



DEPARTMENT OF NATURAL RESOURCES
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December 15, 2011

Douglas County Commissioners
100 Third Street
Castle Rock, CO 80104

Dear Commissioners:

The Colorado Oil & Gas Conservation Commission (COGCC) has set forth below our initial comments on your proposed oil and gas regulations.

Background

For sixty years, the COGCC has been the primary state agency charged with regulating oil and gas development in the State of Colorado. Under the Colorado Oil and Gas Conservation Act, the COGCC is charged with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment and wildlife resources. Colo. Rev. Stat. §34-60-102(1)(a)(I). In implementing this authority, the COGCC has worked productively with local governments across Colorado.

To this end, our regulations provide local governments with special rights to notice of, information on, and comment regarding various matters and to initiate or participate in planning processes, hearings, and public forums. For example, we seek to work with local governments to ensure that our permitting decisions consider and address local concerns through our local government designee program. COGCC Rules 214 (Local Governmental Designees), 303 (Drilling Permit Applications and Location Assessments), 305 (Notice, Comment, and Approval of Applications), & 306 (Consultation on Applications). Through that process, local governments can submit comments regarding, and recommend conditions on, permit applications, consult with COGCC staff and applicants, and seek input from the Colorado Department of Public Health and Environment in appropriate circumstances. If a local government disagrees with our permitting decision, then it is entitled to a hearing before our commission. *Id.* at Rule 503 (Hearing Applications). Other regulations that vest local governments with special rights include Rules 205 (Access to Records), 216 (Comprehensive Drillings Plans), 312 (Change of Operator), 333 (Seismic Operations), 508 (Local Public Forums), 509 (Protests and Interventions), 513 (Geographic Area Plans), 607 (Hydrogen Sulfide), 608 (Coalbed Methane), 801 (Aesthetics and Noise), 908 (Centralized E&P Waste Management), 912 (Venting and Flaring), & 1101 (Pipelines).

In implementing our regulations, we also benefit from an experienced and capable technical staff, which includes petroleum, civil, environmental, and geotechnical engineers, geologists, hydrologists, geo-chemists, planners, and other environmental scientists. All of our engineers and environmental professionals and many of our field inspectors and permitting staff have undergraduate degrees in engineering or science. Twelve of our engineers, environmental professionals, and field inspectors hold graduate science degrees, and two have PhDs. Collectively, they each average more than 20 years of professional experience.

Regulations of Concern

The attached table lists certain of your proposed regulations that would or could conflict with our current regulations. For your convenience, we have included both references to the relevant COGCC regulations and explanations of the conflicts. Given our many other obligations, and our desire to provide you with prompt input, we have had only a limited opportunity to review the proposed regulations; therefore, the attached table may not identify all potential conflicts.

Some of the potential conflicts reflect your imposition of requirements that are similar to but different from the requirements imposed by our regulations, such as those involving approval standards, well setbacks, noise, fencing, wildlife protection, pits, and notice. Other potential conflicts reflect your imposition of requirements where no comparable requirement is imposed by our regulations, such as those involving the submittal of facility operating plans, facility improvement plans, sound emission & special mitigation plans, safety & security plans, visual mitigation plans, wildlife management plans, water supply plans, weed management plans, and revegetation plans. All of these potential conflicts are of concern to us because they may materially impede the responsible and balanced development of oil and gas in Douglas County. For example, conflicts between our respective regulatory regimes could create inconsistent obligations for operators, generate confusion over applicable requirements, consume staff time, and impose costs and delays.

These potential conflicts could also interfere with our statutory authority “to regulate [o]il and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resources...to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost effectiveness and technical feasibility,” Colo. Rev. Stat § 34-60-106(2)(d), and our statutory obligation to ensure that our permitting process remains “timely and efficient,” *id.* at § 34-60-106(11)(a)(I)(A).

For these reasons, we believe that certain of the proposed regulations would undermine our joint interest in ensuring that oil and gas development in Douglas County is effectively and efficiently regulated and create the potential for future disputes.

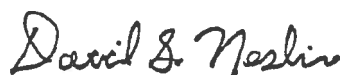
Intergovernmental Coordination

We understand and share many of the apparent objectives behind your proposed regulations. As mandated by the Colorado legislature, we are committed to the exploration and development of oil and gas in an environmentally responsible manner. This commitment is reflected in our

extensive regulatory program, our rigorous and transparent permitting process, our frequent imposition of site-specific permit conditions, and our record of support for pitless drilling, landscape level planning, groundwater monitoring, and hydraulic fracturing disclosure.

At the same time, we have significant concerns that certain of your proposed regulations will conflict with COGCC regulations. We therefore request an opportunity to discuss with you how we can collaboratively resolve these conflicts and coordinate our respective regulatory programs in a manner that achieves our common goals. This could, for example, involve exploring ways to facilitate Douglas County's use of the local government designee process to address its concerns with future oil and gas development. It could also involve exploring the possibility of programmatically addressing such concerns through an area specific order under COGCC Rule 503, a local public forum under COGCC Rule 508, or a geographic area plan under COGCC Rule 513. We recently went through a similar collaborative process with Gunnison County, which resulted in the development of a memorandum of agreement.

Respectfully,

A handwritten signature in cursive script that reads "David S. Neslin".

Dave Neslin
Director

cc: Curt Weitkunat

Review of Proposed Douglas County Oil & Gas Regulations -

Douglas County		COGCC	
Citation	Language	Citation	Comment
1706B Definitions	Abandonment: The permanent abandonment of a well shall be based on the operator's filing of abandonment with the Colorado Oil and Gas Conservation Commission (COGCC). Presumption of permanent abandonment of an Oil & Gas Well Facility shall be based upon non-use or non-operation for one year without notification to the Director of the intent to resume operations under specified conditions. Pit: A subsurface earthen excavation (lined or unlined), or subsurface open top tank , used for the purpose of retaining or storing substances associated with the drilling or operation of oil and gas wells.	319	COGCC provides prescriptive requirements for well abandonment that include many more criteria than just timing. Temporary non-use may include shut-in (SI) or temporary abandonment (TA) status based upon Rule 319 criteria at the discretion of the Director. This language is inconsistent with COGCC Rules.
1707B.02 Approval Standards	The suitability of the location of the proposed facility given its size, design, and operational characteristics. Factors to be considered include: noise levels, impacts upon air and water quality, vibration and odor levels , fire protection and access requirements, visual impacts, wildlife impacts, and public safety. These factors will be evaluated in accordance with applicable state, County, and federal standards.	100 & 900	COGCC specifically excludes partially buried steel, fiberglass, concrete or similar vessels from the pit definition. These standards differ from those of the COGCC. In addition, it is unclear how they will be quantified. For example, there are no applicable state or federal vibration or odor standards. This seems like an open-ended evaluation that could create additional conflicts with COGCC requirements.
1709B.01 Setbacks	A setback of at least 450 feet shall be required between the wellhead and the closest existing residential structure or platted building envelope. A waiver to this standard may be granted if verified written consent is obtained from the affected surface property owner(s).	603	Setbacks are not consistent w/ COGCC state-wide requirements of 150 feet.
1709B.03.3 Sound Emissions	Sound emissions shall, at minimum, be in accordance with the standards as adopted, and amended by COGCC. In all instances, all Oil & Gas Well Facilities shall comply with sound emission standards designated for residential land uses unless a variance is granted by the Board of Adjustment.	802	COGCC rules provide for commercial, light industrial and industrial standards as well. This could pose a conflict in those areas.
1709B.04.1 Security and Safety	Security fencing and a locked gate for Oil & Gas Well Facilities shall be required in the following locations: 1. Where there are four (4) or more existing residences within 1,000 feet of the facility site perimeter. 2. Where there is a public or private school within 1,000 feet of the facility site perimeter. Where there is any other	603.e.(7)	COGCC only requires security fencing in defined high-density and designated outside activity areas. When required, COGCC does not require 3-strands of barb wire across the top of the security fence (County "security fence" definition).

Review of Proposed Douglas County Oil & Gas Regulations -

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1709B.06 Wildlife	existing structure with commercial occupancy as defined by the Building Code within 1,000 feet of the facility site perimeter. 3. Where there is an existing recreational facility designated by an appropriate federal, state, or local authority within 1,000 feet of the facility site perimeter. If a state or federal law or regulation does not exist or is not applicable , the owner or operator shall comply with the following list of standard operating practices (SOPs) for the protection of wildlife in the County...	306.c 1200 Series	Parks & Wildlife provides consultation via the COGCC under the provisions of Rule 306.c. It is unclear what the County means by “not applicable” as the conditions which Parks & Wildlife participates are well-defined. The County language does not provide for surface owner rights and appears to be providing for Parks & Wildlife consultation on all sites regardless of Rule 1200 language.
1709B.07.1 Water Supply	If fresh or potable water is required for any Oil & Gas Well Facility, the applicant shall identify the proposed source and documentation from the state of the ability to use such water.		The state can only provide documentation of legal entitlement of water if water rights are involved. If the water is being purchased through a municipality or private water system this type of documentation is not available. Provision for this type of use should be provided since many operators purchase water in this manner.
1709B.08 Pits and Pit Liners	Closed loop systems are preferred in lieu of pits. When pits are necessary, they shall be constructed in accordance with applicable state or federal law or regulation. <u>If however, a state or federal law or regulation does not exist or apply</u> , the pit shall comply with the following: 1709B.08.1 All pits shall be fenced or otherwise covered in order to prevent access by persons, livestock, or wildlife unless the applicant provides alternate mitigation measures to prevent entry by unauthorized persons, stock, or wildlife.	900 Series	Again, it is unclear how the County defines, “does not exist or apply”. Rules 902-905 provide very specific language on the permitting, design, management and closure of pits (COGCC definition). Fencing and netting of pits is at the Director’s discretion, depending upon a variety of factors. The County language appears to be requiring all pits to be fenced or otherwise covered.
1709B.09.2	Oil & Gas Well Facilities shall not be located in a flood hazard area as defined in Section 18, Floodplain - Overlay District.		There is no COGCC equivalent exclusion, unless within a public water supply (317B) area, and then buffers are based upon other criteria. Potential conflict exists w/ COGCC permits.
1713B Submittal Requirements	7 Vicinity Map d Current surface ownership within 1,320 feet of site, including the location of residences.	303.d.(3)	COGCC Form 2A requires a drawing showing all visible improvements (including residences) w/in 400 feet and surface waters and riparian areas within 1,000 feet.

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	<p>8 Facility Improvement Plan (FIP) Narrative</p> <p>a. Facility Operating Plan, including the method and schedule for the drilling, completion, production, abandonment and reclamation phases of the operation.</p>	34-60-106 216	<p>The Act gives the authority for oversight of O&G operations to the COGCC. COGCC does not require the submittal of operations plans on a site-by-site basis, but requires operational details be submitted with a Form 2 APD. The definition of "general description" may lessen the possibility for conflict; however language in 1716B has much more prescriptive submittal requirements (see below).</p>
	<p>9 Facility Improvement Plan (FIP) Exhibit (Section 1716B)</p> <p>b. Sound Emission & Special Mitigation Plan (Section 1709B.02 & 03)</p> <p>c. Safety & Security Plan (Section 1709B.04)</p> <p>d. Visual Mitigation Plan (Section 1709B.05) & visual mitigation techniques (Section 1709B.05.9)</p> <p>e. Wildlife Management Plan (Section 1709B.06)</p> <p>f. Water Supply Plan (Section 1709B.07)</p> <p>g. Waste Disposal Plan (Section 1709B.14)</p> <p>h. Weed Management Plan (Section 1709B.15)</p> <p>i. Revegetation Plan (Section 1709B.16)</p>		<p>The narrative provided in the draft rule language does not state that a written plan, or exhibit, be provided on these topics. Instead it dictates what actions must be taken. There are no definitions ore examples as to what these plans must include.</p> <p>COGCC does not require written plans be submitted on most of these topics. Operators are required to comply with COGCC rules which cover most of these topics in depth.</p>
1716B Facility Improvement Plan Exhibit and Narrative	A Facility Improvement Plan (FIP) Exhibit and Narrative shall be required for all facilities.	Form 2A	Is this the same plan as referred to in the Submittal table and noted in comments above (8 & 9)? This language is introduced after the submittal table and is confusing. Includes data similar to COGCC Form 2A.
1716B.06	Distance to residences, buildings, and structures within <u>500 feet of the lease area.</u>	Form 2A	COGCC Form 2A requires a drawing showing all visible improvements (including residences) w/in 400 feet and surface waters and riparian areas within 1,000 feet.
1717B Courtesy Notices	Written courtesy notices shall be provided to current landowners where an Oil & Gas Well Facility is proposed to be located, and the current landowners of parcels <u>within 500 feet of the proposed gathering line or 1,320 feet of the wellhead</u> , or other proposed Oil & Gas Well Facility easement boundary.	305.e	County provides definition for "site", not "lease area". COGCC only requires notice w/in 500 feet of a proposed oil and gas location. Potential language conflict w/ wellhead.