



Challenge Filed to New COGCC Regulations

By: [Andrew Bremner](#)

On May 1, 2009, Beatty & Wozniak, P.C. filed a complaint on behalf of the Colorado Oil and Gas Association for judicial review of the Colorado Oil and Gas Conservation Commission's new and amended rules that took effect on April 1, 2009.

The new and amended rules introduce comprehensive changes to Colorado's regulation of oil and gas operations, including major changes and additions such as:

- New wildlife regulations, including Restricted Surface Occupancy Areas and a requirement to follow unpublished Best Management Practices as permit conditions;
- New rules for Comprehensive Drilling Plans;
- Surface water protection areas;
- Expanded notice, consultation, protest, and judicial review provisions;
- New odor, green completion, fugitive dust, and flare requirements;
- New stormwater management rules;
- New and expanded recordkeeping requirements, including chemical inventories, pollution checklists, and waste manifests; and
- New rules on coalbed methane development.

The complaint requests that the new and amended rules be set aside and remanded to the Commission for rehearing because they were adopted without substantial compliance with the Colorado Administrative Procedures Act (APA). The lawsuit asks the Court to find that, among other deficiencies, the new and amended rules were adopted without full consideration of their effects, without a finding that they would encourage the benefits of a free enterprise system, with the incorporation of unpublished materials by reference, and without, and in excess of, the Commission's statutory

authority.

The APA recognizes that regulations can have negative effects on the state's economy and business climate, and therefore imposes on agencies a continuing responsibility to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency action. The lawsuit challenges that the cost-benefit and regulatory analysis that was prepared in the Commission's rulemaking did not satisfy the requirements of the APA because it failed to properly consider the impacts that the rules will have on affected classes of persons, the state economy, private markets, small businesses, employment, consumers, state agencies, and state revenues, and the economic competitiveness of Colorado businesses.

The Commission has not yet filed a response to the complaint and hearings have not yet been scheduled.

For more information, please contact Michael Beatty, the lead attorney on this matter.



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