



## COGCC Adopts Rules Regulating Collaboration Between Operators and Local Governments

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On January 25<sup>th</sup>, the Colorado Oil and Gas Conservation Commission (COGCC) commenced its final public hearing to adopt rules to implement Recommendation Nos. 17 and 20, unanimously approved by the Governor’s Oil and Gas Task Force nearly one year ago. The final rules adopted by the COGCC on Monday represent months of stakeholder meetings, multiple pleadings filed by seventy-two interested parties, and four days of oral testimony before the COGCC.

The final rules require, among other things, greater local government involvement prior to permitting a large oil and gas facility within an Urban Mitigation Area (referred to in the final rules as a Large UMA Facility). Under the final rules adopted by the COGCC, a Large UMA Facility shall be defined as an oil and gas location proposed to be located in an Urban Mitigation Area<sup>1</sup> on which: (1) eight new wells are planned for the location; or (2) the cumulative new and existing on-site storage for produced hydrocarbons exceeds 4,000 barrels. If a planned location qualifies as a Large UMA Facility, the operator must engage in extended notice and consultation with the relevant local government and surface owner before it may submit its permit to the COGCC for the location (unless an exception applies).

The final definition, approved by the COGCC in a 5-4 vote, proved to be the first of many disappointing outcomes for industry. The industry-advanced alternative definition characterized Large UMA Facilities as: (1) planned oil and gas locations with more than 16 new vertical or directional wells or more than 12 new horizontal wells, or (2) locations on which the cumulative new and existing on-site tank storage capacity for produced hydrocarbons exceeded 9,600 barrels. Additionally, industry’s alternative definition would have increased the trigger to 20 vertical or directional wells or 16 horizontal wells where the operator had secured pipeline transportation. Industry advocated for the pipeline incentive in the definition, reminding the Commission that the best way to reduce the overall impacts to surface and increase safety was to transport resources off-site via pipelines.

The final rules provide that an operator must provide a “Notice of Intent to Construct a Large UMA Facility” to both the surface owner and the local government with land use authority over

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<sup>1</sup> The COGCC Rules define an Urban Mitigation Area as an area where: (A) At least twenty-two (22) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within a 1,000’ radius of the proposed Oil and Gas Location; or (B) At least eleven (11) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within any semi-circle of the 1,000 radius mentioned in section (A) above

the location no less than 90 days prior to initiating the permit process with the COGCC. The notice must include: (1) a description of the proposed oil and gas location, (2) a siting rationale for proposing to locate the facility within an Urban Mitigation Area (including a description of other sites that were considered and why they were rejected), and (3) an offer to consult with the local government to seek agreement regarding the location of the Large UMA Facility. If the operator and local government are unable reach agreement regarding the location, the operator must offer in writing to engage in mediation with the local government.

Industry and other stakeholders were successful in advocating for exceptions from the notice and consultation process. Specifically, an operator proposing a Large UMA Facility is not required to engage in consultation with the local government if: (1) the local government with land use authority has opted out of the notification and consultation processes, (2) the operator has an existing agreement with the local government regarding siting of oil and gas locations, (3) the Large UMA Facility is proposed to be located in an approved site specific development plan which expressly governs the location of wells or production facilities, or (4) the location of the Large UMA Facility is within acreage identified as an oil and gas operations area in an approved “Application for Development” pursuant to the Mineral Notification Act. Despite these approved exceptions, the Commission failed to adopt rules which would exclude existing surface use agreements from notice and consultation despite legal and operational arguments raised by industry, Colorado Home Builders Association, Colorado Farm Bureau, and many west slope local governments.

The final rules also require operators to register in each municipal local jurisdiction and county in which it has an approved drilling unit or a pending location request by May 1, 2016. Moreover, at the request of a local government designee, operators must provide prospective operational information to the local government with respect to the number of wells the operator intends to drill within the local jurisdiction over a five-year period, and a map showing the operator’s existing well sites and production facilities, sites for which the operator has approved or pending applications for permits-to-drill and approved spacing orders, and sites the operator has identified for development on its current drilling schedule for which it has not submitted applications for permits.

While the final rules are designed to facilitate early collaboration between operators and local governments, industry remains concerned that the rules will cause additional delay to final approval of Large UMA Facilities (the cumulative time to provide notice and consultation with local government, comply with existing pre-application general notices, and allow permit review by COGCC staff may reach more than 270 days). The concerns regarding the operational and economic effects of such delays have been further articulated as a result of declining commodity prices.

The final rules are estimated to be effective March 16, 2016, following legal review by the office of the Attorney General and publication with the secretary of state. For more information on the COGCC Task Force rulemaking, please contact [Jill Fulcher](#).