

## Rulemaking to Implement HB1298 and HB1341

### Stakeholder Working Group Sessions

#### Additional Regulations Group (AR Group) – Output Tabulation

##### Topics within ARG

- All Additional Regulations topics on COGCC list except Well Completion Practices
- Well Completion Practices transferred to Environmental Group
- Specified distance issues under Form 34 will remain with Process Group
- Federal / County -COGCC preemption issues remain with Process Group and will be addressed at the end of that Group's sessions
- Additional Topics for AR Group
  - Impact of proposed rule changes on
    - processes for drillsite spacing unit determinations, unitization and forced pooling matters
    - APD's -- extensions and conditions for granting
  - Form 34 matters
    - Cross section plot requirements
    - Scaled construction drawings
    - Requirement for topographic map
    - Vegetative analysis requirement (NRCS map unit analysis; baseline vegetative transect)
    - Description of offsite mitigation
    - Construction and Ongoing Operations and Maintenance Plan and included plans
  - Bonding –
    - Process for claiming a bond
    - Surface Owner Protection Bonds

##### Form 35 Inventory

- Reasons for:
  - Facilitates analysis of cumulative impact of O&G operations in State especially on air and land
  - Assists with emergency response requirements
  - Provides background data for air quality analysis
  - Enables informed responses to landowner and other non-industry inquiries
  - Provides a physical snapshot like the "One Call" process
  - Provides needed information concerning potential wildlife impacts
  - Provides staff with some advance knowledge of site that will assist monitoring efforts
  - Provides information useful for studies and enables competent data base management

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- Industry Objections
  - Redundant – already required in other contexts (APEN)
  - Potential conflict with surface use agreements
  - Too much unnecessary detail
  - Should distinguish between mobile and permanent equipment
  - Not targeted to a need – no indication of how information will be used
  - Jurisdictional issues – processing facilities
  - Jurisdictional issues – 18 CFR 380.12(c)
- Alternatives
  - Digital photos
  - Site security diagram like what BLM requires
  - Industry provides information in response to specific COGCC requests
  - Provide equipment lists by category
  - Provide Certificate of Public Convenience and Necessity where available
  - Clarify inventory requirement in terms of downstream facilities scope

### Projects Subject to Federal Certification

- Need for COGCC role derives from the fact that COGCC is often called by the public when a problem exists or is perceived
- Industry not opposed to defined COGCC role that does not raise jurisdictional issues and that focuses on Series 400 rules
- This topic is better suited for a small task force working on a different time track
  - Industry supports formation of such a task force that includes COGCC and non-industry participants
  - Those desiring to participate are to contact Tricia – Blue Sky and El Paso Corporation have done so already

### Information Gathering Authority and Chemical Inventories

- Why –
  - Provides data that COGCC does not now have and that takes time to acquire when needed
  - Facilitates COGCC responses to complaints and public concern about chemicals used on sites
  - Simply asking that information be maintained and be readily / immediately available on request
- Industry response
  - Redundant -- Tier 3 reporting already occurs; records must be kept for 5 years
  - Words of proposal are too broad, e.g. “all”
  - Chemical identification Ok, but not formulation when proprietary
  - Concept is workable from industry perspective
  - Operators will maintain and keep available lists of what is stored, used and how

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- Scope of information should be clearly defined without use of words like “all”
- Does not address a stated need. Public health impact of chemicals used at O&G operations needs to be subject of studies covered by Health Group
- Non-Industry response
  - Proposal does not go far enough
  - Chemicals used on sites and at operations should be publicly disclosed at all times
  - Form 34 should include disclosure of chemicals expected to be used
- Likely areas of Disagreement
  - Non-Industry wants COGCC to go further and require the following
    - that chemicals expected to be used be disclosed on Form 34
    - public disclosure of all chemicals being used on sites at any time
  - Industry concerned about uninformed public reaction
  - Non-industry concerned about lack of ready access to information relevant to public health issues -- ground water contamination

### Tank Labeling

- Why –
  - Current rule (210.b.) does not provide sufficient information concerning tanks themselves, their age and contents
  - Not always clear who is accountable for a particular tank
  - Issues occur where there is more than one operator or tank is not near a well
- Industry Concerns
  - Signs more appropriate and less permanent – facts about a particular tank change
  - Already subject to Rule 210.b.
  - Retroactivity issue – cost
- Consensus: The need for additional information can probably be effectively and acceptably addressed through amendments to Rule 210.b.

### Well Monitoring During Stimulation – Cement Bond Logs

- Why –
  - Many public complaints
  - COGCC needs to be informed when pressure gets too high
- Industry response
  - Already monitor backside and this info can be provided
  - Rule 317.o. does not require cement bond logs, but this data can be provided

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- Non-Industry wants rule to go further and require baseline regional well monitoring – no consensus on this point.

### Financial Assurances – Bonding

- Why –
  - Have had financial assurance requirements for many years, but current dollar amounts too low in terms of what State must pay to P&A a well, clean-up site
  - Shallow wells cost at least \$10K, deeper wells \$20K
  - The current rate is 5-7 closures a year @ \$20-30K
  - Often State must dip into State funds
  - No salvage value by the time site gets to the State
  - ERF still important, a state-wide umbrella policy
  - No claims made against largest blanket bonds – problems occur with smaller operators
  - Goal: bond amount = closing cost, but on state-wide average basis
  - Bond amount should be incentive for operator to P&A and incentive to keep number of idle wells low
  - Surface facilities at Class II well locations need to be covered but aren't currently
  - Gas processing bonding requirements – no problems yet, but if the State had to clean up such a site, the impact would be large
  - Centralized waste management facilities need to be bonded based upon estimated cost of closure instead of flat amount
  - Reclamation bonding rule changes are targeted to those activities that are currently un-bonded
- Bond Release
  - Interim reclamation a violation and enforcement issue, not a bonding issue – variances hard to get
  - No release of bond without final reclamation
  - DOW wants bond incentive at interim stages
- Non-Industry Response
  - Bonding generally inadequate
  - No indexing for inflation
  - No professional engineering support for bond amounts
  - All bonding should be done on a site by site basis unless a CDP in place in which case blanket bonding would be allowed
- Industry Response
  - State should take advantage of this existing rules that allow for well-by-well increases
  - State has adequate resources already to address financial assurance concerns:
    - Proper enforcement of existing rules -- Responsible Party concept
    - Insurance
    - Bonding
    - Oil & Gas Conservation and Environmental Response Fund -- This is what this fund is for and it should be used

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- Small operator problem only – increasing the larger state wide bond would make no sense
- Bonding not tied to risk analysis or actuarial studies and should be
- State needs to maintain bad actor data
- The examples cited reflect enforcement problems not bonding problems
- There are no oil and gas operation sites that are not subject to bonding requirements
- Increase proposed will be problem for small operators – incentives already there

### Form 34 Matters – Vegetative Analysis Requirement

- Why —
  - Need baseline info to monitor against undisturbed areas
  - Helps keep the reclamation plan on point
  - Not currently required – form 2A is general, not specific enough to set reclamation goals
  - Best to have a snapshot at peak of native growing season
  - Not asking for expensive analysis
  - Not required on cropland
  - Reclamation must be done within wildlife context
  - This analysis facilitates speedier reclamation
  - Empirical data in CSU study supports the need
- Industry
  - Stripper well and small operators can't comply
  - Has to be subject to what the landowner wants
  - Not helpful or necessary everywhere – BLM and private land
  - Only needed in critical habitat areas
  - Too onerous if required for entire length of a road
- Non-Industry response
  - Need a reference area of land for later reclamation
  - DOW publishes a document for reference area selection, monitoring, enforcement

### Form 34 Matters – Offsite Mitigation Concept

- Why –
  - Voluntary, here if the operator wants to take advantage of it
  - Disturbance is a given, so enhance offsite areas as a credit against irreclaimable damage
  - This concept already deployed by DOW
  - DOW: BMP's should be in an Appendix to the APD and be separately manageable
- Industry response
  - Timing – part of APD or can site be identified later on?
  - In BLM this is part of the NEPA process
  - Approach should be to avoid, minimize, mitigate
  - Too prescriptive if mandatory, works against flexibility needed for good landowner relationship

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- Won't work on BLM land, split estates
- Not clear who has authority to enforce – DOW, COGCC?

### Form 34 Matters – Construction and Ongoing Operations and Maintenance Plans

- Why –
  - No plans are now required and should be
  - Plans identify issues, goals and help monitor outcomes
  - Short plans are better – basic applicable standards, not detailed implementation steps
  - Plans help facilitate and measure self-certification
  - Intent: apply current BMP's to what is planned
  - Field inspection reports reveal many noxious weed, road maintenance and other surface impact problems that are not being adequately addressed
  - There is a resource (\$\$ and people) problem and APD delay is not desirable, but better planning is needed
  - Broader scale plans that cover larger areas / regions are undoubtedly more workable
  - Appendix A (11/27/07 memo) items will be required for all APD's
- Non-Industry Response
  - Plan means a better result
  - A 1998 study showed 80% of oil and gas sites studied not properly reclaimed
  - Pending Sage Grouse classification will drive this type of planning anyway
  - Need to make certain that plans don't control where not working
  - Plans need to be changeable
  - Rule 1000 series (enforcement) may be part of problem
  - Access road scaled construction drawings are very costly
- Industry response
  - Performance is now required, plans won't help performance
  - No process for changing a plan
  - One plan does not fit all locations
  - Cannot predict at time permitting what will be required
  - Surface owner must be involved – plan is grounded in surface owner requirements
  - Counties require noxious weed control plans already
  - Use the plan only when needed for enforcement
  - Too much paperwork with no value
  - COGCC does not have the resources to read, critique, act upon all plans
  - State is trying to solve a macro problem with an unworkable site specific requirement
  - How will plans attached to an APD affect completeness determination?
  - Form 34 not the way to address state wide noxious weed, road maintenance, surface impact issues
  - Broader scale plans may be workable and more effective than site specific plans
  - Access road scaled construction drawings are very costly
  - Can provide lists of what plans are already required and by whom

### Enforcement

- Current processes and rules
  - Sites inspected once every 4-5 yrs
  - Environmental plans not reviewed at permit stage, but should be
  - Environmental and site clean-up enforcement grounded in Rule 1003 (interim) and Rule 1004 (final reclamation)
- Proposed
  - Not trying to cause industry to do things the surface owner objects to, but Rule 502(b) waiver must be based on a reason more than ownership
  - Need higher ground cover requirements
  - County lists and weed control plans are valid reference points for noxious weed control compliance
  - Concept of dual jurisdiction over noxious weed control and site clean-up a valid approach and helps the limited human resources factor

### Self Certification

- CDPHE Input
  - Education, not enforcement is prime objective
  - Concept being floated, not necessarily proposed
  - Not seeking certification re compliance
  - Certify as to plans in place, resources available to implement, what is being and can be done
  - Won't work for all regulatory requirements, but appropriate for selected high profile regulations: bear-proof trash receptacle example
  - Title V of the Clean Air Act is not the model
  - Not directed (can't be) at Surface Owner Agreements (A.G.)
- Industry Responses
  - Statute already makes form certification deficiencies a misdemeanor – permit is the certification
  - Works for solid waste, but will it work for O&G industry with so many sites and operations in State
  - Criminalizes filing deficiencies which is non-criminal behavior
  - Auditing would be a manpower problem for State
  - Self certification won't work for reclamation or noxious weed control
  - Concern about consistency- different interpretations of rules from different agencies/inspectors
  - Not needed to achieve environmental compliance
  - Unfair burden on local/field management to be responsible for all field conditions at all times
  - If limited to provision of information and narrowly focused, then may be OK,
    - Concerned that the scope will inevitably grow to meaningless proportions – nature of government regulation
    - Limit to certification that plans are in place and resources available to implement

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- SPCC plans are similar to what may be acceptable
  - Definition of time frame crucial
  - Could certify that good faith steps are being taken
- Title V of Clean Air Act a good example of self certification not working
  - Started out modestly and grew
  - This example has industry concerned about the concept
- Some in the Industry would rather pay for more enforcement than try to meet self certification requirements
- Requires legal review of each certificate
- Industry education not a valuable goal– dry cleaner example does not work
- Want to know more about lack of COGCC resources, this is the way to address compliance
- Non-Industry Input
  - O&G development has outstripped state ability to keep up
  - Three choices:
    - Slow down development
    - Industry pay for more enforcement
    - Self certification
  - Why can't Industry pay for more enforcement and self inspect?
  - Certification that good faith steps are being taken a good idea
  - Education goal is valuable, especially for smaller operators
  - Industry is not perfect, mistakes are made and non-compliance occurs -- self certification will help
- CDPHE Response
  - Valuable discussion and have paid attention
  - All comments will be taken on board
  - Merely seeking an effective tool to encourage compliance in key areas
  - Limited scope makes sense, not trying to make anyone's job harder

### Reclamation enforcement

- Issues
  - Any performance based enforcement remedy won't work in reclamation because standard so difficult to define
  - Bond is a better reclamation enforcement tool – no release until standard is met and iterative release of partial bond amounts is a good idea.
  - DOW idea (public lands): define a site specific objective and release bond gradually as objective is approached and met
  - This Defined Objective approach will work for interim and final reclamation
  - Post bond when APD filed – site specific
  - Reference area concept important for plant cover reference, not a way to define required species
  - Current parameters allow reference areas to be distant from site
  - Interim reclamation not a bonding issue – a violation and enforcement issue
  - Reclamation on gathering systems – subject to COGCC jurisdiction, but counties not always seeing enforcement
- Industry Responses

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- Flexibility is essential – there are no absolutes in reclamation
- Can plan, but only after operation is underway
- Some operations last 20-30 years – reclamation plans at time of APD make no sense
- Reference area a good concept, but needs to be clearly defined
- It should be a reference area for plant cover purposes not species
- Defined Objective approach seems very workable
- Support strong enforcement of good reclamation
- Don't want to file costly plans that no one reads
- Counties need to be more engaged in enforcement
- Incentives to good reclamation should be:
  - Bond release
  - Do it right the first time – less costly
  - Fines
  - Stronger enforcement
  - Increased COGCC field staffing
- Use of contractors for inspection encourages finding violations
- Non-Industry Response
  - Defined objective a workable concept, but really means a plan
  - There have to be consequences for not meeting the defined objective
  - Consider hiring private inspectors and make losing party pay the cost
  - Reference area (designated at time of APD) can be an alternative to base line transects
  - New operations/sites are much better than older ones in the State