

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

IN THE MATTER OF CHANGES TO THE RULES)	Cause No. 1R
OF PRACTICES AND PROCEDURES OF THE OIL)	
& GAS CONSERVATION COMMISSION OF THE)	Docket No. 200300071
STATE OF COLORADO)	
)	Type: Rulemaking

**THE CITY OF COMMERCE CITY
200-600-SERIES PREHEARING STATEMENT**

The City of Commerce City appreciates the opportunity to submit a pre-hearing statement for consideration by COGCC staff during this rulemaking process. Commerce City staff has the following comments, questions and suggestions regarding the most recently released draft:

I. ALTERNATIVE SITE ANALYSIS

The city commends the COGCC for including the requirement for an alternative location analysis for sites that meet the criteria defined in rule 302(b)(4). Under proposed Rule 304, an alternative location analysis would be required for oil and gas development (a) in floodplains, (b) high priority habitat [a term that is not yet defined], (c) where there is a surface owner protection bond, and (d) where the location is within 1,500 feet of 10+ building units. The city believes that additional revisions to COGCC’s latest draft may be necessary to ensure effective coordination between analyses conducted separately at the state and local levels.

The city requests that the alternative site analysis submittal requirement be considered separately from an operator’s form 2a application, and review of that analysis should occur prior to the operator submitting a full 2a application (which includes detailed location drawings, layout drawings, and other detailed, technical information). By requiring this as a submittal requirement for one individual 2a application, rather

than a pre-submittal requirement prior to submittal of an eventual 2a application for that spacing unit, it may encourage operators to skew the analysis to provide justification for their planned facility at their preferred choice, rather than select the location based on a robust, objective analysis process. The analysis should aim to evaluate which (if any) location is the most protective of health, welfare, safety and the environment, and the spirit of that analysis may not be effective if it doesn't occur at the right time.

The COGCC should also consider expanding the application requirements for the alternate site location analysis to include the following

- Other planned activity by the operator in the general area
 - To assess and evaluate if potential re-configuration of spacing units and consolidation of surface use locations may be more protective of health, safety and welfare
- Potential truck routes for a contemplated location
- Potential pipeline alignments
- Generally throughout section 304b, require showing all defined features within a certain geographic distance (1 mile), rather than a stated distance from the nearest feature
 - For example, simply listing 1,000' from the nearest delineated wetland, may not account for the quantity or size of the wetlands, which may be a critical evaluation component as to whether or not a facility should be located near these features.

Requiring an alternative location analysis (304b) to include *all potential alternate locations that may be considered for siting of the Oil and Gas Location* may be interpreted narrowly by operators based on the language included in this section, and may not constitute more than one submitted location within the analysis. A requirement for at least three (3) submitted locations would ultimately lead to a more meaningful analysis for COGCC staff to consider.

Following the adoption of Senate Bill 19-181, many local governments have modified their local regulations to include an alternative location analysis that may (or may not) include the same criteria under 302(b)(4). Given that land use and zoning regulations are administered primarily through home rule municipalities within the State of Colorado, local governments develop comprehensive land use plans, sub-area plans, neighborhood plans, and other various adopted plans, and have valuable resources and insight as it pertains to the land development process.

Section 304(9) requires operators to provide the following: *“A narrative description of the current land use(s), the Relevant Local Government’s land use or zoning designation, any applicable federal land use designations for proposed Oil and Gas Locations on federal surface estate, and the landowner’s designated final land use(s) for the purpose of determining reclamation standards.”* This language does not consider adjacent land uses, or what planned developments may be occurring within the area within the next several years. Given that local governments typically have this information and background, it may be necessary at a minimum, for the Local Government to be a referral on the Alternative Site Location Analysis, and provide comments on the application. The COGCC should also consider, for those local governments who have a requirement for an alternative location analysis that meets a minimum set of robust standards, to automatically adopt the local government’s alternative location analysis if a local permit has been issued.

The COGCC should consider providing some guidance as to what criteria signifies a location that would be considered acceptable for approval. Below is the criteria that Commerce City has utilized in its most recent draft:

- 1. A proposed site’s conformance with Local Government’s applicable adopted plans;*
- 2. The absence of any significant impacts the proposed site location may have on adjacent properties;*
- 3. Adequate surface acreage and suitable topography for safe and efficient operations;*
- 4. The ability to access targeted minerals with technology available at the time of development;*

5. *The ability to reasonably implement the protections contained in the BMP Document from the proposed location;*
6. *The ability to consolidate facilities with other planned drilling and spacing units proposed*
7. *The ability to reconfigure proposed drilling and spacing unit applications to provide more suitable surface use locations;*

Additionally, under 302c, what set of criteria could constitute whether or not an alternative site location analysis is waived by the director? This should be defined more clearly to ensure the process is transparent.

Finally, the city requests that local government consultation described within 302(g) be greatly expanded beyond sub-bullets 1 and 2, to include significant discussion on siting, development activity, zoning and the adopted comprehensive plan(s) for the surrounding area.

II. SETBACK REQUIREMENTS

The City commends the COGCC for creating an additional minimum setback of 1,500' from 10 or more residential building units, or one high-occupancy building unit. The city believes that in any circumstance, the minimum setback for new Oil and Gas development during the drilling and completions phase of development should be increased from 500' to at least 1,000', regardless of how many residential units are adjacent. Within the significant body of research¹ assessing impacts on human health from proximately located Oil and Gas Well Sites, the majority find increased adverse impacts within 1,000 feet of the well site. A minimum of 500' may not be justified in protecting public health and safety.

Additionally, the language included in 604c(2) stating: *“Unless the Commission finds, after a hearing pursuant to Rule 510, that the location can be approved because the Commission has developed conditions*

¹ See exhibit 1

of approval that protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.” is not prescriptive enough in determining what circumstances potentially qualify in a deviation from the minimum standards. The city requests that in all circumstances where a deviation is requested, the applicant shall be required to formally obtain a variance from the COGCC. A set of approval criteria that explicitly states which circumstances may constitute a deviation from the minimum standards should be implemented in the code, and evaluated by the COGCC during their evaluation process. Any such variance should only be granted where the applicable local government has a variance process established, with similar evaluation criteria in place.

Additionally, the city commends the COGCC for adopting the definition of Working Pad Surface, and conducting measurements from the edge of the Working Pad Surface, rather than the nearest portion of permanent production equipment on site. This will account for a greater extent of ongoing impacts that may occur during the lifetime of the well, including potential re-drilling and re-completion of wells, and emissions from truck traffic that may be present well beyond the edge of the nearest permanent equipment on site.

III. PUBLIC WATER SYSTEM PROTECTION

The COGCC has proposed 1,000-foot setbacks from “Groundwater Wells Under the Direct Influence” (“GUDI wells”), as defined by the Colorado Water Quality Control Commission. The City of Commerce City joined as a signatory on the 300 and 400 series prehearing statement provided by Public Water Suppliers, stating the concerns with this definition. The city maintains its position that the COGCC should adopt the definition of Shallow Public Water System Well, in lieu of Groundwater Wells Under the Direct Influence.

Shallow Public Water System Well means a water well connected to a public water system that is drawing water from a Type III aquifer, as defined by the Colorado Department of Natural Resources' Division of Water Resources.

IV. CUMULATIVE IMPACTS

The city is supportive of the COGCC contemplating the cumulative impacts of Oil and Gas development in its most recent draft. These analyses help evaluate impacts collectively, over a broad geographic region. Given the direction that the COGCC was provided from Senate Bill 19-181 to consider “cumulative impacts of oil and gas development”, the current draft takes initial steps to further this directive, but more work may be needed. The California Environmental Quality Act Guidelines (CEQA) define cumulative impacts as “*two or more individual effects which, when considered together, are considerable, or which can compound or increase other environmental impacts.*” (California Environmental Quality Act Guidelines (2020), Sec. 15355, p. 280). Some local governments may lack the ability to assess environmental impacts outside of their jurisdictional boundaries, nor should it necessarily be their mandate if other government entities are better suited to handle the issue. Given the regional nature of cumulative impacts assessment, the city feels that state regulatory agencies, such as the Colorado Department Public Health and Environment, The Air Pollution Control Division, and Colorado Parks and Wildlife are best equipped to not only determine baseline thresholds and guidelines, but to conduct measurement of this data as well.

As Commerce City and other local governments consider potential incorporation of their own cumulative impact assessment requirements, detailed guidance from state regulatory agencies about what factors, methodological approach, and thresholds would be reviewed in their analyses is critical to ensure consistency. Within section 303(a)(5) of the draft regulations, more specific details are needed regarding the cumulative impacts assessment requirements (form 2B). Most important, an expectation needs to be formed regarding the geographic region that this analysis will be conducted for. Many of the assessment

criteria listed in subsections A-J might only apply to either a macro level or micro-level scale depending on the specific criteria the state is looking to evaluate within the analysis. For example, light, dust, and odor impacts would generally be most notable in close proximity to a well, but applying assessment of these impacts at the same scale that would be utilized to analyze regional air quality impacts would be difficult to quantify and measure.

Subsequently, 303(a)(5) needs detailed evaluation criteria that explains what the state will be reviewing the criteria against, and how thresholds are defined. Additionally, a cumulative impacts assessment should also consider the requirement for an alternatives analysis, which would require the operator to consider a range of alternatives that can accomplish the reasonable extraction of mineral resources in that location. Such an evaluation could compare the proposed facility to either a “No Project Alternative”, “Reduced Project Alternative”, or an Environmentally Superior Alternative”. Alternatives could include siting decisions, additional incorporation of best management practices, or other creative solutions.

It is also unclear how the incorporation of cumulative impacts within this latest draft coincides with the statewide overall emission reduction targets highlighted in HB19-1261, which mandates a targeted goal of 26% reduction in GHG emissions by 20205, 50% by 2030, and 90% in 2050, using 2005 as a baseline year.

The city additionally requests that cumulative impacts are re-assessed at the time an operator proposes significant modifications of an existing permit.

V. LOCAL SITING DEFERENCE

The city is concerned about 302(b)(4) as it relates to deference on local siting decisions. The current draft states that a COGCC hearing will be required if a local government regulates the siting of an Oil and Gas Location, and has denied the siting of a proposed Oil and Gas Location. If the intent of Senate Bill 19-181 is to provide local governments more regulation authority on siting decisions, and a local government finds

through its objective review process that an application does not meet the stated criteria, the potential for the COGCC to approve such a location though public hearing appears to contradict that intent. Based on the draft, it appears that the COGCC could ultimately approve an application that did not meet the local government's minimum setback or siting requirements, if those exceed COGCC standards. Rule 302 further does not address the instance where the COGCC approves a site different from the one a local government approved. This may infringe on the local government's ability to be more stringent than the COGCC, and result in inconsistent outcomes.

One potential strategy would be to require the operator to provide a copy of an approved local permit with their 2a application. The COGCC could potentially approve an alternate location within the 2a application, if that local government does not have siting requirements as stringent as the state.

VI. STANDING OF PROXIMATE LOCAL GOVERNMENTS

The City commends COGCC staff for proposing draft rule 507, which would give “affected persons” and “proximate local governments” the ability to require a hearing on COGCC applications. This acknowledges that impacts from Oil and Gas facilities occur across jurisdictional boundaries, and addresses the scenario where a permit application may be directly adjacent to residences in another municipality, but the impacted local government did not have standing to request a contested hearing.

VII. ENVIRONMENTAL JUSTICE

Environmental Justice is defined by the EPA as *“The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”* Addressing issues of environmental injustice at a regulatory level is critical to ensure that no group of people should bear a disproportionate burden of environmental harms and risk that may arise from industrial activities, which has historically occurred disproportionately to low income and minority populations. Addressing

environmental justice intentionally from a regulatory standpoint is an acknowledgement that patterns of systemic racial injustices and inequities exist in our society. These divides continue to be perpetuated by omitting marginalized communities as an equal stakeholder in major policy discussions.

The city commends the COGCC for adding the definition of Disproportionately Impacted Community, and including this as an evaluation criteria within the Alternative Location Analysis requirement. The city would additionally like to see expansion of various aspects of the community engagement process and notice requirements to be more inclusive of low income and minority communities. This should include requirements for multi-lingual translation of notices (depending on the prevailing primary and secondary languages in the area), translation services for required in-person stakeholder meetings, and other strategies to engage underrepresented and marginalized communities.

Additionally, the city would like the COGCC to consider, when planned facilities are within one (1) mile of a defined Disproportionately Impacted Community, the operator should be required to provide as part of their 2a application, a specific and detailed community outreach strategy that provides the following:

- Detailed demographic information on the population within 1 mile of the planned location, including income levels, race, poverty rate, etc
- Summary of primary and secondary languages spoken in the area
- A detailed outreach and community engagement strategy proposed by the operator that describes:
 - A communication plan that is inclusive of all languages, abilities, and technology constraints
 - A plan for hosting stakeholder working groups, community meetings, or workshops (in-person or virtual, depending on the circumstances) that seek to inform Disproportionately Impacted Community members and collect their input
 - The process for prioritizing insights collected from individuals who identify as belonging to an underrepresented or marginalized community

The COGCC should also consider and explore methods to solicit feedback from environmental justice communities during the alternative location analysis process, in addition to the 2a application. By aiming to have public feedback inform siting decisions, rather than soliciting feedback once the location of a facility is relatively finalized, ensures greater transparency in the process and can incorporate public feedback in a more meaningful way to influence outcomes.

VIII. CONCLUSION

Overall, the City feels that the proposed regulation changes contemplated in the Mission Change, Alternative Site Analysis, and Cumulative Impacts rulemaking are significant improvements over current COGCC regulations, and provides furtherance of fulfilling the mandates instituted by SB19-181. Thoughtful evaluation and consideration of the changes and recommendations made in this prehearing statement will further increase public transparency, and protect public health, welfare, safety, and the environment.

Respectfully submitted on July 13, 2020,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **PREHEARING STATEMENT** was electronically filed and delivered via e-mail this 13th day of July, 2020, to the following entities that require notice of such filing:

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