

Oil and Gas Drilling: A local government's considerations and deliberations

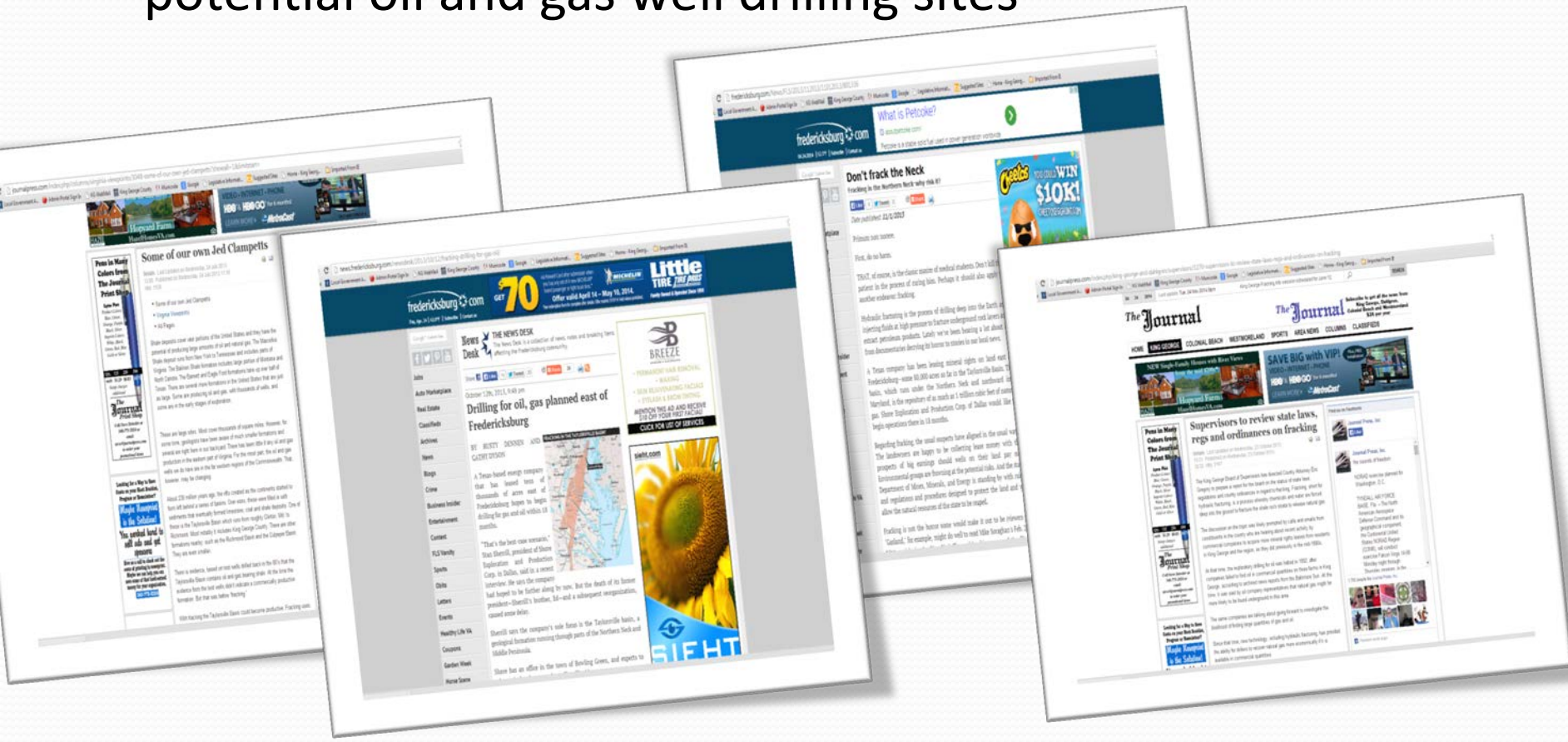


Presented by:
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* Any views, comments or statements made or expressed by Eric Gregory are his own and do not express the views or policies of King George County or the Board of Supervisors of King George County.

Timeline

- **Summer/Fall 2013:** News stories begin to appear about “fracking” and Shore Exploration acquiring leases for potential oil and gas well drilling sites



Context, Comp Plan, Conflict...

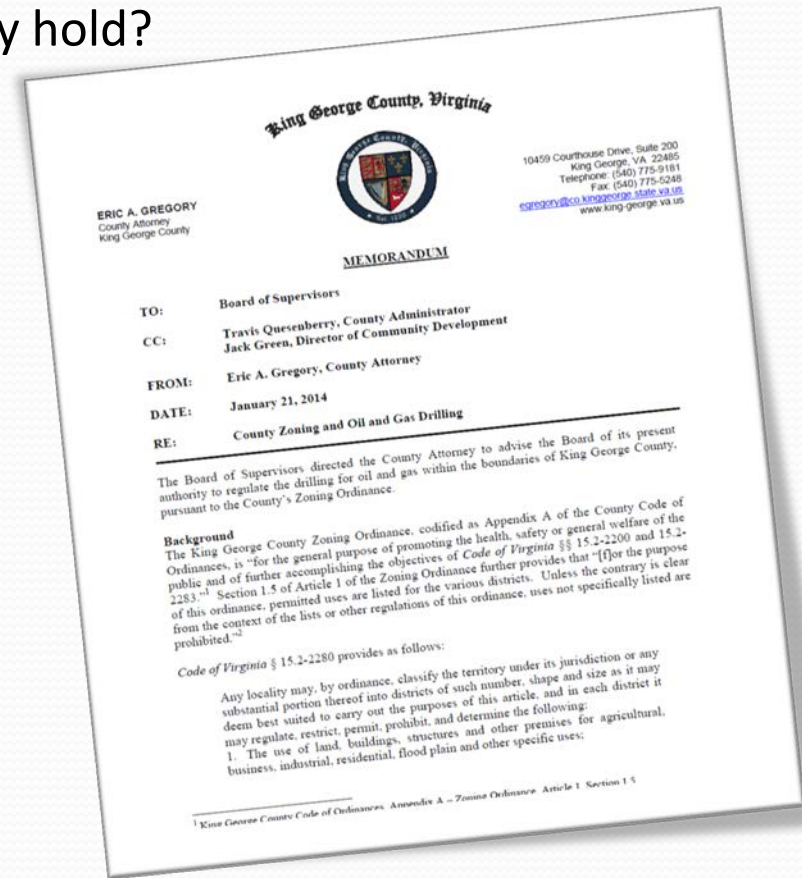
- **Context:** Refer to King George County's Comprehensive Plan, adopted April 16, 2013...
- **Comp Plan Goals:**
 - Preserve the Rural Characteristics of King George County
 - Promote a healthy, diversified economy in the County
 - Encourage protection of critical environmental resources and maintain renewable natural resources for future generations
 - Seek to manage the through-traffic flow on principal roads in such a manner as to minimize the impact on local-traffic flow
 - Chesapeake Bay Preservation Act and Resource Protection Areas, Va. Code § 62.1-44.15:72
 - County part of Groundwater Management Area
- **Conflict:** Seeking to reconcile or balance community concerns, environmental protection, economic development goals, private property interests, public interests, federal, state, and local legal and regulatory requirements...



- **October 2013:** Board of Supervisors begins information gathering/fact-finding; directs County Attorney to research issues and provide analysis of state law and local authority pertaining to the regulation of oil and gas drilling in Virginia and King George County.
- **January 21, 2014:** County Attorney provides memorandum
- **Key Questions:** What is the interplay of state and local regulation of gas and oil drilling? What authority does the County hold?

KEY PROVISIONS REFERENCED:

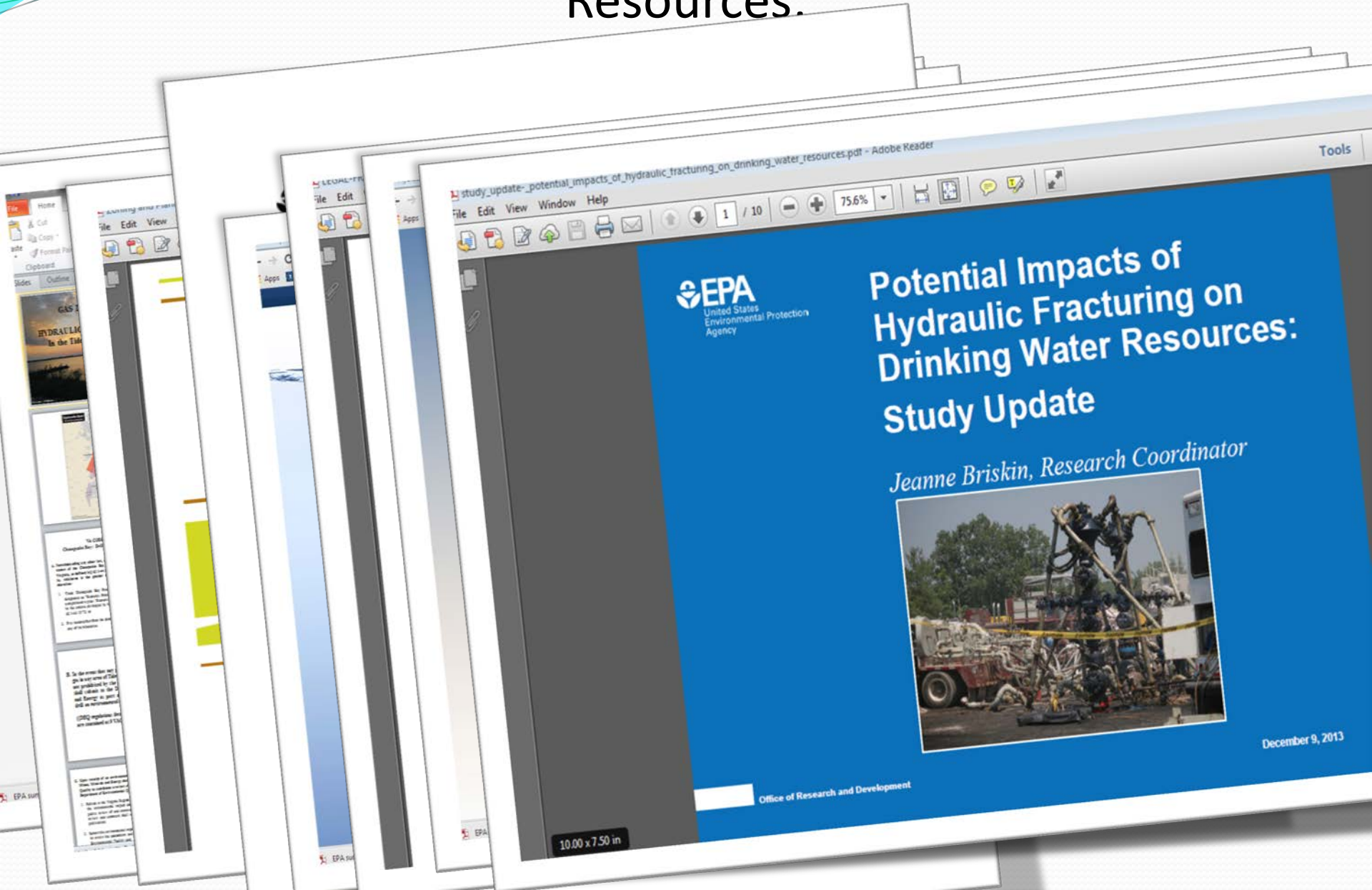
- *Code of Virginia* § 15.2-2280. Zoning ordinances generally.
- The Virginia Gas and Oil Act, *Code of Virginia* §§ 45.1-361.1 through 45.1-361.44
- King George County Code of Ordinances, Appendix A, Zoning Ordinance, § 4.11.
Exploratory drilling for oil and/or natural gas



Research includes:

- Consulting with state agencies (DMME, DEQ)
- Consulting with other Virginia localities that have experience with gas/oil drilling and/or have faced similar issues (Rockingham County, Washington County)
- Fielding input from non-governmental organizations (Southern Environmental Law Center, www.fracfocus.org) and citizens
- Environmental Protection Agency information/studies

Resources:



- **February 4, 2014:** DMME provides presentations concerning oil and gas drilling, geology, and agency oversight

Gas and Oil Well Drilling
Requirements for the Tidewater Area

RICK COOPER
DIRECTOR OF THE DIVISION OF GAS AND OIL
VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY



Natural Gas Resources of the
Taylorsville Mesozoic Basin

DAVID SPEARS
STATE GEOLOGIST
VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY



- Board of Supervisors directs County staff to post information to County web site to provide information to citizens:

The screenshot shows a web browser window displaying the King George County website. The address bar shows the URL: www.king-george.va.us/news-and-announcements/announcements/taylorsville-basin---bos-meeting-powerpoint-slides-feb-4-2014.php. The website header features the King George County logo and navigation menu items: HOME, ABOUT KGC, COUNTY OFFICES, CALENDAR, BOARDS & COMMISSIONS, ECONOMIC DEVELOPMENT, and CONTACT US. The main content area is titled "Taylorsville Basin - BOS Meeting - Feb 4, 2014" and includes sections for "BOS Meeting PowerPoint Presentations - Feb 4, 2014", "Pertinent Documents and Presentations", and "Educational Links". A sidebar on the right contains a "News and Announcements" menu with sub-items like Residents, Business, and Government.

Taylorsville Basin - BOS Meeting - Feb 4, 2014

BOS Meeting PowerPoint Presentations - Feb 4, 2014:

- Taylorsville Basin Presentation - BOS Meeting Feb 4, 2014
- Taylorsville Gas & Water Presentation - BOS Meeting Feb 4, 2014

Pertinent Documents and Presentations:

- Fracking 101 - 1st Half Presentation - Workshop Feb 2014
- Fracking 101 - 2nd Half Presentation - Workshop Feb 2014
- Gas Drilling & Hydraulic Fracturing in the Tidewater Region Workshop - Jan 29, 2014
- Draft Ordinance - Natural Gas - Latest Version Nov 25, 2013
- Natural Gas Overlay Map with Drilling Unit

Educational Links:

Frac Focus website: <http://fracfocus.org/>

Virginia Regulatory Town Hall - Department of Mines, Minerals and Energy's Gas and Oil Regulation page: <http://www.townhall.virginia.gov/L/ViewChapter.cfm?chapterid=1292>

Virginia Regulatory Town Hall - Department of Environmental Quality's Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operation in Tidewater Virginia page: <http://www.townhall.virginia.gov/L/ViewChapter.cfm?chapterid=1172>

Senator Richard Stuart's Senate Bill 48 regarding Eastern Virginia Groundwater Management Area; prohibition on oil and gas drilling: <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=141&typ=bi&val=sb48>

Home > About KGC > News and Announcements > Taylorsville Basin - BOS Meeting - Feb 4, 2014

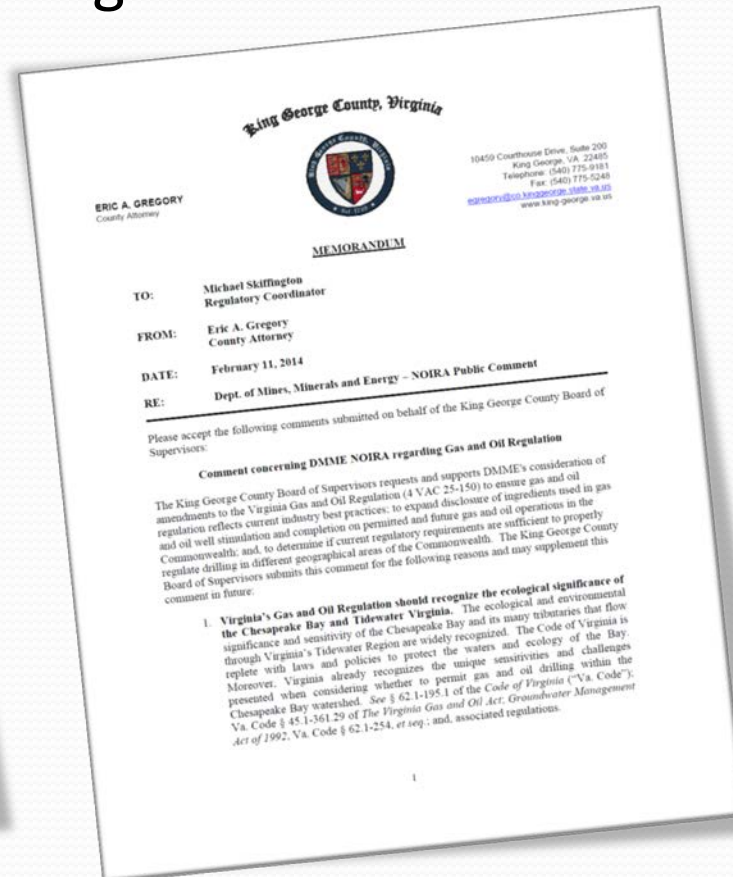
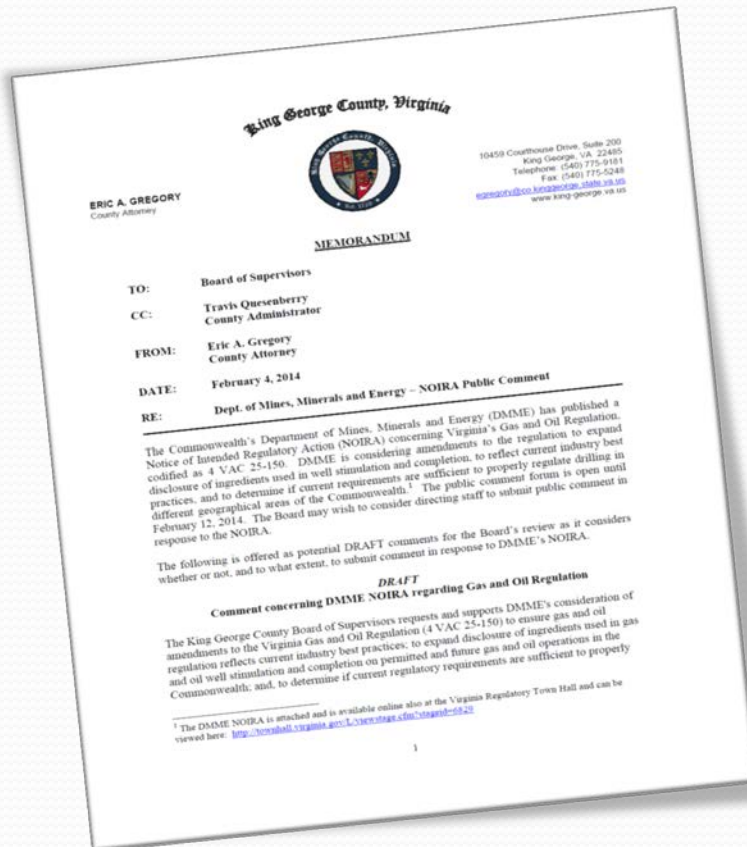
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<http://www.king-george.va.us/news-and-announcements/announcements/taylorsville-basin---bos-meeting-powerpoint-slides-feb-4-2014.php>

Information provided on County web site includes:

- DMME Power Point Presentations from February 4, 2014
- “Fracking 101” Presentations from community workshop
- Power Point Presentation by Southern Environmental Law Center
- Draft Ordinance under consideration by Washington County, Virginia
- Links to general information about oil and gas drilling and hydraulic fracturing:
 - www.fracfocus.org
 - Virginia Regulatory Townhall – DMME information

- February 4 and 11, 2014:** Board of Supervisors authorizes and County Attorney submits comments in response to DMME's Notice of Intended Regulatory Action regarding Gas and Oil Regulation



Key points submitted in response to DMME NOIRA:

1. Virginia's Gas and Oil Regulation should recognize the ecological significance of the Chesapeake Bay and Tidewater Virginia.
2. The Regulation should be amended to require disclosure of ingredients used in gas and oil well stimulation and completion.
3. The Regulation should be amended to reflect current industry best practices.
4. Current regulatory requirements are not tailored to properly regulate drilling in different geographical (geological) areas of the Commonwealth.
5. The Regulation should be amended to require permit applicants to certify compliance with all pertinent local ordinances.
6. Permit applications should not be considered complete until the DMME completes its review and amendments deemed necessary have been approved and become effective.

- Board of Supervisors has solicited a review and study of the topic of oil and gas drilling and hydraulic fracturing by the **George Washington Regional Commission** (Virginia Planning District 16), whose members include:
 - Counties of King George, Caroline, Spotsylvania, and Stafford, and the City of Fredericksburg
 - GWRC has procured the study, which will be forthcoming
 - A model ordinance for GWRC localities may be a good option to achieve consistency among the localities
- **June 12, 2014:** Board of Supervisors to host community meeting concerning Oil and Gas Drilling, featuring invited representatives from DMME, DEQ, Southern Environmental Law Center, Shore Exploration, and Al Pollard
 - King George County may partner with GWRC and member localities to make this a regional program

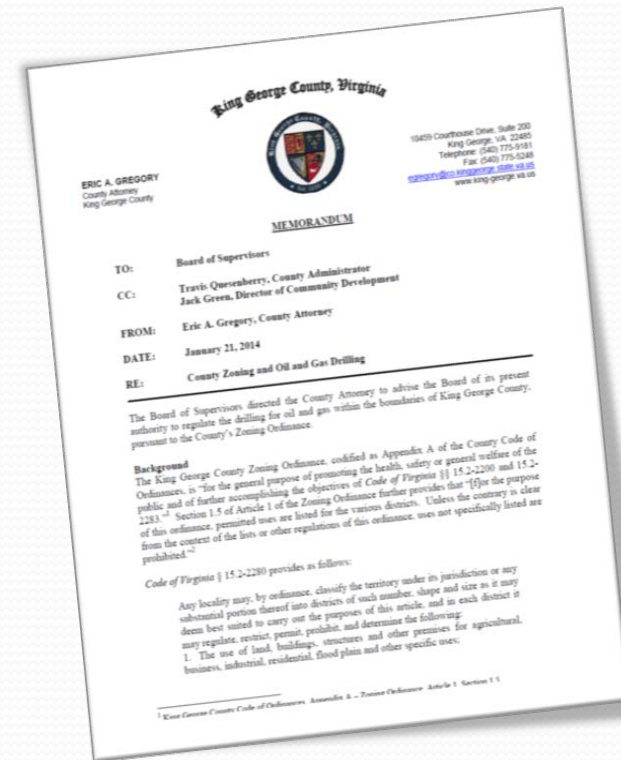
Key Questions:

- What is the interplay of state and local regulation of gas and oil drilling?
- What authority does the County hold to regulate gas and oil drilling?

1. Va. Code § 15.2-2280 provides that:

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it **may regulate, restrict, permit, prohibit, and determine** the following:

1. The use of land, buildings, structures and other premises for agricultural, business, **industrial**, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. ...
4. **The excavation or mining of soil or other natural resources.**



Key Questions (cont'd):

2. Virginia Gas and Oil Act recognizes and provides for local regulation pursuant to local zoning ordinances:

§ 45.1-361.5. Exclusivity of regulation and enforcement.

No county, city, town or other political subdivision of the Commonwealth shall impose any condition, or require any other local *license, permit, fee or bond to perform any gas, oil, or geophysical operations which varies from or is in addition to the requirements of this chapter.* However, ***no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of other state agencies, local land-use ordinances, regulations of general purpose, or ...*** [references to certain tax laws]

See also Resource Conservation Management, Inc. v. Board of Supervisors, 238 Va. 15 (1989) (Supreme Court of Virginia affirmed local government's authority to regulate solid waste landfill via its zoning ordinance in conjunction with the Virginia Waste Management Act.); *but see also, Blanton v. Amelia County*, 261 Va. 55 (2001) (Supreme Court of Virginia overturns local prohibition of biosolids application via general and zoning ordinance in context of state legislative permitting program.)

3. In King George County, those uses of property not explicitly permitted by the Zoning Ordinance are prohibited.

4. King George County Zoning Ordinance, § 4.11. Exploratory drilling for oil and/or natural gas.

- a. County ordinance allows for exploratory drilling for oil and/or natural gas
- b. Special exception permit is required
- c. Under a special exception permit, the County may impose certain restrictions to address impacts associated with the use, such as heavy truck traffic, noise, dust, etc.

Key Questions (cont'd):

5. What does the King George County Ordinance allow?*

Sec. 4.11. Exploratory drilling for oil and/or natural gas.

4.11.1. Intent. The purpose and intent of this section is to set forth specific regulations for those oil and/or gas facilities designated as uses permitted by **special exception** in the applicable zoning districts [**A-1 and A-2 Agricultural Districts only**] within this ordinance.

4.11.2. Plans required. The application for a **special exception permit** shall include a copy of the following:

1. A site plan in accordance with the requirements of article 7.
2. Plan showing the method of ingress and egress to the proposed drill site.
3. Plan of the drill site when the rig is in place.
4. Application for temporary housing indicating the number of trailers to be on-site and the proposed method of water and sewer.
5. The plan for proposed well in the event the exploratory drilling is unsuccessful.
6. An **Erosion and Sediment Control Plan** in accordance with Erosion and Sediment Control Ordinance of King George County, Virginia.
7. A copy of the **Environmental Impact Assessment and the Operations Plan to be submitted to the Virginia Department of Mines, Minerals and Energy.**

4.11.3. Development standards.

1. Development of the well site shall be in conformance with article 8, **Chesapeake Bay Preservation Area Overlay District**, of the King George County Zoning Ordinance.
2. No exploratory oil or gas well bore shall be permitted within 500 feet of either **the resource protection area boundary or an occupied residence.**
3. The **drill site shall not exceed four acres**, but may contain any number of boreholes.
4. Grading and alteration of natural drainage shall be minimized.
5. If the exploratory drilling program is unsuccessful the well site shall be abandoned within six months.

4.11.4. Proof of ownership. Each application for a permit to drill for oil and/or natural gas shall be accompanied by a statement of proof of ownership of the oil and/or natural gas mineral rights for the entire site. This proof may take the form of signed contracts, leases, affidavits, or other documents.

(Ord. of 2-19-2008)

*** Ordinance does not address compression stations or pipelines.**

Key Questions (cont'd):

6. Is local regulation of gas and oil drilling via the County Zoning Ordinance preempted by state law?

- Not in my view, so long as it does not conflict with or attempt to supersede the Virginia Gas and Oil Act.
- A local ordinance may not encroach upon the regulation of oil or gas drilling and extraction activity or the means and methods of gas or oil drilling; that is the province of DMME.
- The local ordinance should be limited to the context of zoning and land use/development and to addresses and protect the local public health, safety, and welfare from associated adverse impacts.
- Local zoning ordinances may address traffic, noise, dust, runoff, minimum lot size, setback requirements, well-pad footprints/dimensions, site plans, fencing/screening, etc. to minimize adverse impacts.
- A local ordinance may provide for baseline environmental assessments/testing of surface water and groundwater within a defined zone surrounding a well site.
- Special exception permit conditions must be related to the use of the land and tailored to address the potential or perceived impacts associated with the use (traffic, noise, dust, etc.)
- A local ordinance may also address emergency preparedness and incident mitigation.

Key Questions (cont'd):

7. Does the Energy Policy of the Commonwealth trump local regulation via zoning ordinance?

- The purpose of the Energy Policy of the Commonwealth is **“to provide guidance** to the agencies and **political subdivisions of the Commonwealth** in taking discretionary action with regard to energy issues, and [it] shall not be construed to amend, repeal, or override any contrary provision of applicable law”, **nor shall it “create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.”** Va. Code § 67-100 through § 67-103. (Emphasis added.)
- While the Energy Policy provides important guidance, it is non-binding and does not preclude or hinder local zoning regulation, in my view.

Where are we now? Next steps?

County Attorney Recommendation:

Refer matter to County Planning Commission for review of current ordinance, further study, and recommendation.

- County continues exploration of issues and fact-finding
- Research, information gathering, town hall meetings
- George Washington Regional Planning Commission Study
- Planning Commission review and consideration
- Zoning ordinance amendments? Model ordinance for regional localities?
- Pending DMME and DEQ (?) regulatory amendments, EPA guidance/regulations? EPA study re: hydraulic fracturing due out in late 2014.
- No permit applications filed with DMME
- **Board of Supervisors is taking a very balanced, deliberative approach as it studies the issues, seeks input and guidance from county staff, state agencies, regulatory experts, industry representatives, the public, and advisory bodies**



Community Meeting

June 12, 2014 at 7:00 p.m.

King George County High School Auditorium

Concerning Oil and Gas Drilling and featuring invited representatives:

Department of Mines, Minerals and Energy

Department of Environmental Quality

Southern Environmental Law Center

Shore Oil and Exploration

Al Pollard

* GWRC may partner with member localities to make this a regional program



QUESTIONS?

THANK YOU!

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