



COGCC and WOGCC Regulatory Update: GWA Rules Questioned, Noise Rulemaking Tabled, and APD Objections Scrutinized

By [James Parrot](#)

Possible Wellbore Spacing Unit Rulemaking in Colorado

At the April 18, 2016 meeting of the Colorado Oil and Gas Conservation Commission (“COGCC”), COGCC Director Matthew Lepore announced that the COGCC will be examining the use of wellbore spacing units (commonly referred to as “WSUs”) in the Greater Wattenberg Area (“GWA”). In 2011, the COGCC amended Rule 318A, which pioneered the use of horizontal WSUs in GWA and allowed overlapping spacing units on a well-by-well basis. GWA is a nine-by-nine township area (approximately 2916 square miles) and is mostly in Adams County and Weld County, but also covers small parts of Larimer County, Boulder, Jefferson, Denver, and all of Broomfield County.¹ As the majority of active oil and gas development currently occurs in GWA, Rule 318A (usually referred to as the “GWA Rule” to distinguish it from Rule 318.a.) applies to a substantial number of permitted and planned wells in Colorado.

The Director noted that WSUs were originally intended to enable the drilling of wells on the boundaries between traditional drilling and spacing units (“DSUs”) but that WSUs have largely replaced DSUs as the de facto spacing unit in the state. For example, if an operator wants to develop a 1280-acre area in GWA with 24 horizontal wells in the Codell and Niobrara Formations, the operator will often designate 24 overlapping WSUs rather than a single DSU with a couple of WSUs on each side to fill in the space between DSUs. According to the Director, this has created what he characterized as “conflict” among companies operating in GWA.

The Director noted that COGCC staff members have been examining changes to the GWA Rule due to the growing use of WSUs, often as substitutes for DSUs. He said that it may be time to consider whether WSUs have outlived their utility except with regard to wells on the boundaries between DSUs. He requested that the Commissioners engage with COGCC staff in executive session to talk about legal aspects of changes to the GWA Rule, which would require a rulemaking.

¹ The Greater Wattenberg Area is defined as Townships 2 South to 7 North and Ranges 61 West to 69 West, 6th P.M.

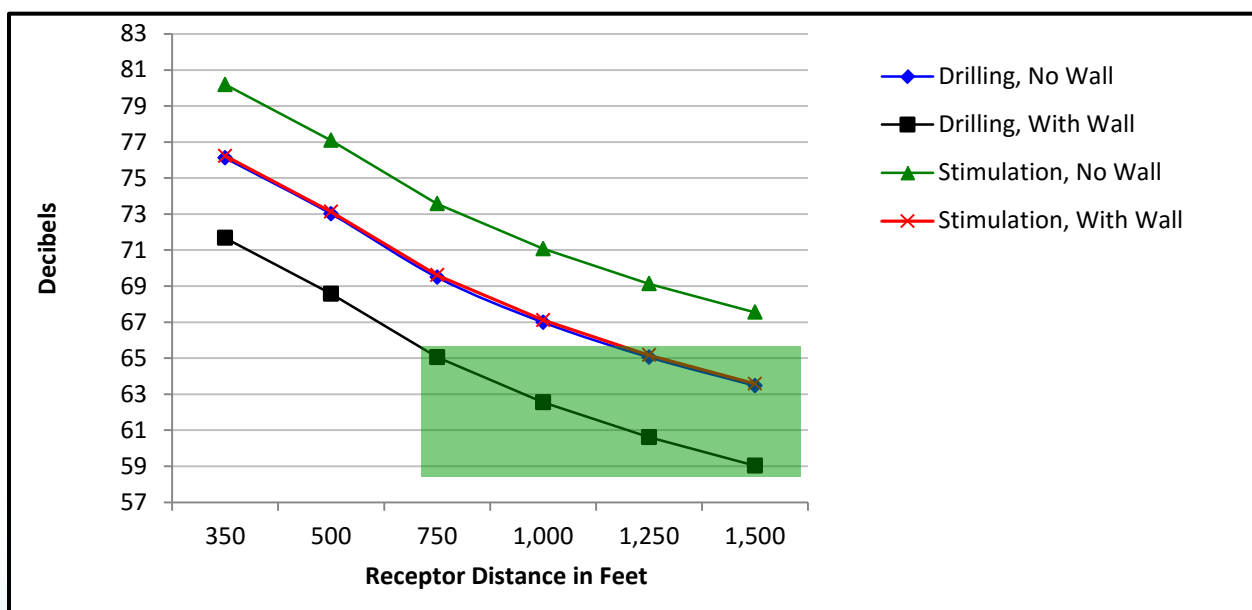
The COGCC did not adjourn to executive session at the April 18 hearing, but presumably, the Director will continue to pursue this policy of considering and proposing limits on the use of WSUs.

Noise Rulemaking on Hold in Colorado

No sooner did the COGCC wrap up the 2015-2016 Task Force Rulemaking than it embarked on another rule change, this time dealing with noise impacts from oil and gas operations. For the time being, the COGCC has deferred the formal rulemaking to gather additional data.

So far, COGCC staff have identified “C” scale noise over 65 decibels as having the most adverse public impact, while “A” scale noise is not as problematic (or is adequately mitigated by current rules). “C” scale noise is low frequency noise, often likened to a subwoofer at high volume in a car with its windows up, and generally is more felt than heard. Nearly 40% of all complaints filed with the COGCC between January 2015 and February 2016 pertained to noise with a “C” scale component and more than half of that noise was over 65 decibels.² Additionally, the COGCC identified several studies and local ordinances that characterize 65 decibels as the point at which “C” scale noise causes adverse public impacts. The COGCC determined that noise mitigation measures currently required under the rules do not adequately reduce loud low frequency noise. This is due in part to the facts that such noise travels farther than high frequency noise and is not as readily absorbed by sound barriers.

The COGCC undertook a series of noise surveys to measure the decibel level of “C” scale noise at various distances from the noise source during drilling and completions, with and without a 30-foot sound wall. The results of the survey are portrayed in the chart below:



² This is 40% of all complaints, not just noise complaints. Other complaints related to lighting, traffic, site access, air quality, flaring, and miscellaneous other issues.

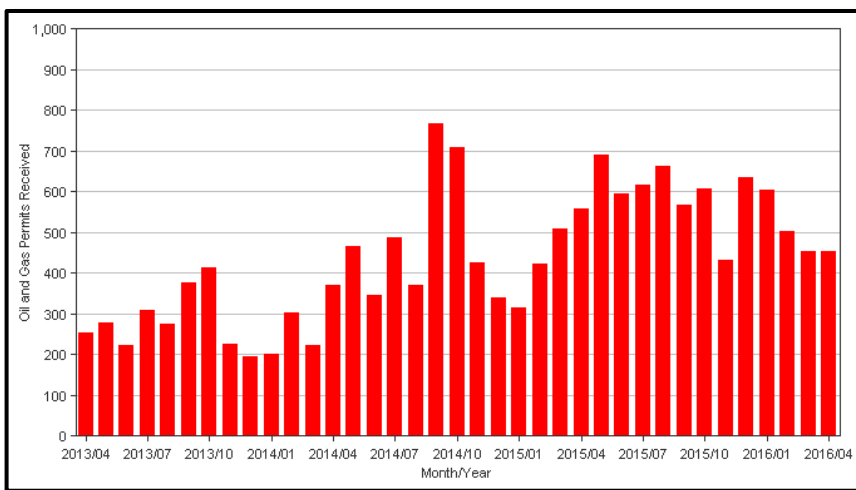
The shaded box shows the “no impact zone” as determined by the COGCC’s survey. For drilling operations with a 30-foot sound wall, at least 750 feet is necessary before “C” scale noise falls below 65 decibels. For stimulation with a 30-foot wall, 1,250 feet is necessary. Stimulation activities with a wall and drilling activities without a wall are nearly identical, as shown by the overlapping red and blue lines.

The COGCC identified various potential mitigation measures to reduce “C” scale noise, including: equipment restrictions; localized engineered sound mitigations; pad layout adjustments; additional noise monitoring and equipment adjustment; and community outreach and noise hotlines.

The COGCC determined that it needs to gather more data and study this issue more carefully before initiating a rulemaking, but also said that a noise rulemaking is very likely in the near future, probably late 2016 or in 2017. The timing is dependent on other rulemakings, appointment of new Commissioners, appointment of a new of Department of Natural Resources Executive Director, evolving drilling and completion technology, the number of active rigs in Colorado, and many other factors.

New APD Policies in Wyoming

Wyoming has not experienced a sharp decline in submittal of Applications for Permit to Drill (“APDs”) like many other oil and gas producing states. In fact, the average number of permits submitted per month is 520 for 2016, which is a little under the monthly average for 2015 (566) but much higher than the monthly averages for 2013 and 2014 (336 and 428, respectively) (see table at right).³ This begs an obvious question—why are companies submitting so many APDs in Wyoming in the face of the decline in oil prices? The answer, in short, is operatorship and protection of lease rights.



No rule or statute in Wyoming guarantees the right to drill and operate an entire drilling and spacing unit (commonly referred to as “operatorship”).⁴ So even though a company might apply for, and receive, an order from the Wyoming Oil and Gas Conservation Commission (“WOGCC”) establishing a DSU, the company will not be deemed the operator of the DSU unless all the other owners in the DSU sign a JOA establishing one

³ Source: Wyoming Oil and Gas Conservation Commission online statistics database, available at <http://wogcc.state.wy.us/>.

⁴ See, The Wyoming Oil and Gas Conservation Act, Wyo. Rev. Stat. §30-5-101, *et seq.* and the Rules and Regulations of the Wyoming Oil and Gas Conservation Commission.

company as the operator. Accordingly, the only way that a company can guarantee operatorship for itself (absent a JOA) is to obtain APDs for every well that will fit in the DSU.

In conventional plays where vertical wells dominate, Wyoming generally has not seen this increase in APD submittals because DSUs are usually smaller than lease tracts. However, in areas where horizontal drilling dominates, like parts of the Powder River Basin, DSUs are generally between 640 and 1280 acres, and therefore encompass multiple lease tracts. Consequently, companies that own various lease tracts compete to establish operatorship of the DSU. See the figure below for an illustration of the difference.

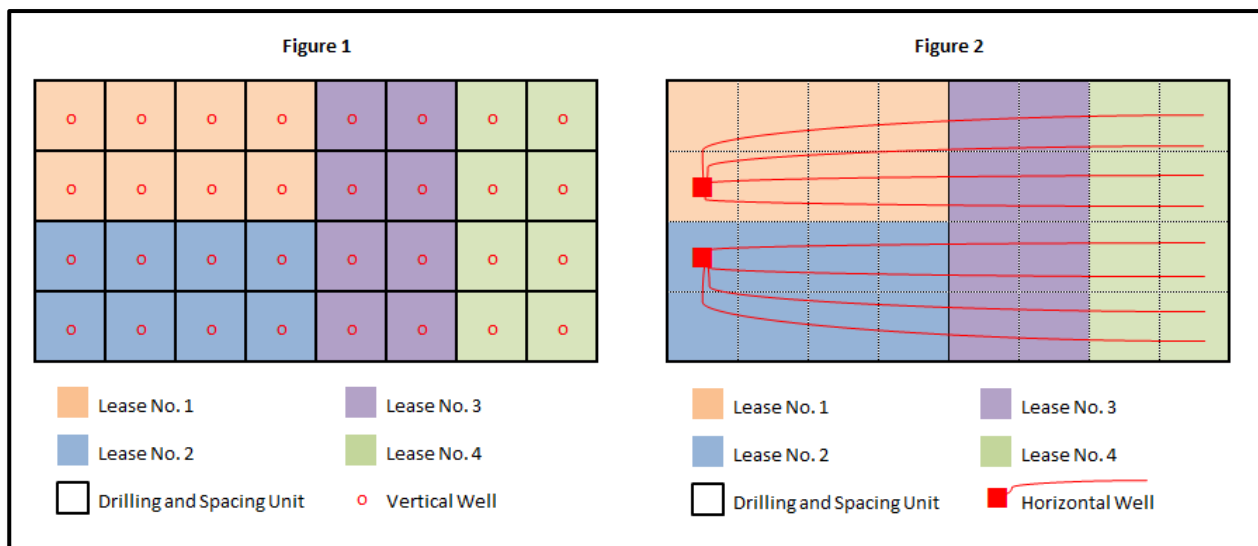
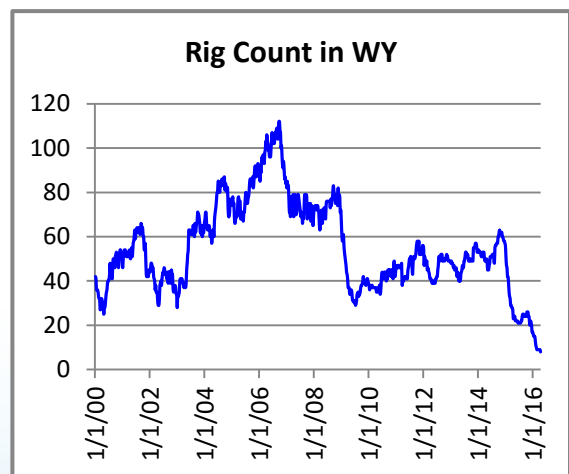


Figure 1 represents an area where vertical drilling dominates, and each well is located in a 40-acre DSU with one well per DSU. Figure 2 represents an area where horizontal drilling dominates and there are eight wells in a 1280-acre DSU. As shown in Figure 1, each lease owner may develop its own lease independent of the other 3 lease owners. However, in Figure 2, no single lease owner will be able to drill long-lateral horizontal wells without infringing on another lease owner. So companies are competing to fill up the DSU with permits to preclude anyone else from obtaining permits and developing others' acreage. Thus, a company can develop its leasehold according to its own plans.

In short, in Figure 1, a company can wait as long as it likes (or until its lease expires) to permit a well because other companies cannot obtain permits where they own no minerals. In Figure 2, companies race to obtain permits. This is why there are so many APDs submitted every month despite the rig count being at its



lowest point in recent history (see figure at right).⁵

Another effect of this operatorship race is that the WOGCC is receiving a record number of objections to APDs. Companies understandably do not want others developing their leaseholds, and so they seek to have any other operator's APDs covering their leasehold acreage denied. This creates a host of problems for the WOGCC in administering permits, and WOGCC has responded with several policies. First, the WOGCC charges a \$75 fee any time it receives an objection to an APD. While this may not seem hugely significant, when a company files twenty or thirty objections per month, it adds up to tens of thousands of dollars per year. Second, the WOGCC has restricted when an APD can be filed. An operator must have an application on the docket to allow the required spacing and well density in order to submit an APD. Third, the WOGCC recently considered a policy of not allowing objections to APDs before they are approved by the Supervisor. The Commission ultimately decided against this restriction on objections, but may take other steps to address the large number of objections being filed. Fourth, the WOGCC has issued several rulings in contested cases that demonstrate an aversion to objections based on operatorship. Although the WOGCC has not issued a formal policy, it has certainly provided ample warning to companies that it will not look kindly on APD objections unless there are significant and substantive problems with proposed wells. An objection based on allegations that a well will drain outside a DSU boundary, for example, may generate support with the WOGCC.

As oil prices climb and the Powder River Basin generates more interest, we can expect to see the operatorship race heat up in Wyoming. Other areas of the state that have traditionally relied on conventional vertical wells are also experiencing some experimental horizontal drilling, which will necessitate large DSUs if proven successful. That will, in turn, expand the APD race to other areas of the state and exacerbate the problems caused by hundreds, or even thousands, of APD submittals and corresponding objections. Undoubtedly, the WOGCC will continue to explore ways to solve these problems, and new policies and possibly a rulemaking may be the solution.

Conclusions

The WOGCC and the COGCC are both grappling with challenges posed by horizontal development, economic changes, development near population centers, and operatorship disputes. There will likely be policy and regulatory changes in both Colorado and Wyoming in response to these issues. Beatty & Wozniak will continue to post updates in this newsletter as these changes evolve over time.

If you have immediate concerns about the issues in this article, or would like assistance with any the upcoming rulemakings or policy changes, please contact [James Parrot](#) or [Jill Fulcher](#).

⁵ Source: Baker Hughes North America Rotary Rig Count (January 2000 – Current), available online at <http://www.bakerhughes.com/>.