



COGCC Update: Governor's Task Force Rulemaking Underway

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On November 16th and 17th, the Colorado Oil and Gas Conservation Commission (“COGCC”) commenced public hearings over proposed rules to implement Recommendation Nos. 17 and 20, unanimously approved by the Governor’s Oil and Gas Task Force in February, 2015. The proposed rules designed to implement Recommendation No. 17 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 proposed rules as a Large UMA Facility). Under the current proposed rules, drafted by COGCC staff, a Large UMA Facility shall mean an oil and gas location proposed to be located in an Urban Mitigation Area on which: (1) the cumulative total measured depth of all new wells planned for the Location exceeds 90,000 feet; or (2) the cumulative new and existing on site storage capacity for produced hydrocarbons exceeds 4,000 barrels.

Specifically, if a Large UMA Facility is proposed by an operator, the proposed rules require written notice to the local government with jurisdiction over the location and proximate local governments within 1,000’ of the proposed location no less than 90 days prior to submitting a Form 2A to the Commission and before the operator has finalized a contract with the surface owner for a specific location. The operator, at the request of the local government, will be required to consult with the local government concerning siting of, and best management practices to be employed at, the proposed Large UMA Facility. If an agreement cannot be reached between the operator and local government regarding the proposed Large UMA Facility, the operator must offer to engage in mediation with the local government. If mediation is unsuccessful, or the local government remains unresponsive, the operator may finally request an expedited hearing before the Commission with respect to approval of a Form 2A.

Large UMA Facilities will be subject to best management practices and mitigation measures to minimize adverse impacts to adjoining land uses. Among other things, the proposed rules allow the Director to impose an unprecedented requirement to limit the duration of drilling, completion, and stimulation operations for the location; require Large UMA Facilities to be built using “best available technologies”; and specify that certain required BMPs will be incorporated into the final OGLA permit to address fire hazards, fluid leak detection, automated well shut in, storage tank pressure and fluid management, and proppant dust control.

With respect to Recommendation No. 20, the proposed rules require operators, at the request of a local government designee, to 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.

Seventy-two parties filed requests to participate formally in the rulemaking process. The interested parties include industry trade organizations and individual companies, local governments, concerned citizens, and trade organizations representing surface and mineral owners. While most interested parties filed separate prehearing statements, which may be found at http://cogcc.state.co.us/reg.html#/rules/gtfrulemaking_party_statements, many parties chose to form coalition groups for purposes of presenting before the COGCC at the hearing.

The first two days of testimony reflected a common theme—interpretation of the Task Force’s intent in approving Recommendation No. 17. Non-industry parties argued that the Task Force intended certain provisions of the recommendation, including siting tools and mitigation measures, to apply outside of Urban Mitigation Areas. Former Oil and Gas Commissioner Perry Pearce, who was a member of the Task Force, testified on behalf of industry that Recommendation No. 17 was intended to be limited to Urban Mitigation Areas, and urged the COGCC to adopt final rules that were consistent with the scope of the recommendations adopted by the Task Force.

Many local governments and citizen groups argued that the COGCC staff’s proposed definition of Large UMA Facility is too narrow, and the metrics (including barrels of storage and total cumulative measure depth) should be reduced by half so that the final rules will apply to more locations. Industry, on the other hand, recommended the Commission modify the definition to refer to total wells planned for the facility (rather than total cumulative measured depth) in order to provide greater clarity and certainty to all stakeholders, and that the total well count be increased in order to more accurately reflect a “large” oil and gas facility. Finally, industry urged the COGCC to adopt a definition which would shield larger facilities from the final rules if the operator had secured pipeline transportation for the site (thus reducing truck traffic, aesthetic impacts, and increasing safety).

The Commission also heard lengthy testimony from all parties regarding the actual notice and consultation process between an operator and local government. Some local governments argued that consultation (and agreement regarding the location of the Large UMA Facility) should include a local government’s land use permitting process (a process that typically takes several months to complete). According to these parties, the only way for local governments to evaluate the appropriateness of a site is through its formal “Use By Special Review” process. Industry voiced strong opposition to this suggestion, reminding the COGCC of its primacy over approving and permitting oil and gas locations under Colorado law, and providing testimony concerning the practical and operational limitations of endorsing a sequential local and state permitting process (as opposed to the concurrent local and state permitting process that many operators utilize now).

The Commission will reconvene in Denver on December 7th and 8th and continue to hear testimony from all interested parties related to the proposed rules. Time permitting, the Commissioners will also deliberate and vote on the final rules in December. For more information on the COGCC Task Force rulemaking, please contact [Jill Fulcher](#).

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