

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES ) CAUSE NO. 1R  
OF PRACTICE AND PROCEDURE OF THE OIL & )  
GAS CONSERVATION COMMISSION OF THE ) DOCKET NO. 1104-RM-01  
STATE OF COLORADO )

NOTICE OF RULEMAKING HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission, on its own motion, will consider amendments to Rule 904.a. of the Commission's Rules of Practice and Procedure, 2 CCR 404-1 ("Rules") to extend for two years the compliance date for operators in Washington, Yuma, Logan and Morgan counties to line new production pits or new multi-well pits.

Specifically, Rule 904.a.(2) currently requires operators constructing new production pits in Washington, Yuma, Logan and Morgan counties meet the pit lining requirements by May 1, 2011. The proposed amendment extends this date to May 1, 2013 for these four counties.

Similarly, Rule 904.a.(5) currently requires operators constructing new multi-well pits used to contain produced water, drilling fluids, or completion fluids that will be recycled or reused in Washington, Yuma, Logan and Morgan counties to meet the pit lining requirements by May 1, 2011. The proposed amendment extends this to May 1, 2013 for these four counties.

As it is proposed to be amended, Rule 904.a. would read in its entirety as follows (strike-through = deletion; all capitals = new language):

**904. PIT LINING REQUIREMENTS AND SPECIFICATIONS**

a. Pits that were constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with the rules in effect at the time of their construction. The following pits shall be lined if they are constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land:

- (1) Drilling pits designed for use with fluids containing hydrocarbon concentrations exceeding 10,000 ppm TPH or chloride concentrations at total well depth exceeding 15,000 ppm.
- (2) Production pits, other than skim pits, unless the operator demonstrates to the Director's satisfaction that the quality of the produced water is equivalent to or better than that of the underlying groundwater or the operator can clearly demonstrate by substantial evidence, such as by appropriate percolation tests, that seepage will not reach the underlying aquifer or waters of the state at contamination levels in excess of applicable standards. Subject to Rule 901.c, this requirement shall not apply to such pits in ~~Washington, Yuma, Logan, Morgan,~~ Huerfano or Las Animas Counties constructed before May 1, 2011, OR TO SUCH PITS IN WASHINGTON, YUMA, LOGAN, OR MORGAN COUNTIES CONSTRUCTED BEFORE MAY 1, 2013.
- (3) Special purpose pits, except emergency pits constructed during initial emergency response to spills/releases, or flare pits where there is no risk of condensate accumulation.
- (4) Skim pits.
- (5) Multi-well pits used to contain produced water, drilling fluids, or completion fluids that will be recycled or reused, except where reuse consists only of moving drilling fluids from one oil and gas location to another such location for reuse there. Subject to Rule 901.c, this requirement shall not apply to multi-well pits used to contain produced water in ~~Washington, Yuma, Logan, or Morgan,~~ Huerfano or Las Animas Counties constructed before May 1, 2011, OR TO MULTI-WELL PITS USED TO CONTAIN PRODUCED WATER IN WASHINGTON, YUMA, LOGAN, OR MORGAN COUNTIES CONSTRUCTED BEFORE MAY 1, 2013.

(6) Pits at centralized E&P waste management facilities and UIC facilities.

NOTICE IS HEREBY GIVEN, that the Oil and Gas Conservation Commission of the State of Colorado, pursuant to the above, has scheduled the above-entitled matter for hearing on:

Date: Monday, April 4, 2011  
Tuesday, April 5, 2011

Time: 9:00 a.m.

Place: Suite 801, The Chancery Building  
1120 Lincoln Street  
Denver, Colorado 80203

The Commission has statutory authority to conduct rulemaking pursuant to section 34-60-105 C.R.S. (the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of the Oil and Gas Conservation Act) and has specific authority to promulgate these rules under section 34-60-106 (2)(d) C.R.S., (the Commission has the authority to regulate oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility).

The Commission may take actions, including without limitation, modifying or amending the existing rules described or proposed herein and making conforming modifications to other rules, which it determines are reasonably necessary.

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the current Rules are available on the Commission internet homepage at <http://www.cogcc.state.co.us>. The reasons and authority for the proposed amendments are set forth in the Proposed Statement of Basis, Specific Statutory Authority, and Purpose (Exhibit A).

Any written comments on the proposed rule changes to be considered are requested to be submitted by March 15, 2011 for more complete consideration by the Commission. Opportunity for testimony from any interested party will be provided at the hearing, however, the time to present testimony may be limited, and parties sharing similar viewpoints are requested to appoint a spokesperson to present their testimony at the hearing.

The Commission will enter its order adopting such rules based on the record made at the hearing and any continuation of the hearing.

IN THE NAME OF THE STATE OF COLORADO

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By \_\_\_\_\_  
Robert A. Willis, Acting Secretary

Dated at Suite 801  
1120 Lincoln Street  
Denver, Colorado 80203  
January 25, 2011

Submit written comments to:  
Colorado Oil & Gas Conservation Commission  
Attn. Robert A. Willis  
Docket No. 1104-RM-01  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203

## Exhibit A

### Proposed Statement of Basis, Specific Statutory Authority, and Purpose

#### **Amendments to Rule 904.a. of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1**

This statement sets forth the basis, specific statutory authority, and purpose for the amendments to Rule 904.a. of the Rules and Regulations and Rules of Practice and Procedure (“Rules”) promulgated by the Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”) on April 4, 2011. Rule 904.a. concerns the requirements to line certain pits.

#### **Statutory Authority**

The amendment to Rule 904.a. is based on: 1) general Commission jurisdiction and rulemaking authority granted in section 34-60-105 (1) C.R.S; and 2) specific statutory authority of section 34-60-106 (2)(d) C.R.S. Additional authority for the promulgation of the rules is provided by sections 34-60-102, 34-60-103, 34-60-104, 34-60-105, and 34-60-108, C.R.S. of the Oil and Gas Conservation Act. The Commission also adopted the following statement of basis and purpose consistent with section 24-4-103(4), C.R.S., of the Administrative Procedure Act. This statement is hereby incorporated by reference in the rules adopted.

The rulemaking for these amendments to Rule 904.a. was held on April 4, 2011 (testimony and deliberations). This amendment becomes effective twenty days after it published in the *Colorado Register*.

#### **Basis and Purpose**

Rule 904.a.(3) requires the lining of production pits unless the operator demonstrates either that the quality of the produced water equals or exceeds that of the groundwater or that seepage will not violate state water quality standards. Rule 904.a.(5) requires the lining of multi-well pits that contain produced water, drilling fluids, or completion fluids that are recycled or reused, with certain exceptions. Except for six counties in Eastern Colorado, these two requirements apply to production and multi-well pits constructed during or after June 2009 on state and private land or during or after July 2009 on federal land. In Washington, Yuma, Logan, Morgan, Huerfano, and Las Animas counties, these lining requirements apply to production and multi-well pits constructed on or after May 1, 2011.

In October 2010, the COGCC staff, in consultation with the staff of the Colorado Department of Public Health and Environment (“CDPHE”), began to consider amending Rule 904.a. to defer the effective date of these lining requirements by two additional years in Washington, Yuma, Logan, Morgan, Huerfano, and Las Animas counties. As part of this process, the COGCC staff conducted stakeholder meetings in November and December 2010 with local governments, oil and gas operators, and environmental groups. Representatives of Washington, Yuma, Logan, and Morgan counties in Northeastern Colorado supported deferring these requirements in their jurisdictions, while representatives of Huerfano and Las Animas counties in Southeastern Colorado did not support such a deferral in their jurisdictions. Operators in Northeastern Colorado likewise supported such a deferral, while operators in Southeastern Colorado either stated that they will begin lining such pits in May 2011 regardless of the effective date of the requirements or took no position on the issue. Environmental groups did not support deferral of the lining requirements, but indicated that they are principally concerned with the lining of pits in Southeastern Colorado.

The amendment to Rule 904.a. defers the effective date of the lining requirements by two additional years in Washington, Yuma, Logan, and Morgan counties. These lining requirements will apply in these counties to production and multi-well pits constructed on or after May 1, 2013. The rationale for the amendments is as follows:

1. The lining requirements only apply to newly constructed production and multi-well pits and few such pits have been constructed in Eastern Colorado since the current version of Rule 904.a. took effect in 2009. Specifically, COGCC records indicate that since July 1, 2009 only one such pit has been permitted in each of Washington, Yuma, and Morgan counties, and no such pits have been permitted in Logan County. Of the three permitted pits, two were lined and one was an emergency pit that has already been closed. Therefore, it appears that deferral will not result in a substantial number

of unlined pits being constructed. In addition, COGCC staff will continue to gather additional useful information regarding these pits.

2. To ensure that the environment is properly protected during the deferral, the COGCC staff may exercise its authority under Rule 901.c. to impose additional requirements on a new production or multi-well pit in these counties where there is reasonable cause to believe that the pit threatens to cause or causes a violation of Table 910-1 standards. In addition, Rule 324A. prohibits such pits from violating water quality standards and requires the use of cost-effective and technically feasible precautions to prevent significant adverse impacts to water, soil, and biological resources. Therefore, during the deferral period, the COGCC can still require new production and multi-well pits in these counties to be lined on a case-by-case basis where site-specific circumstances indicate that such action is needed to protect the environment.
3. In previously making these lining requirements applicable to production and multi-well pits constructed in these counties beginning in May 2011, the Commission anticipated that this would “allow COGCC and CDPHE staff to work with operators and local government to evaluate further the basis, need and appropriate nature of production pit lining requirements for these Eastern Colorado locations.” Because of other obligations, and the relatively small number of pits constructed in Eastern Colorado, COGCC and CDPHE staffs have not completed such work. This further deferral will provide additional time for the staff, operators, local governments, and other interested parties to gather relevant information and evaluate these requirements before they become effective. This, in turn, will help ensure that Rule 904.a. strikes a responsible balance between energy development and the protection of public health, safety, welfare and the environment, without unnecessarily disrupting current water management practices or imposing unwarranted costs or restrictions.
4. Much of the above reasoning arguably applies to Huerfano and Las Animas counties as well. As previously noted, however, those counties did not support a further deferral of these requirements. In addition, Pioneer Natural Resources USA, Inc. indicated that it will begin lining new production and multi-well pits constructed in Southeastern Colorado in May 2011 whether or not the requirements are deferred. Other operators in that area, such as XTO, El Paso, Red River Ranch, and Petroglyph, took no position on the deferral; they currently dispose of produced water through permitted discharge or injection and are likely to continue doing so during the next two years. Therefore, in Huerfano and Las Animas counties, the effective date of the lining requirements is unlikely to affect water management practices or impose additional costs or restrictions. Accordingly, there is little apparent benefit to deferring them further.

Accordingly, the Commission amended Rule 904.a. as described above.