

MINUTES

Stakeholder Work Group for HB07-1298/1341 Rulemaking

Process Group – Meeting No.7

COGCC Conference Room, 1120 Lincoln St., #801, Denver, CO 80203

Tuesday, February 19, 2008

Tim Atkeson, Facilitator

Attendees (taken off the sign-up sheets):

Alex Correa/Exxon Mobil	Susan Aldridge/Beatty & Wozniak	Rebecca Watson/Hogan & Hartson for Bill Barrett	Daniel Schner/El Paso
Tom Dugan/Dugan & Associations for CPA	Claire Moseley/Public Lands Advocacy	Joe Barrett/Williams	Eileen Dey/Conoco Phillips
Tony Trinko/El Paso	R. Comer/DOI	David Bell/Anadarko	Amy Wilson/Dufford & Brown for CAHB
Elise Jones/CO Environmental Coalition	Suzanne Holland/Chevron	John R. Jacus/DG&S for Anadarko	Wally White/La Plata County
Bruce Bertram/Delta Co.	Jeff Becker/Holland and Hart	Pete Hack/DGS for Anadarko	Perry Peance/Conoco Phillips
Randall Ferguson/COGCC	David Lovell/CDOW	Dave Brown/BP	Melody Holm/US Forest Service
Dave Neslin/COGCC	Reed Scott/Anadarko	Thomas Williams/USDA Forest Service	Morgan McCammon/Conoco Phillips
Ken Wonstolen/Fulbright for COGA	Martha Whitmore/Patton Boggs for Pioneer	Pat Garland/LT Env. For PDC	Jep Seman/CPA
Kate Fay/CDPHE	Bruce Barker/Weld County	Steve Bennett/BLM	Howard Boigon/Hogan & Hartson
Christa Lee Rock/Patton Boggs for Pioneer	Bill Keefe/Paulson Odell	Julia Crusius/EnCana	Julie Acevedo/Noble
Fernando Blackgoat/Exxon Mobile	Gini Pingenot/CO Counties, Inc.	David Baumgarten/Gunnison County	Jeff Madison/Rio Blanco County
Jesse White/Apollo Operating	Donna Havins/Oxy	Jevin Croteau/EnCana	Jerry Alberts/Antero
Matt Sura/WCC	Tyson Powell/DOI		

Meeting was called to order at 8:00am.

Tim opened the meeting by letting people know that they can make comments and/or submit draft language to either Dave Neslin (david.neslin@state.co.us) or to the whole group and by requesting that people do so sooner rather than later. He noted that the 3 agencies will be meeting this week to start drafting the rules. He also wanted to make clear that in the objectives CPA presented last week CPA wasn't opposed to having public comment but wanted it limited to that provided for in existing COGCC rules.

The discussion then turned to preemption, with the first half of the meeting dedicated to county and local government, and the second half to the federal government. Jeff Robbins (La Plata County Attorney) and David Baumgarten (Gunnison County Attorney) presented the local government proposal on preemption. The proposal was premised on two main principles: 1) the state would set statewide standards for protection of wildlife and the environment which would be the minimum that operators would have to comply with, and 2) the state would authorize local governments to enact and enforce additional standards as long as they were at least as stringent as the state standards.

In terms of process, Jeff suggested the use of a Memorandum of Agreement (MOA) to allow the state to create flexibility within the different basins. Pursuant to the MOA, the state would allow the local government to give a permit for all surface activities. It is hoped that this would streamline the process by reducing the number of permits operators would need to get. In addition, Jeff suggested that use of a MOA could bring uniformity in the surface-oriented permit process. When the state recognizes the MOA process and does a pilot with a county, other local governments could use that MOA as a template.

A number of local government attorneys and officials voiced their support for the proposal. David Baumgartner noted that it offers a chance to bring a solution with local and state governments working together without litigation. Judy Jordan, Garfield County, felt that MOAs were a good way to go about sharing the jurisdiction. Bruce Barker, Weld County Attorney, said that some aspects of the proposal make a lot of sense, but he had questions about the details. Weld County likes the way it is now. He would like the ability to keep the system as it is, but keep tabs on the regulations put in by the state.

Dave Neslin wanted to let everyone know that he appreciated all the work in developing the proposal and the possibility of a new relationship with all the other different interests. He noted this rulemaking was not intended to diminish the local governments' regulatory programs, and added that the legislature directed the COGCC to take a balanced approach with this.

Stakeholder Comments:

- What about city government and the fire and water districts? How is that going to work in this process? Jeff Robbins answered by saying that it made sense to include the cities and municipal governments in the MOA process and that further thought would have to be given to the fire and water districts, which had different jurisdictional authority than the county and city governments.
- Part of the MOA would have to assure staffing levels and a local process that was timely and efficient. The hope is that once a MOA is signed off by the state and local governments, the permit process would be streamlined.
- Wally White, La Plata County, commented that MOAs would help people know what the issues are. This would give citizens a better understanding. We have a desire to mitigate surface disturbance, but not to stop drilling. We don't want to have a confrontational relationship any more. Trying to foster a better working relationship and build on citizen involvement.
- Industry would need to be included in the development of the MOAs.
- The MOAs would have to assure that the local regulation was not a subterfuge for preventing drilling and, instead, complied with the state's interest in development of the resource.

- Questions were raised as to whether the state delegation was an abdication of its authority.
- Concerns were voiced about minimum state standards which could then be increased by the local governments.
- Some commentators indicated that even though they were interested in the MOA process they were reserving judgment as to whether Form 34-type regulation would constitute actual preemption

Dave Neslin then said that a smaller group would be formed to discuss this issue in detail. He noted that there is a time constraint. This group would consist of 3 people from each of the following groups: 1) Industry, 2) Local governments, 3) Citizens, Environment, and Agriculture, and 4) each of the 3 agencies. There should be a couple of meetings soon and an attempt to reach an agreement as to how the regulations would authorize an MOA process and what regulatory sideboards would be established. Anyone interested should send an email to Tim (tim@atkeson.net) and Dave Neslin (david.neslin@state.co.us). Tim will make the decision as to will be in the group. However, anyone can make comments, regardless of whether they are in the smaller group or not.

A 15-minute recess was called.

The discussion then moved to preemption as it related to federal land. The first topic involved federally certificated operations. It was agreed that a further discussion would be had regarding these facilities. Several commentators then questioned whether that State had any authority to regulate drilling and/or surface activities on federal land and suggested that the State make use of the various tools already available to it (cooperating agency, participation in energy pilot programs, commenting on management plans, etc.). Other suggested that it would be helpful if the state and federal government would share data and technology. There is not currently an MOU between the State and the federal government regarding surface activities and some commentators felt it would be worthwhile to negotiate one with both the BLM and the Forest Service. Steve Bennett, BLM, noted that Form 34-type rules (as currently expressed) have the potential to be in conflict with existing BLM rules.

Tim closed the meeting by thanking everyone for their participation and by reminding the group that all comments are welcomed and the sooner the better. Send comments to Thom Kerr (thom.kerr@state.co.us), or to Randall Ferguson (randall.ferguson@state.co.us), or to Dave Neslin (david.neslin@state.co.us).

Meeting adjourned at 11:20am.