

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF COLORADO**

|   |                              |
|---|------------------------------|
| <b>IN THE MATTER OF CHANGES TO THE )</b>  | <b>CAUSE NO. 1R</b>          |
| <b>RULES AND REGULATIONS OF THE OIL )</b> |                              |
| <b>AND GAS CONSERVATION COMMISSION )</b>  | <b>DOCKET NO. 0803-RM-02</b> |
| <b>OF THE STATE OF COLORADO )</b>         |                              |
| <b>_____ )</b>                            |                              |

**COLORADO OIL AND GAS CONSERVATION COMMISSION STAFF  
FIRST RECOMMENDED CLARIFICATIONS OF DRAFT RULES**

The staff of the Oil and Gas Conservation Commission (OGCC) submits the following recommended clarifications to the Draft Rules published in the *Colorado Register* on April 10, 2008. See 31 Colo. Reg. 4 (April 10, 2008). These clarifications were brought to light as a result of OGCC staff’s analysis of the Draft Rules and conversations with various parties and stakeholders, and they are provided now so that parties may respond to them in their rebuttal statements if they wish. Our goal is to provide Commissioners and parties with the maximum clarity possible at each stage of this rulemaking proceeding. We thus anticipate that we may recommend additional refinements after reviewing rebuttal statements and engaging in further discussions with parties.

Provisions of the Draft Rules for which changes are recommended are shown below. Additions to existing OGCC rules shown in red and deletions are shown in ~~red~~, as in the April 10 *Colorado Register*. Recommended additions to the Draft Rules are shown in blue, and deletions from the Draft Rules are shown in ~~blue~~. When multiple subsections of a Draft Rule are being changed, intervening subsections that are to be unchanged are replaced with “<< >>”.

**1. 100-Series**

The Draft Rules’ definition of CHEMICAL INVENTORY should be clarified by moving a portion from the definition and into Draft Rule 205 (shown below). The Draft Rule should read:

**CHEMICAL INVENTORY** shall mean a list of all chemicals, by chemical name, used, stored, or released at an oil and gas facility, operation, or location during or in support of site preparations or operations, well drilling and downhole operations, construction completion, stimulation, and production. ~~The chemical inventory shall include how much of each chemical was used, how it was used, and when it was used.~~ “Chemical name” as used in this definition means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature, or a name which clearly identifies the chemical for the purpose of conducting a hazard evaluation.

The Draft Rules should be clarified with a new definition for the term “CONTAINER.” The Draft Rule should read:

CONTAINER shall mean any portable device in which a hazardous material is stored, transported, treated, disposed, or otherwise handled.

The definition of “GAS GATHERING SYSTEM” should be clarified. The Draft Rule should read:

**GAS GATHERING SYSTEM** shall include all pipelines, gas facilities, and ancillary facilities used to transport, treat, compress, or process natural gas that are located between a well's production facility, a transmission line or main, or the inlet of a gas processing plant ~~(not located on a transmission line).~~

The definition of “GATHERING LINE” should be clarified. The Draft Rule should read:

**GATHERING LINE** shall mean a pipeline and equipment described below that transports gas from a production facility to a natural gas processing plant or transmission line or main. The term “gathering line” includes valves, metering equipment, communication equipment, and cathodic protection facilities, but does not include pigging equipment, dehydrators, treaters, tanks, separators, compressors, or other associated gas gathering equipment located downstream of the final production separator and upstream of the natural gas processing plants, transmission lines, or main lines.

The definition of “RESTRICTED DEVELOPMENT ACTIVITY” should be removed and the subject should be addressed in a new subsection of Draft Rule 1208 (shown below). The Draft Rule should read:

~~**RESTRICTED DEVELOPMENT ACTIVITY** means the seasonal deferral of ground disturbance, construction, drilling and completion, non-emergency workovers, and pipeline installation activity, except in the event of situations posing a risk to public health, safety, welfare, or the environment, to minimize adverse impacts to wildlife resources. It does not include production, maintenance, emergency operations, reclamation activities, or habitat improvements.~~

The OGCC staff proposes to define two terms to be used in Draft Rule 317B. The Draft Rule should read:

**PUBLIC WATER SYSTEM** shall mean a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. The term “public water system” includes: (a) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (b) any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system. The term “public water system” does not include any “special irrigation district.”

**SOURCE WATER ASSESSMENT AREA** shall mean the area or zone providing water to the surface water intake and/or ground water well. For surface water systems, the Source Water Assessment Area will include that portion of the entire watershed area upstream of the public water system's intake structure that actually drains to the intake.

The definition of “VEGETATIVE TRANSECT” is unnecessary and the OGCC staff proposes its removal. The Draft Rule should read:

VEGETATIVE TRANSECT shall mean a fixed path along which one records and counts occurrences of plant species and other types of ground cover, such as plant litter, rock, and bare ground.

## 2. Draft Rule 201A

The Draft Rule requires clarification to account for rule-specific effective dates and the anticipated date of final Commission action. The Draft Rule should read:

Unless otherwise specified in the rules, a amendments to these rules adopted by the Commission in July-August 2008 shall become effective on November 1, 2008.

## 3. Draft Rule 205

The Draft Rule should be clarified by incorporating a portion of the definition for “CHEMICAL INVENTORY” and including a phase-in effective date. The first unnumbered paragraph of the Draft Rule should read:

All producers, operators, transporters, refiners, gasoline or other extraction plant operators and initial purchasers of oil and gas within this State, shall make and keep appropriate books and records covering their operations in the State, including natural gas meter calibration reports, from which they may be able to make and substantiate the reports required by the Commission or the Director. These records shall include a chemical inventory, by well or oil and gas facility, that identifies how much of each chemical was used, how it was used, and when it was used. In addition to the inventory, the records shall include material safety data sheets, product information sheets, and other records necessary to describe the chemical constituents of each product listed in the inventory. Entities maintaining inventories under this section shall update these inventories bi-monthly throughout the life of the well or oil and gas facility and comply with the provisions of this section within six (6) months of the effective date of these rules. These records must be maintained in a readily retrievable and reviewable format. The Colorado Department of Public Health and Environment may obtain information provided to the Commission in a chemical inventory upon written request to the Commission.

## 4. Draft Rule 206.b.(2)

The OGCC staff proposes to changed the name of the Checklist to “Compliance Checklist” and clarify that it may be completed by someone other than the person designated in Rule 522 for service of Notices of Alleged Violations or orders related to rule compliance. The Draft Rule should read:

b. Pollution Prevention Compliance Checklist. Operators with oil and gas facilities in the Piceance geologic basin shall complete and retain a Pollution Prevention Compliance Checklist, available on the COGCC website, for each oil and gas facility concerning actions taken or current on-site conditions that indicate compliance with specific requirements necessary to minimize adverse impacts.

- (1) The ~~Pollution Prevention Compliance~~ Checklist shall demonstrate on-going compliance with requirements relating to stormwater management, protection of surface water drinking water supply areas, odor management, management of exploration and production waste, and maintenance of a chemical inventory.
- (2) A new ~~Pollution Prevention Compliance~~ Checklist shall be completed and signed by a ~~designated agent~~ an operator's authorized representative annually for each oil and gas facility on or before February 15, and operators shall retain an accessible and current ~~Pollution Prevention Compliance~~ Checklist at the oil and gas facility at all times.
- (3) An operator required to complete and retain a ~~Pollution Prevention Compliance~~ Checklist shall provide a copy of an oil and gas facility's current ~~Pollution Prevention Compliance~~ Checklist to the Director within five (5) days of receiving a written request. The Director may grant an operator a reasonable extension of time to provide a ~~Pollution Prevention Compliance~~ Checklist where the operator provides sufficient information to the Director that there was no access to the oil and gas facility because of weather or other event not caused by the operator.
- (4) The ~~Pollution Prevention Compliance~~ Checklist is not considered a report, record, account, or memorandum for purposes of C.R.S. §34-60-121(2).

## 5. Draft Rule 210.d

Draft Rule 210.d should be clarified to take into account the new definition of CONTAINERS, (shown above). The Draft Rule should read:

### d. TANKS AND CONTAINERS.

(1) All tanks with a capacity of 50 barrels or greater shall be labeled or posted with the following information:

~~A.(1)~~ Name of operator;

~~B.(2)~~ Operator's emergency contact telephone number;

~~C.(3)~~ Containment capacity;

~~D.(4)~~ Tank contents or identification number from the U.S. Department of Transportation (DOT) placard or label; and

~~E.(5)~~ National Fire Protection Association (NFPA) label; and

~~(6)~~ Identification number from United States Department of Transportation placard or shipping document.

(2) Containers that are used to store, treat, or otherwise handle a hazardous material and which are required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations, shall retain the markings, placards, and labels on the container. Such markings, placards, and labels must be retained on the container until it is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

## 6. Draft Rule 303

Draft Rule 303.c.(18) should be eliminated and its contents should be incorporated into Draft Rule 303.a.(1). Draft Rule 303.a.(1) should read:

- (1) **Approval by Director.** Before any person shall commence operations for the drilling or reentry of any well, such person shall file with the Director an application on Form 2 for a Permit-to-Drill, a completed (or, where it has been approved in advance, an approved) Oil and Gas Location Assessment, Form 2A, pay a filing and service fee established by the Commission (see Appendix III), and obtain the Director's approval, **subject to Rule 303.m.1**, before commencement of operations with heavy equipment.

Draft Rule 303.c.(18) should read:

- ~~(18) A completed or, where it has been approved in advance, an approved Oil and Gas Location Assessment, Form 2A.~~

Draft Rule 303.d.(3).A.iv should be clarified. The Draft Rule should read:

- iv. **Where the proposed oil and gas location requires submittal of a Form 2A and the proposed facility:**
- a. **Is an ancillary facility to a well a production facility:**
  - b. **Is servicing multiple wells; and**
  - c. **Would not require any other Commission permit or facility registration.**

A time period in Draft Rule 303.h should be clarified. The Draft Rule should read:

- gh. Incomplete applications.** Applications for ~~p~~Permit-to-~~d~~Drill, **Form 2**, or **Oil and Gas Location Assessments, Form 2A**, which are submitted without the **required information and necessary** attachments, the proper signature, or the required information, shall be considered incomplete and shall not be **reviewed or** approved. The COGCC staff shall notify the applicant in not more than **thirty-ten (310)** days of ~~permit application~~its receipt of the application of such inadequacies, **except that the Director shall notify the applicant of inadequacies within three business (3) days of its receipt where the proposed location is covered by an accepted Comprehensive Drilling Plan.** The applicant shall then have thirty (30) days from the date ~~which that they were it was~~ contacted to correct **and/or** provide requested information ~~for that well~~, otherwise the ~~permit~~ application shall be considered withdrawn and the fee shall not be refunded.

## 7. Draft Rule 305

Draft Rule 305.b.(1).B.i should be changed to incorporate the term “surface owner” as defined in the Oil and Gas Conservation Act, C.R.S. § 34-60-103(10.5). The Draft Rule should read:

- i. **Whether submitted pursuant to Rule 303.d.3 or Rule 303.d.4, the applicant shall, within five (5) days of a completeness determination pursuant to Rule 303.h, provide a copy of a complete Oil and Gas Location Assessment, Form 2A, with attachments to the record owner of the surface to be affected by the proposed location surface owner and his**

lessee (if known) and the ~~record~~-owner(s) of property that is both adjacent to and within five hundred (500) feet of the proposed location, if such owner(s) exists, and his lessee (if known).

Draft Rule 305.d should be clarified to provide that when identifying adjacent landowners, operators may use the same method as when identifying surface owners.

- d. **Identifying surface owners.** In determining the identity and address of a surface [or qualifying adjacent property](#) owner for the purpose of giving all notices under this Rule 305., the records of the assessor for the county in which the lands are situated may be relied upon.

## 8. Draft Rule 306

The introductory paragraph of the Draft Rule should be clarified. The Draft Rule should read:

~~In locating roads, production facilities, and well sites, or other oil and gas operations, and in preparation for reclamation and final abandonment, t~~he operator shall ~~use its best efforts to~~ consult ~~in good faith, as provided below. with the affected surface owner, or the surface owner's appointed tenant as provided for in Rule 305. Consultation with local governmental designees is addressed in Rule 306.a. (3) below. The following shall apply to each such consultation:~~

Draft Rule 306.a should be clarified. The Draft Rule should read:

- a. ~~Drilling e~~**Consultation with surface owner.** Where a proposed oil and gas location is not subject to a surface use agreement [or other legal arrangement between the operator and the surface owner](#), the operator shall undertake a ~~The~~ good faith effort to consult ~~shall occur~~ at a time mutually agreed to by the parties prior to the commencement of operations with heavy equipment upon the lands of the surface owner. ~~The operator shall confirm that the surface owner consultation requirements of this Rule 306, have been completed or waived before the Director approves an Application for Permit to Drill, Form 2.~~

Draft Rule 306.d.(1).B.vii. contains an incorrect internal reference. The Draft Rule should read:

- vii. Rule ~~4002.g.~~ [1002.f.](#) Stormwater Management.

## 9. Draft Rule 313A

The effective date of the Draft Rule should be clarified. The Draft Rule should read:

~~Beginning January 1, 2009, a~~All operators of gas facilities that are processing, gathering, or storing natural gas shall submit Gas Facility Registration/Change of Operator, Form 12, to the Director. Form 12 shall also be submitted by a purchaser of a gas facility within ten (10) business days of the date of final sale to indicate a change of operator.

Also, the Draft Rule should be clarified to provide that an operator's Form 12, Gas Facility Registration/Change of Operator, is not subject to approval by the Commission. An operator's failure to timely file a completed Form 12 would still render him or her subject to a Notice of Alleged Violation under Rule 522 or fines under Rule 523. The Draft Rule should read:

Operators shall provide a list of any notices, permits, and permit numbers or other similar types of notifications for the facility or gathering system from local governments or other agencies to the Director for review prior to ~~Commission approval~~ the Director's acceptance of the registration as complete.

## 10. Draft Rule 317B

The Draft Rule should be clarified to use newly defined terms. The Draft Rule should read:

### **317B. ~~SURFACE WATER DRINKING WATER SUPPLY PUBLIC WATER SYSTEM SOURCE WATER ASSESSMENT AREAS~~**

a. **Applicability determination.** The applicability of Rules 317B.b and 317B.c will be determined by reviewing the ~~Source Water Drinking Water Supply Public Water System Source Water Assessment Area Map~~, located on the Commission website or by entering the longitude and latitude coordinates into the ~~Source Water Drinking Water Supply Public Water System Source Water Assessment Area Applicability Determination Tool~~, also located on the Commission website.

b. **Oil and gas operations located in ~~Surface Water Drinking Water Supply Public Water System Source Water Assessment Area(s)~~.**

Oil and gas operations shall be located a minimum distance of five hundred (500) feet from a classified surface water supply segment for a distance of five (5) miles upstream of a public water ~~supply system~~ intake ~~used as a public water supply in a source water assessment area~~. Oil and gas operations shall also be located a minimum distance of five hundred feet from a water supply spring or ground water well under the influence of surface water, ~~used as a public water supply in a source water assessment area~~.

c. **Performance standards for oil and gas operations located in ~~Surface Water Drinking Water Supply Public Water System Source Water Assessment Area(s)~~.**

The following performance standards shall be implemented when oil and gas operations occur within a distance of one-half (½) mile from a classified surface water supply segment for a distance of five (5) miles upstream of a public water ~~supply system~~ intake ~~used as a public water supply in a source water assessment area~~. The following performance standards shall also be implemented when oil and gas operations occur within a distance of one-half (1/2) mile from a water supply spring or groundwater well under the influence of surface water, ~~used as a public water supply in a source water assessment area~~:

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(4) Copies of all test results described above shall be provided to the Commission and the operator of the public water ~~supply system~~ within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

(5) Operators shall develop, maintain, and immediately implement an emergency spill response program that includes employee training and maintenance at all times of current direct contact information for any downstream public water ~~supplier system(s)~~ as well as the ability to notify any such downstream public water ~~supplier system(s)~~.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures.

If a spill or release impacts or threatens to impact ~~the surface water drinking water supply~~ a public water system, the operator shall notify the affected public water supplier system(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

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#### 11. Draft Rule 333.c.(2)

The Draft Rule is missing an indefinite article, and plurals should be made singular. The Draft Rule should read:

- (2) **Blasting safety setbacks.** Blasting shall be kept a safe distance from ~~occupied~~ a building ~~units~~, water wells or springs, unless by special written permission of the surface owner or lessee, according to the following minimum setback distances:

#### 12. Draft Rule 501.c

The Draft Rule contains a reference to Rule 303.m.1 that is in the incorrect format. The Draft Rule should read:

- c. **Judicial review.** Any rule, regulation, or final order of the Commission, or any approval of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A by the Director for which a hearing is not requested within ten (10) days pursuant to Rule ~~303.m.1-303.m.(1)~~, shall be subject to judicial review in accordance with the provisions of the Administrative Procedure Act, §24-4-101 to -108, C.R.S., and any other applicable provisions of law. The statutory time period for filing a notice of appeal from any Commission decision shall commence on the date the order is served or that is three (3) business days after the date the order is mailed.

#### 13. Draft Rule 503.b.(8)

The Draft Rule should be changed to clarify that certain entities may request a hearing on the Director's approval of an Application for Permit-to-Drill, Form 2. The Draft Rule should read:

- (8) For purposes of seeking a hearing on approval of an Oil and Gas Location Assessment, Form 2A, under Rules 216.e.(4) or an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 303.m.(4), any of the following may be the applicant:

#### 14. Draft Rule 508

The phrase "Geographic Area Plans" should be removed from the title, since that subject is addressed in a different rule. The title of the Draft Rule should read:

**508. LOCAL PUBLIC FORUMS, HEARINGS ON APPLICATIONS FOR INCREASED WELL DENSITY, ~~AND AND~~ PUBLIC ISSUES HEARINGS, ~~AND GEOGRAPHIC AREA PLANS.~~**

**15. Draft Rule 520.b.(2)**

The Draft Rule should be amended to clarify that witnesses may be required to be available in person or by telephone. The Draft Rule should read:

(2) Applicants may be required to have witnesses available in person or by telephone at the time of a Commission hearing to address Commissioners' questions prior to voting on the consent agenda.

**16. Draft Rule 710**

The Draft Rule should be clarified to reflect changes to the Oil and Gas Conservation Act, C.R.S. § 34-60-122(1)(b), that combined the Oil and Gas Conservation Fund and the Environmental Response Fund into one fund, the Oil and Gas Conservation and Environmental Response Fund. The title and text of the Draft Rule should read:

**710. Environmental Response Fund. Oil and Gas Conservation and Environmental Response Fund.**

The Commission shall ensure that the two-year average of the unobligated portion of ~~It is the intent of the Oil and Gas Conservation Commission that~~ and Environmental Response Fund ~~(ERF)~~ is maintained at a level not to exceed four million dollars (\$4,000,000), and that there is an adequate balance in the fund to address environmental response needs ~~"emergency reserve" of unobligated funds be maintained in the amount of one million dollars (\$1,000,000)~~, which may be used in accordance with the Act and Rule 701.

**17. Draft Rule 802.c**

The Draft Rule should be clarified to reflect changes made to the Rule in September 2006, pursuant to Order No. 1R-103. The Draft Rule should read:

| <b>ZONE</b>  | <b>7:00 am to next 7:00 pm</b> | <b>7:00 pm to next 7:00 am</b> |
|--|--------------------------------|--------------------------------|
| Residential/Agricultural/Rural<br><del>Construction commencing after January 1, 2007</del> | 55 db(A) <del>50db(A)</del>    | 50 db(A) <del>45 db(A)</del>   |
| Commercial   | 60 db(A)                       | 55 db(A)                       |
| Light industrial   | 70 db(A)                       | 65 db(A)                       |
| Industrial   | 80 db(A)                       | 75 db(A)                       |

**18. Draft Rule 804**

The Draft Rule contains a typographical error. The Draft Rule should read:

Production facilities, regardless of construction date, constructed or substantially repainted after May 30, 1992 which are observable from any public highway shall be painted with uniform, non-contrasting, nonreflective color tones, (similar to the Munsell Soil Color Coding System) and with colors matched to but slightly darker than the surrounding

landscape. Operators of those production facilities constructed prior to May 30, 1992 shall have until July 1, 2009 to comply with ~~the~~the requirements of this rule.

## 19. Draft Rule 805.b.(2)

The Draft Rule should be clarified by including a phase-in effective date for new equipment requirements. The first unnumbered paragraph of the Draft Rule should read:

- A. **Condensate Tanks.** All condensate tanks with a potential to emit volatile organic compounds (VOC) of five (5) tons per year (tpy) or greater, located in the Piceance and San Juan geologic basins and within ½ mile of a building unit, educational facility, assembly building, hospital, nursing home, board and care facility, jail, or designated outside activity area shall utilize a control device capable of achieving 95% control efficiency of volatile organic compounds (VOCs) and hold a valid permit from the Colorado Department of Public Health and Environment Air Pollution Control Division for the tank and control device. Condensate tanks meeting the above criteria and existing on November 1, 2008 shall be in compliance with this subsection by May 1, 2009.
- B. **Crude Oil and Produced Water Tanks.** All crude oil and produced water tanks in the Piceance and San Juan geologic basins, with a potential to emit VOC of five (5) tpy or greater, located within ½ mile of a building unit, educational facility, assembly building, hospital, nursing home, board and care facility, jail, or designated outside activity area shall utilize a control device capable of achieving 95% control efficiency and hold a valid permit from the Colorado Department of Public Health and Environment Air Pollution Control Division for the tank and control device. Crude oil and produced water tanks meeting the above criteria and existing on November 1, 2008 shall be in compliance with this subsection by May 1, 2009.
- C. **Glycol dehydrators.** All glycol dehydrators with a potential to emit VOC of five (5) tpy or greater, located in the Piceance and San Juan geologic basins, located within ½ mile of a building unit, educational facility, assembly building, hospital, nursing home, board and care facility, jail, or designated outside activity area shall utilize a control device capable of achieving 90% control efficiency and hold a valid permit from the Colorado Department of Public Health and Environment Air Pollution Control Division for the tank and control device. Glycol dehydrators meeting the above criteria and existing on November 1, 2008 shall be in compliance with this subsection by May 1, 2009.

## 20. Draft Rule 902.f

The Draft Rule should be clarified to provide that only unlined pits are prohibited on fill material. The Draft Rule should read:

~~fg. Unlined drilling pits~~Unlined pits shall not be constructed on fill material.

## 21. Draft Rule 912.d

The Draft Rule contains an improper reference to another rule, and the final sentence of this subsection was improperly deleted. The Draft Rule should read:

- d. Flared gas shall be directed to a controlled flare ~~in accordance with Rule 903.b.(2)~~ or other combustion device capable of ninety-five (95) percent control efficiency. Prior to flaring of any gas, operators shall construct a special purpose pit in compliance with Rule 903.

## 22. Draft Rule 1001.c

The Draft Rule should be clarified by correcting a typographical error, deleting a proposed phrase, and clarifying references to other rules. The Draft Rule should read:

- c. **Surface owner waiver of 1000 Series Rules.** The Commission shall not require compliance with Rules 1002. (except Rule 1002.f, for which compliance will continue to be required), 1003., 1004. a. b. ~~or~~ c.(1), (2), ~~Or~~ (3), or d. if the operator can demonstrate to the Director's or the Commission's satisfaction that compliance with such rules is not necessary to protect the public health, safety and welfare, including prevention of significant adverse environmental impacts ~~and adverse impacts to wildlife resources~~, and that the operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land. Absent bad faith conduct by the operator, penalties may only be imposed for noncompliance with a Commission order issued after a determination that, notwithstanding such agreement, compliance is necessary to protect public health, safety and welfare. Prior to final reclamation approval as to a specific well, the operator shall either comply with the rules or obtain a variance under Rule 502.(b). This rule shall not have the effect of relieving an operator from compliance with the 900 Series Rules.

## 23. Draft Rule 1002.f.(2)(D)

The Draft Rule contains a typographical error. The Draft Rule should read:

- D. The stormwater program shall include procedures and specific schedules for inspections of BMPs implemented pursuant to the ~~stormwater~~ stormwater program to ensure their performance against the requirements of Rule 1002.f.2.

## 24. Draft Rule 1003

Draft Rule 1003.d.(2) erroneously contains words that do not appear in the OGCC's rules. The Draft Rule should read:

- (2) **Drilling pit closure on non-crop land.** All drilling fluids shall be disposed of in accordance with the 900 Series rules. ~~Operators shall ensure that soils and ground water meet the allowable concentrations and levels of Table 910-1, above.~~ After the drilling pit is sufficiently dry, the pit shall be backfilled. Materials removed from the pit for drying shall be returned to the pit prior to the backfilling. No more than de minimis amounts may be incorporated into the surface materials. The backfilling of the drilling pit will be done to return the soils to their ~~as of August 30, 2001~~ original relative positions so that the muds and associated solids will be confined to the pit and not squeezed out and incorporated in the surface materials. ~~Closure and reclamation of drilling pits shall occur no later than six (6) months after drilling and completion activities conclude.~~

The unnumbered paragraph of Draft Rule 1003.e.(2) contains a typographical error. The Draft Rule should read:

Interim reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and all disturbed areas have been either built on, compacted, covered, paved, or otherwise stabilized in such a way as to prevent erosion, or a uniform vegetative cover has been established with an individual plant density of at least seventy (70) percent of pre-disturbance ~~disturbance~~ levels or reference areas, excluding noxious weeds, or equivalent permanent, physical erosion reduction methods have been employed. Re-seeding alone is not sufficient.

## 25. Draft Rule 1004

Subsection .d of the Draft Rule should be deleted as redundant when read with Rule 1001.c., and subsection .e should be renumbered accordingly. The Draft Rule should read:

~~d. **Surface owner waiver of 1000-Series Rules.** Pursuant to Rule 502.b, an operator may request a variance from the provisions of Rule 1004 prior to final reclamation approval as to a specific oil and gas location. When considering such a variance request, the Commission or Director shall consider whether compliance with Rule 1004 is necessary to protect the public health, safety, and welfare, including protection of the environment and wildlife resources, as well as whether the operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land. This rule shall not have the effect of relieving an operator from compliance with the 900-Series rules.~~

~~e.~~ Final reclamation of all disturbed areas shall be considered complete when all activities disturbing the ground have been completed, and all disturbed areas have been either built upon, compacted, covered, paved, or otherwise stabilized in such a way as to prevent erosion, or a uniform vegetative cover has been established with an individual plant density of at least seventy (70) percent of pre-disturbance levels, excluding noxious weeds, or equivalent permanent, physical erosion reduction methods have been employed. Re-seeding alone is not sufficient.

## 26. Draft Rule 1202.b.(2)

The Draft Rule contains a typographical error. The Draft Rule should read:

(2) Using scientifically acceptable survey techniques coinciding with the season and activity periods for the specific species noted below and ~~and~~ based on its review of wildlife occurrence data from the Colorado Division of Wildlife, an operator planning an oil and gas facility shall survey, map, and report the occurrence of all identified wildlife species, including a survey of lands within a ¼ mile radius of a proposed oil and gas facility, on lands legally accessible by the operator, for the following species:

## 27. Draft Rule 1206.a.(1)

The provision in Draft Rule 1206(a) allowing an operator to disinfect equipment by keeping it dry for 10 days should be eliminated, and subsequent subsections should be renumbered (1) and (2) to conform with the deletion. The Draft Rule should read:

~~(1) Keep the equipment dry for 10 days;~~

~~(2)~~(1) Spray/soak equipment with a 1:15 solution of disinfectant solution containing the following ingredients:

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~~(3)~~(2) Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes.

## 28. Draft Rule 1208

Draft Rule 1208.a should be clarified to provide that the Timing Limitation Areas are to be applied to oil and gas operations if surveys or mapping conducted pursuant to Draft Rule 1202.b identify the presence of a particular species. It should also be clarified to provide that the Timing Limitation Areas shall not apply if the area in question is not in fact habitat that is able to support the identified species. The Draft Rule should read:

- a. Timing Limitation Areas described herein shall be applied to oil and gas operations in the following areas of Colorado, as delineated on the Colorado Division of Wildlife Species Activity Mapping (SAM) systems, found on the Colorado Division of Wildlife website, or as a result of surveys conducted pursuant to Rule 1202(b), except gathering lines, using the best available technology to minimize adverse impacts to wildlife resources and to plan and manage oil and gas operations in a manner that balances development with wildlife conservation, unless an operator demonstrates that the identified species-habitat is not in fact present to support the identified species and use:

Also, a new subsection should be added to clarify the activities that are and are not allowed during the period of the timing limitations imposed in the Draft Rule. This new subsection would closely mirror the definition of “RESTRICTED DEVELOPMENT ACTIVITY” being deleted above. The Draft Rule should read:

- e. During the period of the timing limitations imposed in this rule, ground disturbing activities are prohibited, including construction, drilling and completion, non-emergency workovers, and pipeline installation activity, except in the event of situations posing a risk to public health, safety, welfare, or the environment, to minimize adverse impacts to wildlife resources. During the period of the timing limitations, production, routine maintenance, emergency operations, reclamation activities, or habitat improvements are not prohibited.

Respectfully Submitted,

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David Neslin, Acting Director  
State of Colorado  
Oil and Gas Conservation Commission