

Update on the Colorado Oil and Gas Conservation Commission House Bills 1298 & 1341 Rulemaking

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This summary is to provide you with an update on the current House Bills 1298 and 1341 rulemaking process at the Colorado Oil and Gas Conservation Commission (the "COGCC").

Since the release of the Pre-Draft Rulemaking Proposal (also referred to as COGCC's "strawman" proposal), COGCC has held a series of "stakeholder" meetings in five substantive areas: (1) Process; (2) Environment and Health; (3) Wildlife; (4) Studies; and (5) Additional Regulations. These stakeholder meetings brought together representatives of federal, state and local governments, industry, concerned citizens and environmental groups to discuss problems, issues and suggestions raised by the strawman proposal. The stakeholder meeting process has largely concluded, and the COGCC is now in the process of drafting proposed rules. Stakeholders have expressed very mixed reviews and reactions to the stakeholder process, and many contentious policy and legal issues remain unresolved and unaddressed.

At the February 25th COGCC hearing, Representative Curry (Chair of the Colorado House Agriculture, Livestock and Natural Resource Committee) and Senator Isgar (Chair of the Colorado Senate Agriculture, Natural Resources and Energy Committee) appeared before the COGCC to discuss timelines to complete the rulemaking process. The COGCC declined Senator Isgar's invitation to request from the legislature an extension into September to complete the rulemaking. Instead, the COGCC resolved to adopt Acting Director Neslin's proposed rulemaking timeline (described below). Representative Curry and Senator Isgar are proceeding with the COGCC's request to the legislature for an extension of time to finalize the new rules from April 1, 2008 (as mandated by existing legislation) to July 16, 2008.

In addition, six of the new COGCC Commissioners are undergoing the confirmation process, and a final vote on the Commissioners has been postponed until mid-March to allow further questioning of the nominees. The Senate Agriculture, Natural Resources and Energy Committee plans to hold hearings with the Director of the Colorado Department of Natural Resources and the Acting Director of the COGCC to discuss the rulemaking.

Excerpt of Current Rulemaking Timeline:

- **March 31, 2008:** Proposed rule and proposed statement of basis and purpose to be posted on COGCC website and filed with the Colorado Secretary of State for publication.
- **April 18, 2008:** Deadline for individuals and organizations to request party status for the rulemaking. Staff prehearing statement to be posted on COGCC website.
- **May 9, 2008:** Deadline for parties' responsive prehearing statements, along with a list of exhibits and witnesses, or alternative proposals, if any.
- **May 15, 2008:** Prehearing conference to be held for planning conduct of rulemaking hearing.
- **May 22, 2008:** COGCC hearing to review proposed order for conduct of hearing and procedural appeals. No testimony, comment or exhibits will be taken or considered regarding the proposed rules.
- **May 29, 2008:** Deadline for rebuttal statements on responsive prehearing statements.
- **June 23-27, 2008:** COGCC rulemaking hearing.
- **July 16, 2008:** COGCC adoption of rules.

Summary of Current Strawman Proposal:

Note that while the stakeholder groups discussed issues raised by the strawman proposal, there is no indication yet as to how much if any of the following will be changed in the draft rules.

New Form 34 Permit Process

- A new approval process for locating oil and gas facilities, known as a Form 34 Permit: Application for Permit to Locate an Oil and Gas Facility.
- Comprehensive and cumulative surface impact review process, including a broad list of public health and environmental matters. This may result in consultation with the Colorado Department of Public Health and Environment (the "CDPHE") and the Colorado Department of Wildlife (the "CDOW"). Surface owners and adjacent owners within 500 feet will have a right to participate.
- Applications for Permit to Drill ("APDs") would still be required, but COGCC's review of APDs would be limited to issues such as downhole engineering, safety and correlative rights.

Comprehensive Development Plans

- Voluntary new operator-initiated tool to address all of the operator's anticipated development in a ten-square mile area over a five-year period.
- Mitigation measures would be included in subsequent Form 34 applications for that area and would be presumed sufficient to

protect public welfare and wildlife unless new information indicates that additional or alternative mitigation is appropriate.

- Intended to enable mitigation measure to be developed at a larger geographic scale and would help expedite and simplify the Form 34 application process.
- Not a public regulatory process, but rather an opportunity for operators to identify all of their anticipated development and infrastructure in an area, and then work with the COGCC, CDPHE, and CDOW to identify potential cumulative impacts and develop avoidance, minimization, and mitigation measures that address these impacts.

Geographic Area Plans

- Covering entire gas fields or geologic basins and encompass the activities of multiple operators, in multiple sub-basins or drainages, over a period of ten to twenty years.
- New basin-specific rules would be adopted pursuant to the COGCC's Rules of Practice and Procedure applicable to rulemaking proceedings.

Air Quality

- COGCC anticipates entering into one or more Memoranda of Understanding ("MOU") with CDPHE to initiate new studies regarding the potential direct and cumulative impacts of oil and gas activities on public health and air quality to begin no later than 2008.
- A MOU would initiate a cumulative air quality impact analysis for a geographic area based on anticipated regional oil and gas development and associated impacts, such as the Piceance or the DJ Basin.
- COGCC would have the authority to require the submittal of data, such as sources, quantity, and chemical composition of products used during oil and gas operations, the fate and transport of chemicals used, produced water discharges, potential exposure pathways, toxicity of fracturing fluids, and health impacts of chemical releases to the environment.

Changes to COGCC Rules

- To update the rules to reflect new issues, additional regulatory experience and changed circumstances.
- New inventory requirements.
- Monitoring during well stimulation operations.
- All wells used for an underground gas storage facility to be permitted and regulated by the COGCC.
- Increase in penalty amounts and fines.
- Oil and gas operations must be in compliance with the CDPHE Air Quality Control Commission regulation concerning odor emissions.

- Compliance with Water Quality Control Division's stormwater regulations and any applicable CDPHE stormwater construction permit.
- Require Facility Spill and Runoff Control Programs during post-construction operations.
- Monitoring requirements for coalbed methane development, including water well sampling, coal outcrop and coal mine monitoring, and bottomhole pressure monitoring.
- Increased financial assurance amounts.
- Management practices to control fugitive dust emissions.
- Shorten the time period after operations cease for an operator to complete interim reclamation on non-crop land.
- Detailed Standard Operating Practices ("SOPs") for the protection of wildlife that would be applicable to Form 34 permits designed to address potential surface impacts of oil and gas activities on wildlife resources.
- Detailed Best Management Practices ("BMPs") designed to minimize or mitigate the impact of oil and gas activities on wildlife resources.

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