

January 28, 2016

Via email only to: townadministrator@erieco.gov

Mr. A.J. Krieger
Town Administrator
P.O. Box 750
Erie, CO 80516

Mr. Krieger,

The Colorado Oil and Gas Conservation Commission ("COGCC" or "Commission") evaluated each of the 18 Best Management Practices ("BMPs") presented in the Memorandum of Understanding ("MOU") between the Town of Erie and Encana Oil & Gas (USA) Inc. to determine which of them are appropriate Conditions of Approval ("COA") on the Morgan Hills Form 2A permit. COGCC generally uses the following criteria to evaluate whether a proposed BMP is appropriate as a COA on a Form 2A or Form 2 ("Permit"):

1. A COA must address a matter that is within the Commission's jurisdiction to remedy. The Commission's jurisdiction and, hence, its enforcement authority is defined by statute. We cannot regulate or enforce matters outside our statutory authority.
2. A COA that purports to require an operator to comply with our rules is redundant and, therefore, unnecessary.
3. A COA that is conditional - e.g. an "if - then" situation - can only be incorporated into a Permit if the contingency in fact exists. Thus, a COA that says "if X is true, then Y is required" will not be included in a Permit; a COA that says, "*because* X is true, Y is required" is appropriate.
4. A COA must not conflict with or weaken a COGCC Rule.
5. A COA must pertain to operational matters that occur after a Permit is issued. Issues such as the siting of a proposed oil and gas operation are addressed as a condition of issuing the Permit. Once a site is approved, a COA is unnecessary.
6. A COA requiring compliance with local codes or regulations cannot be enforced by COGCC (due to lack of jurisdiction) and, therefore, will not be included in a Permit.



7. A COA cannot compel an operator to perform an obligation that pertains solely to interactions between the local government and the Operator (e.g., to meet with or provide notice or records to the local government).
8. A COA is not appropriate for a matter that is solely within the operator's discretion.

A summary of COGCC's analysis of the 18 BMPs follows.

BMP #1 -- Distance to Erie Building Units

Discussion

An operator is required to provide the specific location of an oil and gas operation, including the distances to the nearest Building Units, in its Permit application. If COGCC approves the proposed location the operator is allowed / required to conduct operations at the approved location. Therefore, a site specific "setback" is not an appropriate BMP because the setback distance is established through approval of the Permit.

If a local jurisdiction and operator have agreed to setbacks greater than those provided by COGCC rules the local government should confirm that the operator's applications conform with the agreement. A local government should timely notify COGCC if it believes an application does not conform with the terms of an MOU, and should work with the operator to resolve any alleged discrepancies.

Result

COGCC will not include this BMP on the Permits.

BMP #2 - Noise mitigation

Discussion

Noise from oil and gas operations is within the Commission's jurisdiction. The Morgan Hills location is within a Designated Setback Location ("DSL") per COGCC rules and therefore is subject to Rule 604.c.(2)A.

A requirement that the operator be present during any sound surveys the COGCC performs during a noise investigation has the potential to hamper COGCC's independent investigatory authority and, for that reason, this BMP is not an appropriate permit condition. Similarly, COGCC cannot agree to limit its investigations to building units that existed at the time the permit was approved.

Beyond the limitation described above, permit conditions consistent with additional noise limits agreed to by the operator are appropriate and will be incorporated, as described below.

Result

COGCC proposes to add the following noise COA to the Morgan Hills Permits:

" For db(A) scale noise, operations at this Oil and Gas Location shall be further limited as follows:

- Operations normally subject to the light industrial standards shall not exceed 60 db(A).*
- Operations normally subject to the industrial standards shall be reduced at least five (5) db(A) below the maximum level permitted by those Regulations.*
- Measurements taken when traffic is passing by the sound level meter will be discounted from the average.*

BMP #3 - Central Hub

Discussion

Use and placement of production equipment is within the Commission's jurisdiction.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

"Operator will not install hydrocarbon storage tanks on this location. However, operator may still install all other equipment and facilities necessary for the production of hydrocarbons, including wellhead equipment, separation equipment, electrical equipment, and temporary flowback equipment (including temporary storage tanks). The operator is required to submit an amended Form 2A prior to deviating from the foregoing requirement."

BMP #4 - Well leak detection and repair

Discussion

Maintenance and inspection of production equipment on location is within the Commission's jurisdiction. Record keeping related to production equipment or exploration and production waste also is within the Commission's jurisdiction.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

“Operator will perform audio, visual and olfactory inspections for leaks from wells and related production facilities on a monthly basis on all at this location once production starts. Operator will also inspect each well with an infra-red camera on a monthly basis when production starts. If the operator determines that repairs are required based on the inspections, operator will promptly initiate these repairs. After a well has produced for twelve (12) months, the frequency of such inspections shall decrease from monthly to quarterly. Operator will retain documentation of such inspections for at least three years and will provide to the COGCC upon request. This BMP will terminate five (5) years after the first monthly inspection performed.”

BMP #5 - Contact information

Discussion

The mailed notice provision of this BMP occurs before the operator submits a Permit to the COGCC and, therefore, is inappropriate as a permit condition.

Location signage is within the Commission’s jurisdiction.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

“Operator shall include its contact information, including both a telephone number for the Operator and the address and hours of the Operator’s Erie community office on all required location signage.”

BMP #6 - Steel-rim berms

Discussion

Secondary containment for liquids stored on a location is within the Commission’s jurisdiction. Steel-rim berms are required for locations within an Exception Zone under Rule 604.c.(3)B.i., which includes Morgan Hills. For locations not within an Exception Zone, a COA to require steel rim berms could be added to the permit.

Result

The proposed BMP is not appropriate for the Morgan Hills Permit.

BMP #7 - Closed-loop systems

Discussion

The Commission has jurisdiction over storage, handling, and transportation of exploration and production wastes, which includes drilling fluids, produced water, and flowback fluids. Existing Commission Rules require the use of closed loop systems on all Designated Setback Locations, which includes the Morgan Hills location. Moreover, the operator indicated on its Permit application it intends to use a closed-loop drilling system on the location.

The COGCC will add “closed-loop completions” as a COA.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

“Operator shall use closed-loop systems for completion operations.”

BMP #8 - Lighting

Discussion

Lighting at oil and gas locations is within the Commission’s jurisdiction. However, the proposed BMP is essentially a restatement of existing COGCC Rules.

Result

A permit condition related to a lighting is not appropriate.

BMP #9 - Class II underground injection control wells

Discussion

No underground injection wells have been proposed for the Morgan Hills location and, therefore, this BMP is inapplicable. As a general matter, local governments have considerable siting authority over the location of UIC wells, independent from COGCC.

Result

A permit condition related to a UIC well is not appropriate.

BMPs #10 and #12 - Recycling and Reuse; Town water supply

Discussion

The COGCC does not have jurisdiction over water supplies or to compel recycling or reuse. Furthermore, as written the decision whether to recycle is completely within operator's discretion.

Result

These BMPs are not appropriate permit conditions.

BMP #13 - Traffic

Discussion

Traffic management is a quintessentially local matter. COGCC has very limited jurisdiction over traffic management plans.

Result

This BMP is not an appropriate permit condition.

BMP #14 - Road Repairs

Discussion

Road maintenance, other than lease roads, is not within the Commission's jurisdiction.

Result

This BMP is not an appropriate permit condition.

BMP #15 - Access Roads

Discussion

Lease or access roads are within the Commission's jurisdiction.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

"Operator shall pave the first 100 feet of the lease road and improve as a crushed surface for the next 100 feet of the lease access road where it exits public right of way, except that this shall not be required over the written objection of a non-operator surface owner."

BMP #16 - Fencing

Discussion

COGCC has jurisdiction over oil and gas location fencing. See Rules 605.c.(3) and 604.c.(2)M. Because the Morgan Hills location is within a Designated Setback Location Rule 604.c.(2)M applies.

COGCC does not have jurisdiction to enforce the Erie Town Code.

Result

This BMP is not appropriate, in part because it essentially restates an existing COGCC Rule, and in part because it is outside of the Commission's jurisdiction.

BMP #17 - Operations conducted in accordance with plans

Discussion

The COGCC does not have the jurisdiction to enforce the terms of the Conceptual Review Process.

Result

This BMP is not an appropriate permit condition.

BMP #18 - Hydraulic Fracturing Responsible Products Program

Discussion

COGCC has limited jurisdiction over the constituents of hydraulic fracturing fluid, but does not have jurisdiction to enforce the terms of Encana's Responsible Products Program.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

"Operator's hydraulic fracturing fluid shall not contain diesel fuels (as defined by EPA 816-R-12-004), 2-Butoxyethanol (2-BE), benzene or heavy metals (i.e. lead, mercury, arsenic, cadmium and chromium)."

BMP #19 - Revision of best management practices

Discussion

The COGCC can add a COA requiring prior approval of changes to any proposed Permit COA or BMP via a Form 4 Sundry Notice.

Result

COGCC proposes to add the following COA to the Morgan Hills Permits:

"Any changes to the COAs or BMPs shall be submitted for prior COGCC approval via a Form 4 Sundry Notice. Any changes to BMPs which implicate the Operator's MOU with Erie shall be submitted with concurrence from the Town of Erie for the change."

Generic BMP Added to the COGCC Permits

The COGCC will include the following language on the Morgan Hills Permits to address some of the MOU BMPs that were not added as permit COAs:

"The Town of Erie and the operator have entered into an MOU in which the operator has agreed to implement a series of BMPs on a variety of items including water sourcing, water recycling, road repairs, traffic management, fencing, a responsible products program to manage fluids during hydraulic fracturing, and conduct of operations. The MOU is attached as a reference."

As a reference document, COGCC will attach an email from Encana that lists all BMPs to the Form 2A. COGCC will also place a comment on the Form 2A stating the BMPs from the MOU are attached.

COGCC has reviewed the MOU BMPs only to determine if they are within the Commission's jurisdiction. COGCC's determination regarding specific BMPs does alter the Town of Erie's rights to enforce the MOU's provisions or any other contracts or agreements between the Town of Erie and Encana.

Sincerely,

Matthew J. Lepore
Director
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