



COLORADO

Oil & Gas Conservation
Commission

Department of Natural Resources

1120 Lincoln Street, Suite 801
Denver, CO 80203

October 6, 2015

To: Interested Parties and Stakeholders

From: Matthew Lepore, Director

Re: Draft Rules to Implement the Governor's Oil and Gas Task Force Recommendation Nos. 17 and 20.

The COGCC Staff's First Draft Proposed Rules Implementing the Governor's Oil and Gas Task Force Recommendation Nos. 17 and 20 are attached. We fully expect these proposed new and amended rules to continue to evolve during the stakeholder process, and we ask you to review the draft Rules in that light. Proposed Rule language in **[bold brackets]** indicates our interest in developing these particular issues further during stakeholder meetings.

A high-level overview of some of the proposed rule language, and our thought processes behind that language, follows. We offer these descriptions to clarify our intent and focus stakeholder discussions.

Effective Date. We intend for these rules to take effect as soon as allowed under the State Administrative Procedures Act following adoption by the Commission. We intend the mitigation measures and best management practices contemplated by the Rules to apply to Form 2A Applications *pending but not yet approved*, as well as all Form 2A Applications for Large UMA Facilities filed after the effective date. An operator with a pending Form 2A Application will not be required to withdraw or re-submit an Application in order to comply with any notice or consultation provisions of the new Rules; those requirements will be waived for pending Applications.

Recommendation No. 17

1. Definition: Large UMA Facility.

Staff proposes total cumulative measured depth of all *new* wellbores on a proposed location **OR** the total cumulative *new and existing* on-site storage capacity for produced hydrocarbons as the preferred metrics to define a Large Urban Mitigation Area Facility.

The proposed total 90,000 feet of wellbore length is approximately equivalent to eight horizontal wells completed in the Niobrara formation with a horizontal lateral length of 4,360 feet (one mile, minus required downhole setbacks). Total measured depth is: an objective measurement that does not require estimates or speculation; easily ascertained at the application stage; and, due to spacing and setback requirements, not subject to significant variability from planned to "as built" configurations. Total



measured wellbore length is also flexible enough to accommodate vertical, directional, and horizontal wells of different lengths.

Total cumulative on-site hydrocarbon storage capacity of 4,000 barrels is approximately equivalent to eight 500-barrel tanks or thirteen 300-barrel tanks. This capacity will provide oil storage for approximately four one-mile lateral horizontal wells during early production. Staff has deliberately proposed a lower threshold for hydrocarbon storage capacity than for wellbore length to incent operators to transfer oil and gas off-site via pipeline rather than truck. On-site storage tanks are serviced by truck traffic; have potential to emit methane and volatile organic compounds; and have visual impacts. Consequently, where possible, staff wishes to minimize on-site hydrocarbon storage in UMAs.

Staff seeks further discussion of these metrics and thresholds during the stakeholder process. The thresholds ultimately established by the Commission *are not limits* on either the number of wells or storage tanks that may be located on a facility. Rather, these metrics merely are triggers that require consultation between the local government and the operator concerning the siting of a proposed Large UMA Facility.

2. Rule 306.b.(4)A., B. Notification and Consultation for Large UMA Facilities.

An operator proposing to locate a Large UMA Facility in an Urban Mitigation Area must notify the local government with land use authority over the proposed facility location, and offer to consult with the local government concerning siting and best management practices for the facility. Staff proposes that the operator provide a “Notice of Intent to Construct a Large UMA Facility” to the relevant local government not less than 90 days prior to submitting an OGLA application to the COGCC, which invites the consultation process. A local government has discretion to waive consultation if it desires. Consultation is not required if a written agreement already exists between the operator and the local government concerning siting of such facilities. **Proposed Rule (P.R.) 306.b.(4)A.**

Staff recognizes local land use planning and approval processes vary. The proposed Rules neither prescribe nor preclude any local government land use planning or approval process. **P.R. 306.b.(4)B.i.**

The operator – relevant local government consultation should occur before the operator has finalized a surface use agreement with the surface owner of the proposed site. **Proposed Rule (P.R.) 306.b.(4)A.** Consequently, at the surface owner’s request, the operator and Director will meet with the surface owner regarding the proposed facility location. COGCC does not have jurisdiction to require a local government to participate in meetings with the surface owner, but the local government may participate in its discretion, and is encouraged to do so. **P.R. 306.b.(4)B.iii.**

3. Rule 306.b.(4)D. Notice to Adjacent Local Governments.

Local governments consistently and almost uniformly expressed a keen interest in being able to comment on large-scale oil and gas development outside of, but in close proximity to, their jurisdictional boundaries. A “consulting agency” concept is not expressly included in Recommendation No. 17, but Staff believes this concept warrants further discussion during the stakeholder process. **P.R. 306.b.(4)D.**

Staff has suggested a consulting agency role for jurisdictions within 1,000 feet of a proposed Large UMA Facility. Staff elicits further discussion of this concept during stakeholder meetings.

Under the proposed Rules, an adjacent local government *will not* have the right to request a Commission hearing on a proposed Large UMA Facility outside of its jurisdictional boundaries, nor is an operator required to seek agreement with the adjacent jurisdiction for the siting of such a location. **P.R. 306.b.(4)D.iii.**

4. Rule 306.b.(4)E. Initiating the Form 2A Process.

An operator must certify on its Form 2A Application either that: it has an agreement with the local government regarding siting for a proposed Large UMA Facility; that the local government waived the consultation requirement or did not timely respond to the Notice of Intent to Construct; or that it could not reach an agreement with the local government despite consultation and mediation. **P.R. 306.b.(4)E.i.-iv.**

Staff will reject as incomplete a Form 2A for a proposed Large UMA Facility that does not contain the requisite certification and relevant supporting documentation. **P.R. 306.b.(4)E.v.**

5. Rule 604.c.(4) Best Management Practices, Required Mitigation Measures, and Site-Specific Mitigation Measures for Large UMA Facilities.

Large UMA Facilities must be built and operated to the highest standards, using the most advanced technology available to avoid or minimize adverse impacts to adjoining land uses. Because Large UMA Facilities will vary from site to site, it is difficult to prescribe specific best management practices that must be applied in every case. At the same time, there are issues present at all locations – such as fire and explosion hazards – that must be addressed.

To address the variability and avoid a “cookie cutter” approach to best management practices, Staff has included three subsections for best management practices and mitigation measures at Large UMA Facilities: A. Required Best Management Practices; B. Required Mitigation Measures; and C. Site-Specific Mitigation Measures.

- A. Required Best Management Practices. This subsection identifies five specific areas that an operator must manage through best management practices to the satisfaction of the Director before a Form 2A will be approved. No specific BMPs are prescribed; rather the operator, in consultation with Staff, must develop appropriate site-specific plans, practices and procedures to manage the issues identified.

Staff invites additional discussion during the stakeholder process on the specific issues to be included under this heading.

- B. Required Mitigation Measures. This subsection incorporates the mitigation measures required for Exception Zone Setback locations into all Large UMA Facility locations, regardless of whether the Large UMA facility is located in the Buffer Zone or Exception Zone. The Exception

Zone mitigation measures incorporate by reference all Designated Setback Location mitigation measures (i.e. all Rule 604.c.(2) requirements are required for a Large UMA Facility).

In addition, Staff proposes that all Large UMA Facilities be subject to a limit on the allowed duration of drilling, completion, and stimulation operations. Drilling, completion, and stimulation operations typically occur around-the-clock and are unavoidably disruptive, particularly when taking place in a UMA. Best management practices and mitigation measures can minimize much of the disruption, but have not been shown capable of eliminating them. Again, variability from one location to the next makes establishing a single duration limit impracticable. Therefore, Staff proposes to determine the duration limit on a site-specific basis in consultation with the operator and, potentially, the local government with land use authority for the location. Staff also proposes an automatic, one-time limited extension of the deadline for unforeseen technical difficulties or force majeure conditions.

A limit on the duration of drilling, completion, and stimulation operations potentially will limit the number of wells that can be placed on a location during a single “phase” of drilling and completion. The number of wells that can be completed within a given period will also vary, and likely will increase as technology advances and drilling times accelerate as they have consistently done over the past few years.

Limiting the duration of drilling and completion operations may necessitate additional drilling phases following a “quiet period” of some duration. Staff proposes that the timing of phased drilling operations be determined on a case-by-case basis in consultation with affected community members and the local government with land use authority.

- C. Site-Specific Mitigation Measures. Subpart C identifies five specific issues Staff believes likely will need to be addressed by conditions of approval (COAs) on Oil and Gas Location Assessment permits for most Large UMA Facilities. This is a non-exclusive list, and is consistent with the Commission’s existing authority to require COAs based on site-specific conditions.

Recommendation No. 20

Recommendation No. 20 proposes that all operators be required to register with municipalities in which they have operations, and to provide specific information to those municipalities. During the Staff’s outreach meetings, many questions were raised regarding both the exclusion of counties from the registration/information requirements and the logic behind and utility of basing a five-year estimate of the number of wells an operator plans to drill in a municipality on “proved undeveloped” reserves as reported to the Securities Exchange Commission.

Staff’s draft proposed language highlights the need for further development of these concepts during the stakeholder process.

1. Rule 302.c.1, 2 Operator Registration with Local Governments

Consistent with the Recommendation as written, Staff proposes the registration requirement apply to municipalities but not counties. The registration requirement would take effect on March 1, 2016.

2. Rule 302.c.3 Operator Drilling Plans and Estimates

Staff's proposal invites further discussion on requiring operators to provide information about planned drilling activity, and estimates of future planned activities to municipalities *including growth management areas*. Such areas, which are presently outside of a municipality's boundaries (and, therefore, within unincorporated county lands), were identified during Staff's outreach meetings as vitally important for municipalities' long range planning. Without extending the registration/information requirements to counties, including growth management areas seems consistent with the spirit of Recommendation No. 20. Staff's proposal limits the disclosure to growth management areas that have been formally approved through a municipality's land use planning and approval process.

Strictly construed, Recommendation No. 20 as written appears to require only a publicly-traded company to provide an estimate of the number of wells it plans to drill in a municipality in the next five years (because only publicly traded companies report to the SEC). There was little discussion of the logic behind such a limitation during the Task Force meetings. Therefore, Staff proposes that all companies provide this estimate upon request of a municipality.

During outreach meetings, operators expressed concern about the utility and practicability of basing a well number estimate on the SEC "proved undeveloped" reserves analysis. Staff proposes not to prescribe the specific basis by which an operator arrives at its estimate, and identifies the SEC proved undeveloped reserves merely as an option, not a requirement.

Recognizing that many variables beyond an individual operator's control influence when, where, and how many wells the operator may drill, Staff has included express language in subsection 302.c. to indicate that any estimates provided pursuant to the Rule are to be made in good faith using reasonable business judgment based on information known to the operator at the time, and that such estimates are subject to change.

Conforming Changes

Adding the Rules described above will necessitate several conforming changes to existing Rules. Staff has proposed changes to the public comment period for a Large UMA Facility (40 days), and for the time period after which an operator can request a hearing on a pending Form 2A for a Large UMA Facility (150 days). Staff also proposes the Colorado Department of Public Health and Environment be invited to comment on all Form 2A applications for Large UMA Facilities. Other conforming changes are self-explanatory.

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Stakeholder Meeting Schedule

We look forward to engaging with all interested stakeholders regarding Staff's First Draft Proposed Rules to Implement Recommendation Nos. 17 and 20 beginning Wednesday, October 14, 2015 from 9:00 a.m. to 12:00 p.m., at COGCC, 1120 Lincoln St., Suite 801. The meeting will be held in the Wasatch Hearing Room.

We will hold additional stakeholder meetings on Thursday, October 15 from 9:00 to 12:00 p.m. and Friday, October, 16 from 9:00 a.m. to 12:00 p.m.

We will provide a call-in number for those who wish to participate by telephone. The call-in information will be posted on the COGCC web page shortly.