



Stay-At-Home Orders and Expiring Permits; Extending the Life of Drilling Permits in a Crisis

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In the midst of unprecedented action taken by federal, state, and local governments in response to the COVID-19 pandemic, businesses and individuals are being forced to shelter in place and halt normal business in an effort to mitigate and minimize the impact of the virus. Many of these stay-at-home orders provide exceptions for oil and gas operations, allowing companies to continue drilling operations. With a growing number of COVID-19 cases, however, and the sharp decline in commodity prices, companies still may find it difficult to timely spud wells prior to permit expiration dates.

Wyoming recently adopted changes to its oil and gas regulations aimed at alleviating various well permitting problems in Wyoming. The new rules seek to reduce the backlog of pending permits, disputes over operatorship (the right to drill wells), and certain complaints about operators stockpiling permits. Prior to the rule changes, an operator could establish operatorship for an indefinite period of time by saturating an area with applications for permits to drill (APDs) and renewing them *ad infinitum*. The new rules make it possible to challenge for operatorship as permits are renewed every two years. Therefore, permits that previously had been secured will now be at risk periodically. Pandemic-related drilling constraints and delays may exacerbate the risks generated by the new rule. This is especially true in Wyoming where there is significant federal acreage, and federal government pandemic responses may delay extensions for requisite federal permits. Wyoming does not have a variance option for permit expiration, so operators will need to work within the framework of the new permitting rules to minimize the risk associated with renewing expiring permits. Additionally, operators may need to pursue creative options for approval of federal permits to avoid vulnerabilities to state permits.

In Colorado, APDs expire if drilling operations on the permitted well are not commenced within two years after the date of approval. COGCC Rule 303.g. The rule no longer allows the Director to approve extensions for expiring APDs. While it is not clear in the rule, operators are not required to drill a well to total depth to keep an APD from expiring. COGCC Staff has taken the position that spudding the well and setting surface casing constitutes commencement of drilling operations for purposes of saving a state APD from expiration. While setting surface casing should sufficiently hold the state APD, setting conductor pipe does not constitute commencement of drilling operations for purposes of extending the life of a Colorado APD.

COGCC's current rule pertaining to APD expiration (which will be subject to amendment as part of the ongoing Mission Change Rulemaking) does not contemplate permit extensions. Rule 502.b., however, does allow the Director or Commission to grant variances to "any Commission rules, regulations, or orders" where the operator makes a showing that it has made a good faith effort to

comply or is unable to comply with a rule, regulation, or order, and the variance will not violate the basic intent of the Oil and Gas Conservation Act. Rule 502.b. (emphasis added). Given the unprecedented nature of this pandemic, and the concurrent and resulting crash in commodity prices, operators should consider all options for saving APDs, including pursuing a variance request with the Director. If an operator does pursue a Rule 502.b. variance to Rule 303.g, the operator must be ready to provide specific facts for why it is unable to comply with the permit expiration date. Such delays should not be the result of the operator's actions or within the operator's control. Accurate and timely recordkeeping regarding operator's due diligence may increase the chances a variance is granted.

Many other state conservation agencies have rules relating to permit expiration and extension. For further discussion on these topics and ways to protect your federal or state APDs, please contact [Jill Fulcher](#), [James Parrot](#), or [Bill Sparks](#).