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Colorado's SB 181: What to Think About as the State Embarks on a Number of Significant New Oil and Gas Rulemakings

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Now that Colorado Gov. Jared Polis has signed the oil and gas bill, Senate Bill 19-181 (SB 181), into law, the focus shifts from the General Assembly to the two state agencies tasked with implementation. Both the Colorado Oil and Gas Conservation Commission (COGCC) and the Air Quality Control Commission (AQCC) will be at the center of these changes as SB 181 not only requires significant rule changes at both agencies, but alters the mission and composition of the COGCC. Below we identify the rulemakings required by SB 181 and offer our thoughts on what stakeholders can do to begin preparing.

Rulemakings Required by SB 181

SB 181 requires the following rulemakings, each of which will impact the way oil and gas development is regulated in Colorado:

COGCC

- Amend or implement rules regarding **protection and minimization of adverse impacts** to public health, safety, welfare, the environment, and wildlife resources;
- Adopt an **alternative location analysis** process, including criteria to determine when facilities located near populated areas will be subject to the alternative location analysis process;
- Evaluate the potential **cumulative impacts** of oil and gas development;
- **Financial assurance**, including increasing financial assurance for inactive and transferred wells, and creation of a fund for orphaned wells;
- New rules on **wellbore integrity**, that will among other things require regular integrity assessments such as surface pressure monitoring during production;
- Amend existing **flowline** and inactive, temporarily abandoned, and shut-in well rules;
- Rules to require **certification for certain employees** (hazardous materials, welders, confined spaces).

AQCC

- New rules to minimize methane and other emissions (VOCs, NOx) for the E&P, processing, gathering, storage, and transmission segments;
- Review of and more stringent rules for well production and compressor stations, including semi-annual Leak Detection and Repair (LDAR);
- Increased inspection requirements for transmission pipelines and compressor stations;
- Requirement for continuous methane emission monitoring at larger facilities, multi-well facilities, and those in close proximity to occupied dwellings;
- Requirements to reduce emissions from pneumatic devices (including requirements for zero-bleed controllers).

Other Important Changes

In addition to these rulemakings, there are other very important provisions of SB 181, including granting of new regulatory and oversight authority over oil and gas development to local governments, a fundamental change to the statutory structure and mission of the COGCC, and amendments to the concept of "waste," which carve out any nonproduction of gas deemed necessary to protect public health, safety, welfare, and the environment as determined by COGCC.

Perhaps the most significant immediate consequence of the bill is that it gives the COGCC Director authority to "delay the final determination regarding an [Application for Permit to Drill]" pursuant to objective criteria that will be published by May 16th, until the COGCC has adopted each required rule and the rule has become effective. The Director's draft objective criteria are available [here](#).

Formulating a Rulemaking Strategy

By mandating at least 12 new rulemakings, each of which can take up to one year from proposal to final, it is difficult to overstate the amount of work that lies ahead for the oil and gas industry, the agencies, local governments, and other stakeholders. As companies prepare for these rulemakings while continuing to run their operations and plan for new development, we offer several thoughts:

- Colorado already has some of the most stringent regulations governing oil and gas development in the country. These include COGCC rules 100-1200 series, governing all aspects of oil and gas development, including environmental and resource protection, and comprehensive air quality rules, which include Colorado's groundbreaking Regulation No. 7 requiring strict emission controls on storage tanks, pneumatic controller, and an industry-leading LDAR program;
- Agencies are prohibited by the Administrative Procedure Act (APA) and case law from adopting rules that are arbitrary or capricious, are in excess of statutory authority, unsupported by substantial

evidence on the administrative record, or are otherwise contrary to law. The agencies decisions must be well reasoned, and there must be a clear connection between the facts found and the choices made;

- The APA also requires agencies to provide regulatory analyses, including cost-benefit analyses, and a demonstration that the rule is flexible, not overly burdensome, and necessary to achieve the various desired goals;
- Other statutory provisions will guide the agencies' decisions, including provisions under the Colorado Air Pollution Prevention and Control Act that require a strict and comprehensive cost-benefit and cost-effectiveness analysis prior to the adoption of new rules.

Given Colorado's comprehensive existing rules governing oil and gas development and operations, and governing legal standards, it will be critical for the regulated industry to hold the agencies and other stakeholders accountable to ensure any new regulatory requirement passes legal muster. Much of the battleground is likely to center on what it means to protect public health, safety, welfare, the environment, and wildlife resources; and perhaps more importantly, why and where the current regulatory regime is failing to do so. These are complex and nuanced issues to be sure. As the rulemakings progress, experts will go toe to toe on oil and gas development, public health, environmental, and wildlife impacts, as well as how the current rules and regulations function. And yes, there will be plenty of lawyers involved too. It will be important to begin assembling a legal strategy early on, including development of a robust administrative record that will hold the agencies accountable for the decisions to be made.

The energy and resource attorneys at Holland & Hart routinely represent clients through the Colorado rulemaking process. We combine our in-depth knowledge of the industry with expertise from across the oil and gas, public health, and environmental disciplines to formulate successful rulemaking strategies. Please do not hesitate to reach out to any of the attorneys on the Holland & Hart team for help navigating the SB 181 rulemakings or with general questions about the sweeping new legislation.

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