



DEPARTMENT OF NATURAL RESOURCES
Bill Ritter, Jr., Governor
1120 Lincoln St. Suite 801
Denver, CO 80203
Phone: (303) 894-2100
FAX: (303) 894-2109
www.cogcc.state.co.us

March 31, 2008

Dear Oil and Gas Commissioners,

I am pleased to present the draft Oil and Gas Conservation Commission rules (“Draft Rules”). These Draft Rules reflect the recommendation of staff experts within the Oil and Gas Conservation Commission (OGCC), Department of Public Health and Environment (DPHE) and Division of Wildlife (DOW) based on extensive input received from constituents across Colorado. They strike a responsible balance between expanding energy development and environmental and wildlife protection and will help to ensure that such development leaves our state as beautiful as today.

Background

Colorado is experiencing an unprecedented oil and gas boom. In 1999, the OGCC approved 1010 Applications for Permit to Drill (APDs). By 2007, this number had grown to 6368. This has provided many Coloradans with good-paying jobs and increased local tax revenues. But in some areas it has also created noxious odors, polluted state waters, and fragmented wildlife habitat. In response, the General Assembly enacted two laws last year requiring the OGCC to consider impacts to human health, safety, welfare and the environment, including wildlife habitat. These laws also require the Commission to promulgate rules to reflect this new policy direction.

After an initial round of constituent discussions, the OGCC staff created an initial pre-draft proposal last fall to frame the potential issues and facilitate public input prior to development of the draft rules. This public input has included five public meetings during January in energy-impacted communities across Colorado, which were attended by more than 1,500 individuals. In addition, five technical work groups were convened to address more than 60 separate issues associated with the initial proposal. More than 250 stakeholders participated in this process, and they collectively met for more than 150 hours during January and February. Each meeting averaged more than 40 attendees with specific expertise in their respective fields and included staff experts from each of the three state agencies. Thus, more than 6,000 hours were invested in these meetings to discuss and refine the initial concepts. Finally, more than 2,000 written and electronic comments were received and considered. This extensive public dialogue has led to significant changes to the initial proposal.

Summary of Draft Rules

Expanded Form 2A for New Information. To better evaluate potential impacts to the environment and wildlife, additional information will be required. The Draft Rules utilize an expanded Form 2A for this purpose rather than the Form 34 reflected in the initial proposal. Except in the Piceance Basin or where consultation with DPHE or DOW occurs, the expanded Form 2A will be a reference document that does not require approval. Even when approval is required, it should take less than the 65 days currently required for APDs provided that OGCC staffing is increased as proposed. If action on a permit application is not taken within 75 days, then applicants may obtain a prompt hearing from the Commission.

Notice, Comment, and Hearings. The OGCC will post applications on their website and provide them to the DPHE and DOW, and the operator will be required to send copies to the local government, surface owner and adjacent landowners within 500 feet of the pad site. In most circumstances, the public will have 30 days to comment. The operator, surface owner, local government, DPHE, and DOW may request a hearing before the Commission. After much discussion among stakeholders, the original concept of “standing” for adjacent landowners has been removed from the Draft Rules.

Consultations with DPHE and DOW. In limited circumstances, the OGCC will consult with DPHE or DOW regarding specific applications. Generally, such consultations will occur only when an operator requests a variance from OGCC rules protecting the environment or wildlife. These consultations will occur within a 40 day period and should not materially extend the timeframes discussed above. They should also occur more rarely than was contemplated in the initial proposal.

New Environmental Standards. The Draft Rules update and modernize our environmental standards, many of which were developed over a decade ago under different circumstances. The new standards reflect various changes from the initial proposal. For example, they will require operators to use “green completion” practices where practicable to reduce odors, and certain equipment in the Piceance and San Juan Basins will utilize odor control devices if located within a half mile of occupied buildings. They will require operators to maintain inventories of all chemicals used at a facility or released into the environment, and to provide this information promptly to the OGCC upon request, subject to protection for trade secrets. Finally, they restrict drilling near designated tributaries upstream of public water supply intakes, and they include mandatory setbacks and the use of best management practices in these areas.

New Wildlife Standards. Although the Draft Rules contain several new wildlife standards, the new standards are less extensive than originally contemplated. They include specified periods when drilling is restricted in designated areas (primarily in Western Colorado) to protect important wildlife habitat. These periods are limited to 90 days and may not be combined. In the event that an operator or surface owner finds a timing restriction to be unacceptable, they may consult with the OGCC and DOW to find a mutually agreeable solution that will allow drilling to occur during the restricted period in exchange for alternative mitigation. Any such alternative mitigation will be subject to surface owner consent, and disagreements will be promptly resolved by the Commission. Operators may also receive an exemption by limiting the density of their development to two pads per section (one pad per section in sage grouse habitat).

Landscape Level Planning. The Draft Rules provide for planning at the landscape level to better avoid and mitigate development impacts. Comprehensive Drilling Plans (CDPs) will generally include one operator and address the impacts in a discreet area, e.g., a drainage basin. Geographic Area Plans (GAPs) may include multiple operators and address a larger geographic area. These landscape planning tools will encourage proactive, collaborative planning and should generate more win-win solutions. To encourage operators to develop CDPs, the OGCC will make decisions on the resulting APDs and Form 2As within 30 days.

Coordination with Local Governments. The Draft Rules provide that interested local governments may enter into memoranda of agreement (MOAs) with the OGCC to clarify, coordinate, and harmonize the relationship between their regulations. Any such MOA would be approved by the Commission through a formal hearing process and must be consistent with the purposes and provisions of the Oil and Gas Conservation Act.

Health studies. The OGCC will develop an MOA with the DPHE to undertake a literature review on existing health studies and an air quality monitoring and impact study.

Conclusion

The Draft Rules are intended to strike a balanced approach to dealing with Colorado's ongoing energy boom. We want to ensure that the oil and gas industry continues to thrive here. But we also want to ensure that our mountains, forests, streams, air, and wildlife are protected and that operators use the latest technologies and strategies for this purpose. To this end, we will continue to work with interested constituents throughout the formal rule making process to refine the Draft Rules and resolve issues as appropriate.

I am enclosing for your convenience a chart comparing the Draft Rules to the initial proposal and existing requirements, as well as answers to frequently asked questions.

Sincerely,

/s/

David Neslin
Acting Director

COLORADO OIL AND GAS CONSERVATION COMMISSION

MAJOR PROVISIONS IN DRAFT RULES FOR OIL AND GAS DEVELOPMENT IN COLORADO

TOPIC	CURRENT RULES	INITIAL PROPOSAL	DRAFT RULES
Surface impacts of new oil and gas locations	Application for Permit-to-Drill, Form 2, and Drill-Site/Access Road Reclamation Form, Form 2A.	Would have required a Form 34 permit with substantial new information.	The draft rule returns to the current permitting structure. Though the Form 2A will require certain additional information, this additional information would be greatly reduced from the initial proposal. Except in the Piceance Basin or where a variance is sought, the Form 2A would be an informational submittal only, not requiring Director approval. <i>Draft Rule 303(d)</i> .
Processing time for drilling permit applications	Not addressed in the current rules. Average processing time is currently 65 days.	Not addressed in the initial proposal, except that permit consideration could be expedited with a Comprehensive Development Plan.	The Director's decision will typically occur in 50 days under the draft rules. Where consultation occurs, permit decisions will be made in 60 days. Where a Comprehensive Drilling Plan exists, permit decisions will be made within 30 days. If the Director has not issued a decision within 75 days, the applicant may request an expedited hearing before the Commission. In the event of an appeal to the Commission, these timelines will be extended. <i>Draft Rule 303(e)</i> .
Notice and comment on drilling permit applications	Operators must notify surface owners and the local government before drilling begins.	In addition to current rules, would have required posting Form 34 applications on the OGCC website and provided a 30-day public comment period.	Applications will be posted on the OGCC website and the public will typically have 30 days to comment (20 days where a Comprehensive Drilling Plan exists). Operators must send applications to the surface owner and adjacent property owners. <i>Draft Rule 305(b)(1)</i> .
Consultation with CDPHE and CDOW on drilling permit applications	Not addressed in the current rules.	Would have required consultation where an operator sought a variance or where the location was in a designated area. Would have provided a 60-day consultation and a 15-day period for informal dispute resolution.	The draft rule requires all consultation to occur within 40-days. DOW will consult where an operator or surface owner seeks a variance from the wildlife rules. DPHE will consult where the operator seeks a variance from environmental rules, or where requested by the local government. <i>Draft Rule 306(c) & (d)</i> .
Who can request a hearing on drilling permit approvals	Only the local government may request a hearing.	Would have allowed the following parties to request a hearing: the operator, the surface owner, the local government, DPHE and/or DOW (where consultation occurred), and adjacent landowners.	The draft rule allows the operator, the surface owner, the local government, the DPHE (raising environmental issues) and DOW (raising wildlife issues) to request a hearing. As under the current rules, adjacent landowners may not request a hearing. <i>Draft Rule 503(b)</i> .
Regional planning	Not addressed in the current rules.	Called for operator-initiated Comprehensive Drilling Plans (CDPs) to identify cumulative impacts and develop presumptive mitigation measures, possibly decreasing permit approval times. Would have authorized OGCC to adopt Geographic Area Plans (GAPs) by rule, addressing activities in gas fields or geologic basins.	The draft rule substantially follows the pre-draft proposal regarding CDPs and GAPs. However, decisions on permit applications covered by a CDP would be made in 30 days. Where the Director does not issue such a decision in 30 days, the operator may request an expedited hearing before the Commission. <i>Draft Rules 216 and 513</i> .
Cooperation with local governments	Not addressed in the current rules.	Not addressed in the initial proposal.	This issue arose in the stakeholder groups. The draft rule authorizes the Commission to enter into a Memorandum of Agreement (MOA) with a local government to clarify, coordinate, and harmonize the relationship between the OGCC rules and local regulations. The MOA will be approved by the Commission after a hearing and must be consistent with the Oil and Gas Conservation Act. <i>Draft Rule 521</i> .
Stormwater management	The current rules require operators to protect soils from wind and water erosion.	Would have required operators to establish Facility Spill and Runoff Control Programs, describing potential pollutant sources and identifying operating practices to reduce erosion.	The draft rule requires operators to identify and implement best management practices to control stormwater erosion and provide for periodic self-inspection of stormwater measures. <i>Draft Rule 1002(f)</i> .

TOPIC	CURRENT RULES	INITIAL PROPOSAL	DRAFT RULES
Protection of drinking water supply areas	Not addressed in the current rules.	Not addressed in the initial proposal.	This issue came up in public meetings and stakeholder groups. The draft rule prohibits construction of oil and gas activities within 500 feet of sources of drinking water for a distance of 5 miles upstream of a public water supply intake. It also requires performance standards for activities within ½ mile of such sources. <i>Draft Rule 317B.</i>
Chemical inventory	Not addressed in the current rules.	Would have required operators to maintain an inventory of the types and quantities of all chemicals used or stored, including all substances released into the environment.	The draft rule substantially follows the initial proposal, and will require operators to maintain the inventory for the life of the facility, update it regularly, and provide it promptly upon request by the OGCC. Information in the inventory will be kept confidential to the extent permitted by law. <i>Draft Rule 205.</i>
Management of odors and fugitive dust	The current rules do not specifically address odors, and they require operators to maintain sites "so as to reasonably control dust."	Would have required odor controls on equipment and limited pits within ½ mile of a residence or school. Would have required operators to control dust within ¼ mile of occupied buildings with wind breaks, road surfacing, etc.	The draft rule substantially follows the initial proposal but limits the odor control requirements to the Piceance and San Juan Basins. It also requires operators to use "green completion" practices where practicable to reduce odors and to employ practices for fugitive dust control. <i>Draft Rule 805.</i>
Lining of waste pits	The current rules require certain pits to be lined, but not all.	Would have required all pits to be lined unless the operator demonstrates that the quality of the water in the pit is equivalent to the groundwater or that seepage will not reach groundwater. Would have doubled the thickness of soil liners and increased the thickness for synthetic lines.	The draft rule substantially follows the initial proposal, though it requires additional pits to be lined. It will prohibit soil liners for new pits and double the required thickness for synthetic liners. It will also require double lining of centralized exploration and production waste management facilities. <i>Draft Rule 904.</i>
Spill reporting	The current rules require operators to report spills to the Director.	Would have required operators to consult with affected surface owners prior to commencing remediation operations. Would have required operators to construct secondary containment around tanks.	The draft rule requires operators to alert DPHE of all spills or releases that threaten a surface water and to report any spill that threatens a public drinking water supply immediately upon discovery. It also requires berms around sites sufficient to contain the largest tank plus precipitation. <i>Draft Rule 906.</i>
Provisions to protect wildlife resources	Not addressed in the current rules.	The DOW initially proposed an 11-page set of conditions that would apply to oil and gas activities to protect wildlife and a 28-page set of Best Management Practices that would be recommended for oil and gas locations to minimize impacts to wildlife.	One of the working groups focused solely on wildlife protection issues, and it reduced the 11-page set of initial restrictions down to a 4-page document. The draft rule will include timing restrictions and areas where activity would be restricted, as well as measures for transportation planning, mosquito control, disinfecting equipment, and using bear-proof containers. They will also direct operators to prepare mapping for specific wildlife species in particular areas of the State. <i>Draft 1200-Series Rules.</i>
Wildlife timing restrictions	Not addressed in the current rules.	The DOW initially proposed broad timing restrictions for various species, and it was unclear how they would relate to and stack upon one another. In some cases, these timing restrictions were as long as 8 ½ months.	The draft rule identifies 3-month drilling restrictions for critical areas of the state where development activities will be restricted, although it provides a drilling window of 9 months or more in all instances and will not apply if operators limit the density of their development in an area. Importantly, an operator or surface owner may elect to consult with the DOW in lieu of the timing limitations. <i>Draft Rule 1208.</i>
Coalbed methane wells	Not addressed in the current rules, but OGCC policy applies in the San Juan Basin.	Would have codified the existing OGCC policy that applies to the San Juan Basin.	The draft rule codifies the existing policy, providing for assessment and monitoring of plugged and abandoned wells within ¼ mile of a proposed coalbed methane well and water well sampling and coal outcrop and coal mine monitoring. <i>Draft Rule 608.</i>
Pollution Prevention Checklist	Not addressed in the current rules.	Would have required operators to file an "annual certification [of] compliance with the terms of the [Form 34] permit, including all conditions of approval and all applicable OGCC rules. . . ."	The draft rule requires operators with facilities in the Piceance Basin to fill out and maintain on site a checklist to demonstrate on-going compliance with 7 specific requirements. <i>Draft Rule 206(b).</i>

TOPIC	CURRENT RULES	INITIAL PROPOSAL	DRAFT RULES
Penalties	Various, ranging from \$250 to \$1000 for violation of rules.	Would have increased penalties for violations of most rules to the statutory maximum (\$1000).	The draft rule substantially follows the initial proposal. <i>Draft Rule 523.</i>
Bond amounts	For wells, \$5,000 per well or \$30,000 statewide if an operator has fewer than 100 wells or \$100,000 if more than 100 wells. For centralized waste facilities, a \$50,000. For gas gathering facilities, \$50,000 statewide or \$5,000 for small facilities.	Would have increased well bonds to \$10,000 for shallow wells and \$20,000 for deeper wells. Would have doubled the statewide bond amounts for wells if an operator has fewer than 100 wells, and not change statewide bond for operators of more than 100 wells. For centralized waste facilities, would have required a bond equal to the estimated cost to ensure proper reclamation, closure, and abandonment. For gas gathering facilities, would have required \$50,000 for large facilities, and \$25,000 for small facilities. For Class II Underground Injection Control wells, would have required a \$50,000 bond.	The draft rule substantially follows the initial proposal. These increased bond amounts are necessary to ensure that the OGCC can perform adequate plugging and reclamation of abandoned oil and gas sites. <i>Draft Rules 704, 706, 711.</i>
Form 35, facility inventory	Not addressed in the current rules.	Would have required operators to submit and update a facilities inventory, Form 35, with detailed information on ancillary equipment at a location.	This is not included in the draft rules. The OGCC will obtain less detailed information on expanded facilities through the Form 2A.
Gas storage facilities	Not addressed in the current rules.	Would have imposed operating, construction, monitoring, and reporting requirements for all wells used in an underground gas storage facility.	This is not included in the draft rules because such facilities are subject to regulation by the U.S. Department of Transportation or receive approval from the Federal Energy Regulatory Commission.

FREQUENTLY ASKED QUESTIONS: DRAFT RULES FOR OIL AND GAS DEVELOPMENT IN COLORADO

1) Will the draft rules provide a timely and efficient process for drilling permit approvals?

Yes. In most cases, the Director will decide on a permit application within 50 days, which is more than two weeks shorter than under the current rules, provided that OGCC staffing is increased as proposed. Where consultation occurs, the Director will make a decision in 60 days. In both instances, if the Director does not issue a decision on an application within 75 days, the operator can request an expedited hearing before the Commission. Where a Comprehensive Drilling Plan exists, the operator can request an expedited hearing if the Director does not act on an application in 30 days. These timelines will be extended where a hearing is requested.

2) Do the draft rules present a one-size-fits-all approach to oil and gas development in Colorado?

No. The draft rules will apply differently in different areas of the state. For example, because fast-growing oil and gas development in Garfield, Rio Blanco, and Mesa Counties is causing more conflicts there than elsewhere, all new pads and facilities in these counties will require OGCC approval before drilling permits are issued. Likewise, because of the number and severity of odor complaints in the Piceance and San Juan Basins, oil and gas equipment near homes and schools will be required to use odor-control devices in these areas. Wildlife standards will apply differently in different counties, depending on the wildlife present.

3) Will the public be able to comment on drilling permit applications under the draft rules?

Yes. All applications for oil and gas drilling permits will be posted on the OGCC website, and most will have a 30-day comment period. Where a proposed oil and gas location is covered by a Comprehensive Drilling Plan, the public will have 20 days to comment. In addition, operators will send drilling permit applications to surface owners and adjacent property owners within 500 feet of the site.

4) Are adjacent landowners given additional rights under the draft rules?

Yes. Under the draft rules, owners of land that is both adjacent to and within 500 feet of a proposed pad will be given individual notice and have an opportunity to provide comment to the OGCC. Adjacent landowners will not have standing to request a hearing. Only the operator, surface owner, local government, Department of Public Health and Environment (DPHE), and Division of Wildlife (DOW) will be able to request a hearing before the Commission.

5) Do the draft rules address spills from oil and gas waste pits like we've seen in the media recently?

Yes. The draft rules will expand existing requirements to help ensure that waste pits do not overflow, as we've seen recently. They will also require operators to maintain a current inventory of all chemicals used or stored on the site, so that regulators know what they're dealing with if a spill happens.

6) Will the draft rules protect wildlife resources?

Yes. The draft rules identify periods of up to 3-months when drilling activities in limited areas will be restricted due to critical wildlife concerns, such as mule deer winter range. They also identify some areas that operators should avoid drilling if possible, such as within ¼ mile of active bald eagle nests.

7) Will these draft rules shut down drilling for ten months at a time, against the wishes of surface owners?

No. The draft rules identify specific periods of up to 3-months for certain identified habitat areas where drilling would be restricted. They also provide that in no case will the Director provide a drilling window of less than 9 months. The draft rules allow operators or surface owners to initiate consultation with the DOW, and they prohibit the Director from attaching permit-specific conditions that are more restrictive than the rules without the consent of the surface owner.

They will also provide for exemption from the timing restrictions when the number of drilling pads is limited in an area. These timing restrictions will cease to apply once a well goes into production.

8) Will the draft rules reduce air emissions and odors from oil and gas facilities?

Yes. The draft rules will require production equipment in the Piceance and San Juan Basins to utilize odor control devices when they are located within ½ mile of an occupied building, such as a home or school. They will also require operators to use “green completion” practices to reduce odors where practicable, and to employ measures to control dust from roads.

9) Do the draft rules encourage comprehensive and regional planning for oil and gas activities?

Yes. The draft rules encourage operators to initiate Comprehensive Drilling Plans to address impacts on a larger geographic scale such as a stream drainage, which will reduce permit-processing time by 20 days. They also authorize the Commission to adopt rules for Geographic Area Plans, addressing activities of multiple operators in a geologic basin or entire gas field. These planning tools will reduce the time necessary to review permits and help mitigate the impacts oil and gas activities have on public health, the environment, and wildlife.

10) Will the draft rules protect drinking water supplies from contamination from oil and gas development?

Yes. The draft rules will prohibit oil and gas drilling within 500 feet of drinking water sources for a distance 5 miles upstream of a public water supply intake, unless the operator gets a variance. They also require oil and gas activities to meet certain performance standards such as eliminating or lining pits, collecting baseline water quality data and water samples, and developing a plan to notify the public water suppliers of spills within ½ mile of such sources.

11) Do the draft rules require corporate officers to review compliance with pollution prevention measures?

Yes. The draft rules will require operators in the Piceance Basin to complete and maintain on site a “Pollution Prevention Checklist” that identifies specific requirements and asks operators to ensure that they are meeting those requirements. These include measures to protect public drinking water supplies, prevent stormwater runoff, control odors, and maintain a chemical inventory.

12) Will these rules conflict with local government regulations?

No. The draft rules will authorize the Commission to enter into a Memorandum of Agreement (MOA) with a local government to clarify and harmonize the relationship between the Commission’s rules and local regulation. The Commission will approve an MOA only after a hearing and will review the MOA annually to ensure that it remains consistent with the Commission’s duties to develop the resource and protect the environment.

13) Will these draft rules help people who are concerned about their drinking water?

Yes. Not only will the draft rules limit oil and gas activities in valuable drinking water supply areas, but they will require operators to monitor pressure in the well casing during hydraulic fracturing (“fracking”) activities to ensure that fracking fluids are not lost and will not harm drinking water. In areas of coalbed methane development, operators will be required to sample nearby water wells to ensure that gas is not found in drinking water.

14) Do the draft rules ensure that abandoned well sites are cleaned up?

Yes. The draft rules increase bond amounts for individual wells to ensure that the OGCC can perform plugging and reclamation activities for abandoned well sites, as well as statewide bond amounts posted by companies. For large, centralized waste facilities, operators will be required to post a bond equal to the estimated cost to ensure reclamation, closure, and abandonment.

15) Will these rules go into effect right away?

No. The draft rules have an effective date of November 1, 2008 to allow an appropriate transition period. The Commission may modify this date when it adopts final rules.