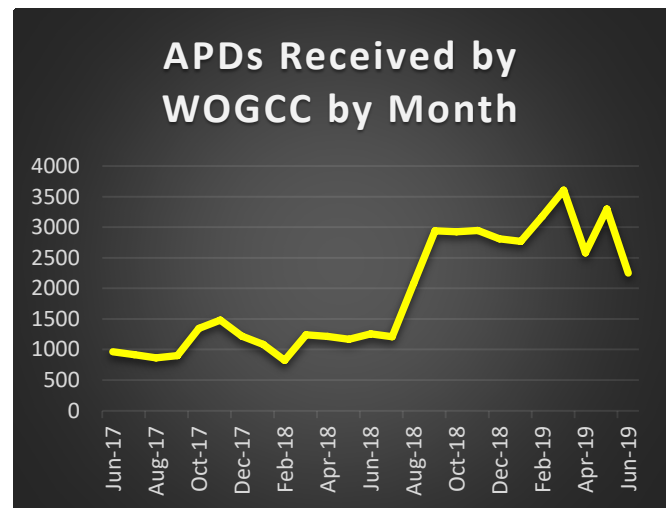




Wyoming Oil and Gas Conservation Commission Proposes Rulemaking to Reduce APD Backlog and Operatorship Disputes

By: [James Parrot](#)

The Wyoming Oil and Gas Conservation Commission (Commission) proposed a rulemaking on July 9, 2019, which aims to alleviate the Commission's backlog of applications for permit to drill (APDs). The backlog is over 40,000, and the pace of permitting has been accelerating over the past two years (see chart at right). Currently, a company can establish operatorship control (the right to drill wells) for an indefinite period of time by saturating an area with APDs and renewing them *ad infinitum*. The Commission stated that the "proposed rule is intended to provide a 'level playing field' for all operators with intent to drill and develop minerals within the state of Wyoming."



Royalty owners, certain state legislators, and even some exploration and production companies have argued that this system discourages drilling and new investment by locking up acreage. Other companies have argued that the system encourages investment and extraction by creating regulatory certainty and reliable drilling blocks. In any case, early in 2019, Governor Mark Gordon and the state legislature considered measures to reduce the permit backlog and number of operatorship disputes that have recently dominated Commission hearings. The legislature declined to pass any laws in 2019, and instead committed to tackling the issue in interim committee meetings between the 2019 and 2020 legislative sessions.

The proposed rule creates a modified "race to permit" system, where the first company to file an APD in a drilling and spacing unit (DSU) will be entitled to all of the APDs in that DSU. The proposed rule clarifies that a DSU is specific to a pool (in other words, a formation). Notwithstanding the first-to-file provision, under the proposed rule, a competing operator may seek its own APDs in a given DSU even though another company has won the race to that particular DSU. This mechanism is best explained in the context of a hypothetical example.

In this hypothetical, two companies wish to drill wells in the Niobrara Formation in a DSU. First File, LLC submits a Niobrara APD in the DSU, which goes into the Commission's queue. Months later, Runner Up Inc. submits a Niobrara APD in the DSU. Under the proposed rule, the Commission will reject Runner Up's APD. However, Runner Up is not out of options.

Runner Up may file an application for hearing, which must be filed within 15 days of 1) receipt of a horizontal well application notice or 2) any 2-year anniversary of the spud of a well. Per the proposed rule, the Application must contain:

- a. The date the APD(s) requested for approval was submitted;
- b. A description of the technical ability and experience of the applicant to drill and complete similar wells;
- c. Percentage of working interest ownership within the DSU and any written support from other working interest owners in the DSU;
- d. Working interest ownership in the area;
- e. The number of wells in the area operated by the applicant;
- f. Status of any necessary Federal permitting;
- g. Contractual obligations, if any;
- h. If the well pad is on Fee surface, proof that negotiations have commenced between the Owner/Operator and surface owner;
- i. Proof of negotiation by delivery of AFE and JOA to all other Owners/Operators and unleased mineral interest owners in the DSU.

First File may submit a protest of Runner Up's application. Per the proposed rule, the protest must contain:

- a. Current development activity and plans in the area;
- b. A description of the technical ability and experience of the applicant to drill and complete similar wells;
- c. Percentage of working interest ownership within the DSU and any written support from other working interest owners in the DSU; and
- d. Working interest ownership in the area.

The proposed rule requires the Commission to consider all of the information contained in Runner Up's application and First File's protest, along with "any other factor the Commission deems relevant." If the Commission approves Runner Up's application, the Commission will deny First File's APD and approve Runner Up's APD. If the Commission denies Runner Up's application, it will approve First File's APD.

The proposed rule also addresses a slight variation of this hypothetical situation, where First File has an approved APD in the DSU, which it is seeking to extend for an additional 2 years. Similar to the first hypothetical, Runner Up may file an application for First File's renewal to be denied. The Commission will address the application the same way as it would an application to deny First File's APD.

Interested parties may submit public comments during a 45-day comment period that the Commission will announce at a later date (it will likely start in August). Prior to the start of the 45-day comment period, the Commission will hold a public meeting to explain the rule and answer questions. The Commission hopes to have the rule finalized by the end of this year. The full text of the proposed rule is available [here](#).

If you have any questions or concerns about the proposed rule, how to submit public comments, or the implications of the Commission's proposal, please contact [James Parrot](#) or [Nicol Kramer](#).