsible for repair and reconstruction of all streets damaged and for all costs associated therewith.

#### **Section 14. ABANDONMENT OF WELLS AND RELATED INFRASTRUCTURE.**

- A. Within ninety (90) days after abandonment of a well or drill site, the operator shall plug the well in accordance with state standards, clean the site, clear it of all material and equipment, fill all holes and excavations, and grade the land and return it to its original condition including replanting of vegetation to match the surrounding area. The operator shall cut and remove all well casings to a depth of at least ten (10) feet below the surface. Additionally, the operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four (4) inches in diameter set in cement and extending at least four (4) feet above mean ground level. The operator shall weld, stamp or otherwise permanently engrave the operator's name, lease name and well number and location into the marker's metal. A plugged and abandonment marker may not be removed without the approval of the county.
- B. [No structure may be built within ten (10) feet of a vertical shaft of an abandoned well.] Structures may be built no closer to an abandoned well than is permitted pursuant to state law, including but not limited to the applicable rules and regulations of the Idaho Department of Lands.



C. Within sixty (60) days after abandonment of a gathering line or pipeline, the operator shall purge and plug the line in accordance with the rules and regulations of each governmental agency with jurisdiction over the activity, including but not limited to the Idaho Department of Lands, the Idaho Department of Environmental Quality and the EPA.

D. Abandonment of a drill site must be approved by the county, and approval requires completion of the following by the operator:

1. The derrick and all appurtenant equipment thereto shall be removed from the drill site; and
2. All equipment, materials and other surface installations shall be removed from the drill site; and
3. All concrete foundations, piping, wood, guy anchors and other foreign materials, regardless of depth, except surface casing, shall be removed from the site; and
4. All holes and depressions shall be filled with clean, compactable soil; and
5. All waste, refuse or waste material shall be removed from the drill site; and
6. All other requirements of this Article have been met, including but not limited to restoration of the drill site; and
7. Conduct a phase II environmental site assessment and submit the results of the assessment to the county engineer. The county engineer shall determine whether environmental remediation work must be performed by the operator prior to abandonment of the drill site.

E. The operator shall request a final inspection of a well intended to be abandoned and furnish the following information to the county:

1. A copy of the form(s) to be submitted to the Idaho Department of Lands, on the same date these forms are submitted to IDL; and
2. A notice of intention to abandon under the provisions of this Section and stating the date such work will be commenced. Abandonment may then be commenced as permitted by IDL and shall take no longer than forty-five (45) days once commenced.

F. [The operator shall provide the county a copy of the Report of Abandonment submitted to the Idaho Department of Lands after abandonment is complete.]

G. All abandoned wells or drill sites shall meet the most current abandonment requirements of the Idaho Department of Lands and this Article prior to the issuance of

any building permit for development of the property.

H. The director of Development Services shall indicate the location of each plugged and abandoned well on the county's land use map.

### **Section 15. REMEDIES OF THE COUNTY.**

It shall be a criminal violation of this Article for a person to knowingly make a misrepresentation of any information to be reported pursuant to this Article, or to fail to comply with any provision of this Article. It shall also be a violation of this Article if the person makes such misrepresentation as a result of failure to exercise such due diligence of investigation or inquiry, as would a reasonably prudent gas or oil well operator or pipeline operator conducting business in the jurisdiction of the county. The county shall be entitled to injunctive relief or any other appropriate relief in a court of appropriate jurisdiction to prevent violation of or to compel compliance with the provisions of this Article.

A. If an operator or the operator's officers, employees, agents, contractors, subcontractors or representatives fails to comply with the conditions of the applicable specific use permit and associated site plan or any requirement of a well or pipeline permit (including any requirement incorporated by reference as part of the permit), or any applicable provisions of this Article or any other Gem County ordinances, the county shall endeavor to give written notice to the operator specifying the nature of the alleged failure and giving the operator a specified time to cure, taking into consideration the nature and extent of the alleged failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community; provided, however, that if circumstances warrant proceeding without notice, no notice will be sent. In any case, failure to give such notice shall not prohibit the county from pursuing any available remedy.

B. If the operator does not cure the alleged failure within the time specified by the county, the county may notify the Idaho Department of Lands and request that the department of lands take appropriate action.?? In addition, the county may pursue all other remedies allowed by law, including but not limited to any or all of the following:

1. The administrator may suspend the well or pipeline permit until the alleged failure is cured; and
2. The administrator may revoke the well or pipeline permit if the operator fails to initiate and diligently pursue a cure; and
3. The administrator may seek recourse against the security required by provisions of this Article; and
4. A criminal citation may be issued for violation of the specific use permit, this

Article or any other ordinance or order of the county.

C. A person who knowingly violates any provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is continued. Each first offense is punishable by a fine of two thousand dollars (\$2,000.00). This fine shall be doubled for the second conviction of the same offense within any 24-month period. [A fourth offense will result in the automatic suspension or revocation, at the discretion of the Development Services Department, of all the operator's permits in the county.]

D. The operator may appeal a decision to suspend or revoke the well or pipeline permit or other remedial order or action of the county taken pursuant to this Section (other than a criminal citation) pursuant to the following Section.

**Section 16. APPEAL PROCEDURE.** [move to become Section 8?]

A. An operator, pipeline operator or other person adversely affected by a decision of the director of planning and development services or the administrator under this Article may appeal such decision by filing written notice of such appeal to both the director of planning and development services and/or the administrator within ten (10) business days of notice of such adverse decision. The notice of appeal must state the appellant's desire to appeal, the ruling from which the appellant desires to appeal, and the relief or ruling sought. Any such appeal shall be to the Gem County Board of County Commissioners.?? The board of commissioners, by the affirmative vote of a majority of the members then present, may affirm, reverse or modify the decision of the director or administrator. The decision of the board of commissioners concerning an appeal under this Article shall be final. The decision being appealed shall be suspended pending such appeal, unless the director or administrator determines that such suspension endangers the public health and safety, in which case the filing of a notice of appeal shall not act to suspend the decision of the director or administrator.

B. Any appeal shall be governed by the following rules and procedures:

1. Such appeal shall be set as an item on the regular Gem County Board of County Commissioners agenda.

2. The appellant shall bear the burden of persuasion that the ruling being appealed is in error and shall bear the burden of proof on such matter.

3. No formal testimony or swearing of witnesses shall be required, and the board of commissioners may consider facts or evidence as the board determines is appropriate. The director or administrator shall present the facts and evidence relied upon by the director or administrator and the reasons for the ruling; the appellant shall then have an opportunity to present the facts and evidence relied upon by the appellant; the board of commissioners shall then consider any facts or evidence from the public or other interested persons. The board of

commissioners may ask questions of the director, administrator, appellant and any other interested persons as the board determines is appropriate. The board of commissioners may limit the time for any presentation in its sole discretion.

4. Upon the conclusion of the hearing, the board of commissioners shall then render its decision. Any appeal shall be determined by majority vote of the members of the board then present.

5. Written documents or evidence which any party wishes to submit must be filed with the director and administrator and submitted to the board of commissioners no less than three (3) business days prior to the appeal hearing.

C. No appeal for the same or related issue on the same piece of property shall be allowed from a previous ruling on any appeal absent a material change of circumstances. If the appellant asserts such a change of circumstances and seeks rehearing of an appeal, such appeal need not be considered unless the applicant presents in writing evidence establishing such change of circumstances. Any such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.

#### **Section 17. ENFORCEMENT, RIGHT OF ENTRY.**

The administrator, fire chief and any appointed county inspector are authorized and directed to enforce this Article, the terms and conditions of any approved specific use permit and the provisions of any well permit. Whenever necessary to enforce the foregoing, or whenever there is reasonable cause to believe there has been a violation of any of the foregoing, the administrator, fire chief and/or the inspector may enter upon any property covered by this Article at any reasonable time to inspect or perform any duty or requirement imposed by this Article. If entry is refused, the county shall have recourse to pursue every remedy provided by law and equity to gain entry.

**Section 11 18.** This Ordinance may be published in summary form allowed by Idaho Code.

**Section 12 19.** This Ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho.

**Section 13 20.** Any ordinances or resolutions which are in conflict with this Ordinance are hereby repealed, but only insofar as the conflict exists.

**Section 14 21.** If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall be applied to effectuate the purposes of this Ordinance.