



## COGCC: Beyond the Director's Objective Criteria

By Joby Rittenhouse

Navigating the post Senate Bill 181 landscape before the Colorado Oil and Gas Conservation Commission (COGCC) requires more than staying current on COGCC Rules and regulations. In addition to the recent [rulemaking](#), the COGCC has released numerous guidance documents and policies, which are readily accessible on the COGCC website (Guidance, [here](#), and Policies, [here](#)). However, review of these materials alone fails to provide an operator an effective understanding of the requirements for operating in Colorado. The Director's Objective Criteria provides a critical example and lesson in this regard.

In April, the Governor signed Colorado Senate Bill 2019-181 into law (SB-181), and pursuant to the language of SB-181, the COGCC Director may “delay the final determination regarding a permit application” if the Director determines, “**pursuant to objective criteria** ... that the permit requires additional analysis to ensure the protection of public health, safety, welfare or the environment or requires additional local government or state agency consultation.” *See* COGCC Operator Guidance, SB 19-181: Objective Criteria, dated May 16, 2019 (“[Objective Criteria](#)”), p. 1 (emphasis added). This authority is to remain in place until the COGCC completes certain mandatory rulemakings, currently scheduled to take place through the summer of 2020.

If a filed permit application triggers one or more of the Objective Criteria, the Director may delay the issuance of the permit until the Director is satisfied that the permit meets the intent of SB-181. Objective Criteria, p. 3. This heightened scrutiny has resulted in significant delays to permit review. Thus, it is critical for operators to read and understand each of the Objective Criteria and assess how and whether criteria can and will be triggered. However, compliance with the Objective Criteria alone does not adequately protect one's right to operate.

### CDPHE Study – Operations Within 2,000 Feet of Building

On October 17, 2019, the CDPHE released the oil and gas health effects study, “[Human Health Risk Assessment for Oil & Gas Operations in Colorado](#).” The study uses emissions data from oil and gas operations in Colorado to model theoretical exposure levels from oil and gas development. The study found no increased risk of cancer or long-term health effects for people living 500 feet or more from an oil and gas well. However, the study also found the potential for rare periods of time when the estimated exposure to a small subset of compounds could, under worst case conditions, exceed acute exposure guideline values at 500-2,000 feet from an oil and gas well.

That same day, the COGCC released its response to the CDPHE's study and announced that it would “immediately enact stricter and safer precautionary review measures to protect public

health, safety, welfare, the environment and wildlife, which align with our mandate under SB 19-181,” including a “new plan for permit review.” COGCC Response to CDPHE’s Oil & Gas Health Effects Study Press Release ([Press Release](#)), p. 2. This “new plan” included an *adjustment* to the previously released Objective Criteria.

The first of the Objective Criteria provides as follows:

(1) Oil and Gas Locations within 1,500 feet of a Building Unit or High Occupancy Building, which include Urban Mitigation Area (“UMA”) and Large UMA Facility (“LUMAF”) locations [will receive heightened review by the Director].

However, as a result of the CDPHE study, the COGCC has determined that extra scrutiny is to be applied to any location within 2,000 feet of a building unit for pending permits. Therefore, any permit for a well or location within 2,000 feet of an occupied building is subject to heightened scrutiny.

#### COGCC November 19, 2019 Operator Group Meeting

Thus, operators must not only be cognizant of COGCC Rules and regulations, but guidance documents and Objective Criteria, as well as press releases issued by the COGCC in response to other state agency studies. However, it does not stop here. The COGCC holds monthly operator group meetings during which COGCC staff provides updates and, as the most recent meeting demonstrates, imposes additional COGCC policies. During the November 19, 2019 Operator Group Meeting, COGCC Staff announced the following:

- Based on the CDPHE study, the COGCC will apply increased scrutiny for all locations within 2,000 feet of a building unit for all pending permits as well as permits that have been *recently approved but for which construction has not yet begun*.
- For these newly-issued permits (for which construction has not yet begun), the COGCC “expects” operators to proactively reach out to the COGCC to discuss the location and ensure protection of the public health, safety, welfare, the environment, and wildlife resources.
- For permits (within 2,000 feet of a building unit), the COGCC is “encouraging” operators to provide information regarding results of the CDPHE study to all building unit occupants (not owners) within 2,000 feet of a location.
- The COGCC is asking that operators engage in this process voluntarily; however, under certain circumstances, staff will require notification in order to continue processing permits.
- Furthermore, under certain circumstances the COGCC may require the operator obtain signatures from building unit occupants confirming receipt of notice.

#### COGCC: “So...about that 60-day approval requirement...”

SB-181 amended the Oil and Gas Conservation Act which, among other things, empowered land use authority to local government to determine siting of oil and gas facilities and

locations and to regulate in a manner to minimize the adverse impacts of oil and gas operations. Accordingly, in August 2019, Weld County “designated its unincorporated area as a mineral resource (oil and gas) area of State interest. Weld County’s 1041 Oil and Gas Location Assessment (WOGLA) permitting process regulations” effective as of August 5, 2019, and memorialized by a memorandum of understanding ([MOU](#)) executed by Weld County and the COGCC (more information [here](#)).

Per the MOU, the COGCC is required to “respond” to any state permit application within 60 days of approval of the WOGLA for any permit received on or after August 5. During the November 19, 2019 COGCC Operator Group Meeting, COGCC staff indicated that this “response” can take one of three forms: (1) Approval; (2) Denial; or (3) Delayed Status. Permits will be placed in “delayed” status where such applications contain errors or inconsistencies that do not meet rejection criteria. These permits are “placed on hold,” effectively halting the 60-day period within which the COGCC is required to respond. Instead, the COGCC will send an email outlining a list of requested items and specify the estimated timeline to respond to corrections. Upon receiving a response from the operator, a new 60-day clock begins anew.

In sum, despite the requirement that the COGCC provide a “response” within 60 days of a WOGLA approval, the COGCC Director may circumvent the 60-day response requirement under the following circumstances:

- Where a submitted Form 2A or APD triggers one of the Director’s Objective Criteria, **AND**
- Insufficiencies exist within a submitted Form 2A or APD such that the Director cannot issue final decision, **OR**
- Best Management Practices (BMPs) on a submitted Form 2A or APD are deemed non-compliant with SB-181.

Based on the COGCC’s approach, operators should consider the following when navigating this dual permitting process in Weld County and before the COGCC:

1. This newest policy for permits tied to WOGLA approvals has the effect of redirecting the attention of COGCC staff to Form 2As and APDs for which corresponding WOGLA permits have been approved (thereby creating possible disruption to the permit priority list submitted by operators) in order to comply with the 60-day response requirement.
2. In a situation where an operator has submitted a Form 2A or APD that is designated as “delayed,” and receives a request for additional information from the COGCC, the operator should forego responding to the information request if the permit is not a priority, as the response will trigger the beginning of a new 60 day cycle.

For more information regarding these and other recent COGCC developments, please contact [Jill Fulcher](#), [Jim Martin](#), [Joby Rittenhouse](#) or [Evan Bekkedahl](#).