

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
 - Processes for drillsite spacing unit determinations, unitization and forced pooling matters
 - Extensions for APD's 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
 - Applicability of proposed regulations to existing wells and operations
 - Bonding –
 - Process for claiming a bond
 - Surface Owner Protections 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 has 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 6-7 closures a year @ \$20-30K
 - Often State must dip into State funds
 - Goal: bond amount = closing cost
 - 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
- 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
 - 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

Form 34 Matters – Vegetative Analysis Requirement

- Why —

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- 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
 - 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

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- 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 years
 - 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

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- Need higher ground cover requirements
- County lists and weed control plans are valid references 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

- Issues
 - 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

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
- Industry Responses
 - 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

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- 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