



RE: COAs for Beneficial Reuse of Drill Cuttings

Deranleau - DNR, Greg <greg.deranleau@state.co.us>

Fri, Apr 9, 2021 at 1:19 PM

To: Holly Hill <hhill@caerusoilandgas.com>

Cc: "Fischer, Alex" <Alex.Fischer@state.co.us>, Steven Arauza - DNR <steven.arauza@state.co.us>

Ms. Hill,

Thank you for relaying Caerus' concerns with the conditions of approval ("COAs"). After consulting with counsel, COGCC does not agree with your interpretation of how the Act's responsible party provision applies to the COAs. The Act's responsible party provisions apply in formal compliance or enforcement actions in which "the commission determines that mitigation of a significant adverse environmental impact on any air, water, soil, or biological resource is necessary as a result of the conduct of oil and gas operations," that leads the commission to "issue an order requiring the responsible party to perform such mitigation." C.R.S. § 34-60-124(7). That is not the case here. In this circumstance, COGCC Staff are not initiating an enforcement or compliance action against Caerus and therefore the Act's responsible party provisions do not apply.

Rather, Caerus has requested COGCC's approval of a waste management plan. COGCC has no obligation to approve or deny a proposed waste management plan. Rule 301.a makes clear that "The Commission, or Director, where applicable may require any conditions of approval that are determined to be necessary and reasonable to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources, or to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations." See *also* C.R.S. § 34-60-106(2.5)(a). To approve Caerus' proposed waste management plan, Staff must make a formal determination that the plan is consistent with the Act and the Commission's Rules. Staff may require adherence to any COAs necessary and reasonable to ensure compliance with the Act. Here, COGCC Staff determined that given the potential for legacy contamination associated with the pit facility, it was necessary and reasonable to require Caerus to adhere to conditions of approval to analyze soil samples and drill a groundwater monitoring well in the location of the pit as a condition of approving Caerus' proposed waste management plan. See Rule 905.a.(4) (former Rule 907.a.(3)). Specifically, Caerus is proposing to conduct land application of drill cuttings as a method of beneficial reuse. See Rule 905.d. This may result in incremental adverse impacts to soil resources and potentially groundwater resources at the location. In order to avoid, minimize, and mitigate potential adverse cumulative impacts on soil resources and groundwater resources at the location, COGCC Staff determined that it was necessary and reasonable to require Caerus to evaluate soil and groundwater at the location to determine the extent of any contamination that predated the proposed action. See, *e.g.*, C.R.S. § 34-60-106(11)(c)(II). Given the physical proximity of the proposed land application operations to the location of the pit, and the similarity in contaminants (hydrocarbons) that could potentially be released into the soil and groundwater as a result of the land application, the boring, sampling, and monitoring COAs are a necessary and reasonable conditions to approving Caerus' proposed waste management plan.

COGCC Staff's practice in this matter is consistent with numerous other common COAs that may require an operator to investigate oil and gas operations that they did not conduct, but are nearby the location of their proposed operations, in order to avoid, minimize, and mitigate adverse incremental or cumulative impacts. For example, Rule 308.b.(7) requires operators to conduct an offset well evaluation for each new well drilled, statewide (prior to this as a rule, the practice was adopted first in the DJ Basin, then statewide as a policy). As a result of the offset well evaluation, an operator may be required as a condition of approval of a Form 2 to perform or fund mitigation activities at a well they do not own or operate in order to avoid potential adverse impacts caused by well communication. See Rule 408.w.

Although COGCC Staff do not agree with Caerus' interpretation of the responsible party provisions of the Act in this situation, Staff are willing to waive the COAs in this specific circumstance, given the unique history of this oil and gas location and Caerus' history of voluntary compliance and commitment to environmental stewardship. Staff's preferred option would be for Caerus to voluntarily conduct the soil boring and sampling and voluntarily install the groundwater monitoring well at the location.

If Caerus does not agree to voluntarily conduct the soil boring and sampling and install the groundwater monitoring well, then COGCC Staff will conduct the requisite soil sampling themselves. If this is Caerus' preferred option, please so indicate in a response to this email. COGCC staff will then coordinate with our contractor and Caerus to schedule the investigation. Note that this coordination is a courtesy and that COGCC Staff have the right at all reasonable times to go upon and inspect any oil and gas location. See Rule 204. Based on the outcome of the sampling, COGCC Staff may determine that additional compliance or enforcement action is necessary. If COGCC Staff initiate compliance or enforcement action against Caerus, Caerus could then assert an affirmative defense that another person is a responsible party. See Rule 526.

Sincerely,

Greg

On Mon, Mar 1, 2021 at 6:36 PM Holly Hill <hhill@caerusoilandgas.com> wrote:

Alex -

To clarify the issue, Caerus questions the two COAs because the former pits were constructed, operated, and closed by another operator more than a year and a half before Caerus acquired the locations. The Oil and Gas Conservation Act limits the Commission's authority to require "investigation or monitoring" or to order "mitigation" to "responsible parties." C.R.S. §§ 34-60-124(6)(b) & (7). For this purpose, the Act defines "responsible party" to mean "any person who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision" of the Act, or any rule, order, or permit, "that threatens to cause, or actually causes, a significant adverse environmental impact." C.R.S. § 34-60-124(8)(a). The COAs are inconsistent with this statutory requirement. Because Caerus never operated the former pits, we are not a responsible party for them, and because Caerus is not a responsible party for the former pits, we cannot legally be required to investigate, monitor, or mitigate their potential impacts.

As set forth in the Form 4, Sundry Notices referenced below, Caerus has proposed to beneficially reuse drill cuttings at the locations, but not in, near or on the formerly closed pits. The potential environmental effects of our reuse of the drill cuttings are already addressed by our proposal and by other COAs which Caerus does not question. Therefore, the two COAs in question applied to the beneficial re-use Form 4s do not address the potential impacts of our proposed action and their impacts do not justify the COAs.

Nevertheless, we appreciate the information you have provided as well as your statement that the COGCC will allow a 90-day extension to address the COAs. As suggested, Caerus has today submitted Form 4, Sundry Notices to request extensions of the COAs until the matter is resolved. The documents numbers for these submittals are: 402613203 and 402613230.

Respectfully,

Holly Hill

Regulatory Manager

1001 17th Street, Suite 1600

Denver, CO 80202

Office: 720-547-8746

Cell: 303-521-2835

Email: hhill@caerusoilandgas.com



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From: "Fischer - DNR, Alex" <alex.fischer@state.co.us>
Date: February 26, 2021 at 4:25:18 PM MST
To: Holly Hill <hhill@caerusoilandgas.com>
Cc: Steven Arauza - DNR <steven.arauza@state.co.us>, Greg Deranleau - DNR <greg.deranleau@state.co.us>
Subject: Re: COAs for Beneficial Reuse of Drill Cuttings

Holly,

When Operators bring projects to the COGCC for review, my Staff and I complete a thorough review of the proposed project. Additionally, we review the following: compliance issues from Inspections, Complaints, NOAVs, Spills/Releases, Remediations, and the past use and history of the Locations and Facilities. Included under the General Comment section on Document #402473553 and Document #402431254, you will see the COGCC's reasoning for the COAs referenced in your February 24, 2021 letter which are also outlined below. The fact that Caerus has waited 182 days (5 months, 29 days) as it relates to Document #402431254 (SG L27 496 Pad, Pit #414443) and 169 days (5 months, 16 days) as it relates to Document #402473553 (NPR A03-596 Pad, Pit #414549) to bring their questions to the COGCC limits their ability to comply with COGCC conditions of approval.

Given the weather and snow cover, the COGCC will allow a 90 day extension to address the COAs on the referenced Documents. Caerus will need to request that extension in writing via Sundry Form 4 and should submit those extensions on or by March 1, 2021 to avoid further compliance delays. Please let Steven or I know when those two Sundries have been submitted so that we may review in a timely manner.

Regards,

Alex

Document #402473553 (NPR A03-596 Pad, Pit #414549)

* COGCC Comment on the document comes from the Environmental Workgroup and outlines the technical basis for the soil boring and monitoring well COAs: Sundry #400787375 and Report doc #400787386 document pit closure with Sample ID Pit Bottom South - SW Bottom (collected 7/18/2011) exhibiting a TPH concentration of 34,020 mg/kg and numerous samples exceeding 500 mg/kg. See COAs above.

* This pit was closed under REM #7741 with Form 27A doc #200424776, which included the following COGCC comment: Based on review of the data presented, it appears that no further action is necessary at this time at this site. However, should future conditions at this site be discovered of contaminant concentrations in soils exceeding COGCC standards or if groundwater is found to be significantly impacted, COGCC may require that further investigation and/or remediation be conducted.

[image.png]

Facility ID #4141279, which is used to reference the pit at the L27-496 location does not exist. The Pit Facility ID is #414443.

Document #402431254 (SG L27 496 Pad, Pit #414443)

* COGCC Comment #4 comes from the Environmental Workgroup and outlines the technical basis for the soil boring and monitoring well COAs: Sundry #400813559 and Report doc #400813563 document pit closure with Sample ID S pit - S center Low Point, collected 6/10/11 has [TPH] at 10,001.9 mg/kg and

numerous samples exceeding 500 mg/kg. See COAs above.

Document #400938573 (SG L27 496 Pad, Pit #414443)

* COGCC Comment #1 indicates that "No Further Action is Required regarding the closure of this pit. [per Paragraph 2 of your letter] REM #9214 has been closed"

* REM #9214, was closed with a Form 27A, doc #200437995 with the following COGCC comment: Based on review of information presented it appears that no further action is necessary at this time. However, should future conditions at the site indicate contaminant concentrations in soils exceeding COGCC standards or if ground water is found to be significantly impacted, further investigation and/or remediation activities may be required at this site.

[image.png]

On Thu, Feb 25, 2021 at 2:34 PM Holly Hill <hhill@caerusoilandgas.com<mailto:hhill@caerusoilandgas.com>> wrote:

Good Afternoon Alex,

Please find attached a letter in response to the Conditions of Approval (COAs) that were applied to the approvals for Beneficial Reuse of Drill Cuttings on Form 4 Document Nos. 402473553 and 402431254. We feel that this matter is really important to address as soon as possible. We look forward to engaging further on this matter.

Thank you in advance for your time!

Holly Hill
Regulatory Manager
1001 17th Street, Suite 1600
Denver, CO 80202
Office: 720-547-8746
Cell: 303-521-2835
Email: hhill@caerusoilandgas.com<mailto:hhill@caerusoilandgas.com>

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Alex Fischer, P.G.

Environmental Supervisor, Western Colorado

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P 303.894.2100 x5138 | F 303.894.2109 | C 303.501.3900

1120 Lincoln Street, Suite 801, Denver, CO 80203

|alex.fischer@state.co.us<<mailto:alex.fischer@state.co.us>> www.colorado.gov/cogcc<<https://protect-us.mimecast.com/s/4NwxC1wzZyFxoO3uLPOD5?domain=colorado.gov>>



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Greg Deranleau
Environmental Manager



COLORADO
Oil & Gas Conservation
Commission
Department of Natural Resources

The mission of the COGCC is to regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, welfare, the environment and wildlife resources.

P 303.894.2100 x5153

C 303.725.3318

1120 Lincoln Street, Suite 801, Denver, CO 80203

greg.deranleau@state.co.us | www.colorado.gov/cogcc