



## COGCC May Hearing: New Law, New Standards, New Commission...Same Public Comment

By [Joby Rittenhouse](#)

On May 21, 2019,<sup>1</sup> the Colorado Oil and Gas Commission (COGCC) met for the first time since Governor Jared Polis signed Colorado Senate Bill 2019-181 into law. The Commission consists of the [following members](#):

- Brenda Haun (agricultural production or royalty member)
- Erin Overturf (environmental protection member)
- Howard Boigon (member with experience in the oil and gas industry)
- John Messner (local government member)
- Liane Jollon (member with experience in public health)
- Mark Hopkins (member with relevant technical expertise)
- Pam Eaton (wildlife protection member)

Among those members appointed, only Commissioners Boigon and Overturf previously served on the COGCC.

COGCC Director Jeff Robbins commenced the meeting by introducing himself, his staff, and the commissioners. Robbins acknowledged pressure from activist groups to institute a moratorium on permit approvals until conclusion of all proposed rulemakings. However, Director Robbins stated that, in his view, such an action was contrary to the intent of the legislature, which directed him to create [Objective Criteria](#) (finalized May 16, 2019) to evaluate well proposals until new rules take effect. While this did not dissuade public comments requesting a moratorium on permits (and criticizing the Director and Governor's Office for failing to take even *more* direct measures to thwart development), neither the Director nor the Commission discussed a possible moratorium on permit applications.

### “New Mission, New Goal, Same Great Team”

During the Report from the Executive Director of the Department of Natural Resources (DNR), Dan Gibbs reiterated goals of Governor Polis's administration (100% renewable energy by 2040) and emphasized the intent to reform the COGCC with a new mission and establish a

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<sup>1</sup> The April 29-30, 2019 Hearing was postponed by the Secretary of the Commission on April 3, 2019, and rescheduled to occur on May 21, 2019.

new regime consistent with the language of S.B. 181: to regulate the oil and gas industry and prevent adverse impacts to public health, safety, and welfare, the environment, and wildlife resources (“PHSWE”). Nonetheless, Gibbs similarly noted that while his office intends to work with an eye toward addressing climate change, a “pause” on permitting and oil and gas development is not necessary or warranted. Gibbs also emphasized the role of the Objective Criteria in providing interim guidance.

Subsequent to the reports of COGCC Director Robbins, DNR Executive Director Gibbs, and COGCC Secretary Mimi Larsen, Director Robbins presented regarding the impact of S.B. 181. The [presentation](#) addressed several key elements, including the following:

#### **Statutorily Mandated Rulemakings:**

- June 17, 2019 – [500 Series / Administrative Law Judges](#) (currently 64 entities filed for party status)
- Fall 2019 – Flowlines \*\*\*
- Fall 2019 – Application Fees
- Fall 2019 – Alternative Site Analysis (for locations near populated areas) \*\*\*
- Fall 2019 – Local Government Provisions
- Fall 2019 – Technical Review Board Requirement
- Spring 2019 – Cumulative Impacts \*\*\*
- Late Spring 2019 – Rules addressing PHSWE \*\*\*

#### **Second Set of Rulemakings:**

- Summer 2020 – Financial Assurance
- Summer 2020 – Wellbore Integrity
- Fall 2020 – Worker Certification (related to hazardous materials)
- Fall 2020 – Incorporating any Colorado Department of Public Health and Environment rules as necessary

#### **Guidance Regarding Establishment of Drilling and Spacing Units (DSUs) and Forms 2 and 2As**

- “Disposition” vs. “Final Determination” – Director Robbins indicated that guidance will be forthcoming, but that it is his interpretation that C.R.S. §§ 34-60-106(1)(f) and 116(1)(b) require an operator to provide sworn testimony that it: (1) has submitted *and* obtained a final determination (i.e., disposition) of a permit to the relevant local government; or (2) that the relevant local government has waived the right to issue such a permit prior to COGCC approval of a drilling and spacing unit or Form 2A, Application for Location Assessment/ Form 2, Application for Permit to Drill (ADP).
- For More Information, please see [May 22, 2019 Operator Group Meeting](#)

Following the Director’s presentation, COGCC staff continued with several additional orientation and procedural presentations for the benefit of the new commissioners, after which the commission proceeded with business as usual, including unanimous approval of a matter

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\*\*\* Rulemakings that are required to be completed by voluntary commission prior to July 2020.

requesting a stay of APDs, Form 2As, and applications to establish drilling and spacing units within a proposed Comprehensive Development Plan and unanimous approval of the General Consent Agenda.

Notably, the Commission—both new and experienced commissioners—expressed a degree of concern regarding enforcement actions and a perceived lenience in penalty assessment. To that end, the Commission unanimously rejected one administrative order on consent (“AOC”) for an enforcement action (while approving all other AOCs unanimously), instructing COGCC staff to renegotiate with the operator and address Commission concerns regarding violation of Rule 326.b(1) (failure to timely conduct a mechanical integrity test on a shut-in well).

In conclusion, while some anticipated a raucous and possibly confrontational first hearing in this new era of oil and gas development post-S.B. 181, the hearing was relatively unexciting. The COGCC is next set to convene June 17<sup>th</sup> for regularly scheduled Commission Hearings and the [first rulemaking pertaining to the 500-Series Rules](#) (regarding Rules of Practice and Procedure before the Commission).

For more information regarding the post-S.B. 181 Commission, please contact a member of our [Commission and Regulatory Group](#).