

2020-2021 COGCC MISSION CHANGE RULEMAKING

The Colorado Oil and Gas Conservation Commission (COGCC) Mission Change rulemaking was required by Senate Bill 19-181. Prior to Senate Bill 19-181, the mission of the COGCC was to “foster” (or promote) oil and gas development and protect public health safety and welfare but only after considering cost effectiveness. The new COGCC mission no longer requires promoting the industry. The new mission is to simply protect public health and safety— without consideration of cost effectiveness. After nearly a year of work, the COGCC passed the mission change rules on November 23, 2020. The new rules took effect on January 15, 2021.

Matt Sura and Matt Samelson represented several local governments, school districts, public water suppliers, conservation groups, and community organizations in this rulemaking and worked to support for the following increased protections for public health, safety, welfare and the environment:

Setbacks - In Rule 604, the COGCC has adopted a “hard setback” that prevents the oil and gas “working pad surface” from being located less than 500 feet from homes or 2,000 feet from school facilities (school property lines). There is also a “soft setback” of 2,000 feet from a building unit (homes or businesses). This 2,000-foot setback can be overcome if, after a hearing, the COGCC Commission finds the proposed operations will provide “substantially equivalent” protections. The Commission considers the following factors in determining if an oil and gas location may be closer than 2,000 feet: 1) best management practices proposed, 2) size and duration of the proposed oil and gas operations, 3) the local government’s position on the location, 4) the results of the alternative location analysis, 5) location in relationship to infrastructure, and 6) outreach efforts to affected residents.

Alternative Location Analysis - The purpose of the alternative location analysis is to identify the best location to access to the targeted minerals while avoiding adverse impacts to public health, safety, welfare, the environment, and wildlife resources. An alternative location analysis is triggered if an oil and gas facility is proposed within ½ mile of a public water supply, within a riparian area, wetland or floodplain, or 2,000 feet from a home or school facility. If no locations that an oil and gas operator (“operator”) proposes in an alternative location analysis are appropriate, Rule 304.b.(2) authorizes the Commission and Director to request that an operator analyze additional locations.

Oil and Gas Development Plan – The existing Form 2a (location analysis), and Spacing Unit applications have been combined into a single “Oil and Gas Development Plan” (OGDP) permit. The OGDP requires numerous plans to protect public health, air quality, water quality, wildlife and other environmental resources. (Rule 304.c.)

If the COGCC staff determines that the proposed oil and gas location and OGDG does not adequately avoid adverse impacts to public health, safety, welfare, the environment, or wildlife resources, the Director may recommend that the Commission deny the proposed location pursuant to Rule 306. Similarly, if the Commission determines that the oil and gas location and OGDG does not adequately avoid adverse impacts, the Commission may deny the proposed location pursuant to Rule 307.

Requiring public hearings and granting standing for affected residents - The COGCC previously approved almost all oil and gas locations administratively. Impacted residents (other than the landowner) had no right to request a hearing before the COGCC. The new regulations require a hearing on every OGDG application and grant broad standing to “any person who may be affected or aggrieved by an application” to participate in the hearing as a party and may require a hearing before the full commission. Residents within 2,000 feet of an oil and gas location have automatic standing.

Proximate Local Governments - Operators must give Relevant and Proximate Local Governments (within 2,000 feet) at least 30 days’ notice prior to submission of an Oil and Gas Development Plan (OGDG). Upon request of Relevant Local Government, the operator and COGCC Director will participate in Formal Consultation Process prior to submission of OGDG. The COGCC will participate as a referral agency to identify any potential conflicts with COGCC rules. In an OGDG, the operator must state the disposition of the Relevant Local Government. Director will defer to local government unless location is within 2,000 feet of a municipality, a home, or other sensitive areas listed in Rule 304.b.(2)B. The operator can choose to first file with local government, COGCC, or simultaneous permitting. (Rule 303a.(6)).

Cumulative Impacts – The COGCC created a new Form 2B to collect data about cumulative impacts from each newly proposed OGDG. This information will populate a database that can be used to evaluate cumulative impacts. Additionally, operators must submit a cumulative impacts plan as an attachment to a Form 2A pursuant to Rule 304.c.(19), in which operators must demonstrate their plans to address cumulative impacts of each proposed oil and gas location by avoiding, minimizing, and mitigating those impacts.

Public Water Supply Protection – Rule 411 now requires a minimum 1,000’ setback from surface waters that are used for public water supplies. The COGCC also added protections for shallow ground water wells including groundwater wells under the direct influence of surface water (“GUDI Wells”) and public water supply wells completed in Type III aquifers (“Type III Wells”). The COGCC also prohibited the use of 15 toxic chemicals in hydraulic fracturing fluid that have been identified as posing a threat to water quality. (Rule 437.)

Notice, comment, and consultation – The COGCC increased public notice of new OGDs to 2,000 feet from the proposed location. The COGCC extended public comment to 30 days and now requires consultation with homeowners and residents within 2,000 feet, affected local governments, public water suppliers, disproportionately impacted communities, and CPW and CDPHE in appropriate cases.

Nuisance protections – As part of the OGDs, the operator must prepare Noise, Light, Odor, and Dust Mitigation Plans. (Rule 304.c.) To reduce nuisance to surrounding residents, the COGCC also lowered maximum A-scale noise levels from oil and gas development and adopted a noise standard for lower frequency C-scale noise of 60db(C). (Rule 423.b.)

Prohibition on venting and flaring – The COGCC also banned routine venting and flaring – when an operator releases or burns excess methane from a well instead of capturing it. The new rule imposed by the COGCC makes Colorado the only state that prohibits flaring and venting – not only from established wells, but also from drilling operations. It is expected the practice of routine flaring will be brought to an end within one year in the North Park region in Jackson County and other places that routinely flare natural gas.

Wildlife protections - The COGCC added a set of rules aimed at protecting wildlife by allowing the Colorado Department of Parks and Wildlife (CPW) to identify “High Priority Habitat.” Operators are required to consult with CPW anytime there are multiple locations proposed within a square mile in High Priority Habitat or if a location is proposed within a migration corridor for elk, mule deer, pronghorn, or big horn sheep. Before obtaining a permit within any High Priority Habitat areas, operators must prepare a Wildlife Mitigation Plan describing site-specific measures the operator will employ to minimize impacts on wildlife and habitat and the operator’s commitments to offset unavoidable adverse impacts to wildlife. The COGCC has established a 500’ No Surface Occupancy (NSO) buffer will apply for all of the aquatic High Priority Habitat streams identified by CPW.