

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. 210600097  
STATE OF COLORADO )  
) Type: Rulemaking

**WRITTEN STATEMENT FROM THE CITY OF  
COMMERCE CITY, COLORADO**

COMMENTS ON STRAW DOG DRAFT

**INTRODUCTION**

The City of Commerce City, a home rule municipality, applauds the COGCC’s efforts to create financial assurance requirements for both new and existing operations to fully protect health, safety, welfare, and the environment. Commerce City recently adopted local financial assurance requirements to ensure compliance with local requirements for future wells, but only the Commission’s rules can fully protect the community and ensure the safe operation and site remediation for existing operations (and some pending applications). Commerce City’s comments below are intended to support the COGCC’s efforts while encouraging more thorough and guaranteed measures. Local financial assurances, in the absence of adequate State protections, are not enough on their own; the COGCC’s primary regulations must ensure that residents and taxpayers not bear the financial responsibility for an operator’s permit compliance, well security and safety, well plugging and abandonment, and well site reclamation.

**COMMERCE CITY BACKGROUND**

Commerce City is one of the fastest growing cities in Colorado. Since 2012, Commerce City’s population has increased from approximately 48,000 to over 62,100 in 2020 (Jan 1, 2020

estimate). Significant residential development has occurred in the city's "Northern Range" area bounded by 96<sup>th</sup> and 88<sup>th</sup> Avenues to the south, E-470 to the north and east, and Highway 2 to the west. Commerce City is anticipated to expand to an area north of Denver International Airport. In this part of Commerce City, a distinctly suburban environment has developed in an area that was primarily farmland 25 years ago. In those areas, oil and gas development has been limited to sites largely established in the late 1970s. For more than three decades, little to no new oil and gas development occurred within Commerce City.

In early 2018, the city started to receive significant interest in oil and gas development. Extraction Oil and Gas Corp. filed multiple applications with the COGCC covering a significant portion of the city's Northern Range and approached the city with plans to explore resource extraction. Before passage of SB19-181, Commerce City negotiated a set of voluntary Best Management Practices to incorporate common industry-wide and environmental practices that were more stringent than COGCC rules at the time. Extraction and Commerce City ultimately signed a limited-purpose "regional operator agreement" in September 2019 that covered several proposed locations, should they be permitted, and provided increased public health, safety and environmental protections, including financial assurances during the completion period. In that agreement, Extraction also agreed to plug and abandon five wells within the city limits and 35 additional wells within with the city's urban growth boundary.

## **DISCUSSION**

As required by SB19-181, the COGCC must require that "every operator provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019." Financial capability of an operator should be determined

based on the operator's capability alone, over the full period of operation, without allocating risk or responsibility to the government and taxpayers. The COGCC's proposed rules make significant steps towards doing so, but exclude key concepts that expose the public to substantial risk.

**Forms of Financial Assurance (Rule 701.a-b).** The proposed rules should mandate, not merely state a preference for, particular forms of financial assurance and should establish rules for the administration of each approved type. Commerce City supports the preference for cash bonds and surety bonds, but also supports including irrevocable letters of credit. These three forms of financial assurance can be readily accessed and provide the greatest guarantee of recovery. The COGCC should refer to Federal requirements (e.g., 40 CFR 144.63; 40 CFR 144.70) to identify administrative provisions and model language for each type of financial assurance. Further, the rules should establish minimum requirements for the entity providing the assurance.<sup>1</sup> Avoiding confusion as to language, issuer type, and administration will be key to avoiding future disputes.

Although § 34-60-106, C.R.S. arguably allows an operator to *submit* other less guaranteed forms of financial assurance (e.g., liens, security interest, escrow account, self-bonding), the COGCC rules should state that such forms will not be accepted. Such forms are more difficult to manage, less guaranteed, and more difficult to access. Escrow accounts may be feasible, if used as a means to manage surety, cash, or letter of credit funds.

**Financial Assurance Blanket Bonding (Rule 702.b-d; Rule 704).** Commerce City's financial assurance requirements begin at \$90,000/well, increasing for inflation, based on COGCC costs for plugging and abandonment and site reclamation. Understanding that these figures may

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<sup>1</sup> See [EPA 816-R-10-017](#) (2010) (Research and Analysis in Support of UIC Class VI Program Financial Responsibility Requirements and Guidance), Tables 3.9-3.11 (Exhibit 3); *see also* [40 CFR 264.143](#); [40 CFR 264.145](#); [40 CFR 144.28](#); [EPA 816-R-16-003](#) (2016) (Federal Financial Responsibility Demonstrations for Owners or Operators of Class II Oil- and Gas-Related Injection Wells) (Exhibit 2).

have been refined, the tier system authorizing blanket bonds is grossly inadequate in light of the known costs and improperly allocate risk to the public. Although Commerce City opposes blanket bonding, even if it could be accepted, the proposed tiers are too expansive for the amounts provided. Any tiers should be more discretely drawn with financial assurance amounts narrowly tailored to the number of wells in each, even if that means including more tiers. It should be noted that the current proposed amounts, when viewed on a per well basis, appear to be barely more than the per-well bond amount used by the Bureau of Land Management since the 1950's. The Government Accountability Office has regularly criticized the BLM's approach to bond amounts and its management of bonds and orphaned wells, which has left the agency unable to address orphaned wells on federal lands.<sup>2</sup>

The individual and blanket bond amounts for surface owners in Rule 704 also appear to be inadequate. If this is intended to protect surface owners who lack a surface use agreement, the assurance amounts should be increased to fully capture, or at least better estimate, the full cost of plugging and abandoning and reclamation of the site. Blanket bonds are not appropriate for the bonding of these exceptional circumstances when a surface use agreement is not obtained from the surface owner.

**Administration and Procedures (Rule 706; Rule 504.b.10; Rule 211; Rule 218; Rule 434.b).** Commerce City supports extensive administrative provisions for financial assurances and recommends that the COGCC look to Federal standards to ensure that program can deliver on its promises. In addition to improving the rules as noted above, the proposed rules could be improved by providing for immediate access to financial assurance funds, without delays, and in involving stakeholders in the process. For example, Rule 706.b's procedures appear to require hearings

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<sup>2</sup> [GAO-19-615](#) (2019); [GAO 11-202](#) (2011).

before any action on the financial assurance. Immediate access by the Director should be authorized to ensure that the public does not bear the risk, either fiscally or by delay in acting to cure an operator's deficiencies. Further, any notice of an action or hearing on financial assurance plans or financial assurances should be provided to local government designees in affected jurisdictions and surface owners, not just the operator.

Commerce City supports retaining financial assurance for the life of a facility through proper plugging, abandonment, remediation and reclamation. Further, the proposed rules properly require that replacement financial assurance be provided when a facility is transferred before the existing financial assurance is released. These measures fully protect the public and properly allocate risk to operators.

**Confidentiality (Rule 223.b.11).** The general provision for confidentiality of financial assurance in the proposed rules is overbroad and could be applied to limit public and stakeholder access to important information. Commerce City recommends that this rule be reduced to designated only limited categories of information as confidential.

**Miscellaneous.**

- **Rule 205.c.** Commerce City supports funding the Orphan Well Fund as proposed and recommends that current funding through a mill levy on production also remains in place.
- **Rule 211.** Commerce City recommends permitting surface owners with standing to apply for a determination that a well is not "used or useful." As drafted, the rules would require surface owners to request the relevant local government to request a Rule 211 plugging and abandonment hearing on the surface owner's behalf. Local governments should not be placed in that position, functioning as a screening body for the COGCC,

and lack the time, resources, and expertise to intervene on behalf of surface owners. Surface owners may be in the best position to make this request and would directly benefit from the plugging and abandonment of such wells.

- **Rule 702.c-d; Rule 434.c.** Commerce City generally supports the extensive efforts to secure inactive wells.
- **Rule 702.a.** Commerce City, which largely surrounds the Rocky Mountain Arsenal Nationwide Refuge, opposes any regulation that reduces bonding requirements for operations on federal property. As previously stated, the BLM's bonding requirements have been found by the GAO to be inadequate. Colorado has the right, and obligation, to protect both public and private lands by requiring adequate financial assurance.

## CONCLUSION

Commerce City recommends that the COGCC continue to refine the proposed rules to further allocate risk and assign responsibility to operators as described above. Commerce City looks forward to participating in the formal rulemaking.

Respectfully submitted on July 30, 2021,

/s/ Robert Sheesley

Robert Sheesley, City Attorney

/s/ Matt Sura

Matthew Sura, Commerce City Special Counsel

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the WRITTEN STATEMENT FROM THE CITY OF COMMERCE CITY, COLORADO was electronically filed on the COGCC's e-filing system, by the deadline of July 30, 2021 at 7:00PM.