



COGA | Colorado's Oil and Gas Regulatory Timeline: 2010-2016

Regulatory Timeline 2010-2016

The State of Colorado is a national leader in its commitment to fostering safe and responsible development of Colorado's oil and gas resources. Over the last 6 years Colorado has implemented precedent setting regulations from baseline groundwater testing and monitoring to air regulations targeting methane leak detection and repair. This regulatory timeline provides summary information on significant legislative and regulatory efforts affecting Colorado's oil and gas industry from 2010 to 2016.

2010- Clean Air, Clean Jobs Act (HB – 1365)

The Colorado Clean Air, Clean Jobs Act (CACJA) was signed into law on April 19, 2010 providing a roadmap to reduce emissions from older coal-fired power plants through the increased utilization of natural gas.¹ This significant legislation transcended traditional political party lines and received support from a broad spectrum of groups.

A key component of this law required the Public Service Company of Colorado (PSCo) to submit a plan to reduce emissions standards, including a 70-80 percent reduction in nitrogen oxides levels by 2017. The final plan submitted by the PSCo included the retirement of 550 megawatts of coal generation and the construction of new natural gas fired power plants.

This law was enacted in part, because Colorado was out of compliance with the Environmental Protection Agency's National Ambient Air Quality Standard for Ozone. Parts of the Colorado Front Range are still considered non-attainment, however, this legislation has informed the development of the current State Implementation Plan (SIP) and provided a framework to reduce air pollution from power plants in a cost effective manner.

2011- Hydraulic Fracturing Disclosure Rulemaking

On December 13, 2011, Colorado regulators unanimously passed a Hydraulic Fracturing Disclosure Rule that requires comprehensive public disclosure of the chemicals used in hydraulic fracturing treatments. The rule represents a balanced compromise between industry and environmental groups, providing transparency while protecting proprietary information.

Starting in April 2012, this rule (205A.) was applied to all hydraulically fractured treatments performed in Colorado². The rules include public disclosure of hydraulic fracturing chemicals using FracFocus.org in addition to disclosure of the volume of water used and the concentration of chemicals in the hydraulic fracturing fluid.

¹[http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont2/OCA296732C8CEF4D872576E400641B74/\\$FILE/1365_enr.pdf](http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont2/OCA296732C8CEF4D872576E400641B74/$FILE/1365_enr.pdf)

²<http://cogcc.state.co.us/documents/reg/Rules/LATEST/200Series.pdf>

This rule also requires operators to provide the Colorado Oil and Gas Conservation Commission (COGCC) with 48 hours notice prior to hydraulically fracturing a well. Operators must file their chemical registry form within 60 days of completing a hydraulic fracturing treatment.

This rule protects proprietary information by allowing operators to file a Form 41 for claimed trade secrets, however, in the case of an emergency, companies must disclose all ingredients to health care workers. Operators are still required to disclose information about chemical family when filing Form 41. The passage of this rule further demonstrates that Colorado's oil and gas industry is committed to operating in a transparent and safe manner.

2013- Baseline Water Quality Sampling Rulemaking

In January 2013, the COGCC approved the most rigorous statewide mandatory groundwater sampling and monitoring rules in the United States. The purpose of Rule 609, "is to gather baseline water quality data prior to oil and gas development occurring in a particular area, and to gather additional data after drilling and completion operations" (COGCC, 2013). Rule 609 was a national precedent setting rule and all data collected as part of this program is available to the general public through the [COGCC database](#).

Under the rule operators are required take water samples prior to, and, post drilling. The monitoring samples are collected from available water sources, up to a maximum of four (4), within a one-half (1/2) mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well.

Initial sampling must be conducted within 12 months prior to setting conductor casing or the commencement of drilling for a dedicated injection well. Subsequent samples are taken between 6-12 months after the initial sampling and 5-6 years following completion of the last well at a site.

*** Requirements in designated fields/regions may vary³

2013- Setback Rulemaking

On February 11, 2013, the Colorado Oil and Gas Conservation Commission (COGCC) voted to approve new Setback Rules to mitigate perceived effects of drilling near buildings.⁴ The rules significantly increased setback distances and imposed advanced best management practices and protective measures to eliminate, minimize, or mitigate perceived impacts for all oil and gas locations within 1,000 feet of occupied buildings. The adopted rules enhanced notice and communication with building owners within 1,000 feet of occupied buildings. The rules became effective in August 2013, and are viewed among the toughest in the nation.

These rules included the following setback distances:

- A uniform 500-foot statewide setback, applicable in both rural and urban areas
- A 1,000-foot setback from high occupancy buildings such as schools, nursing homes and hospitals.

Additional mitigation measures were put in place for sites within 1,000 feet of an occupied structure including stringent mandatory mitigation measures to minimize, noise, and to improve the notification and engagement process. Lighting abatement requirements were extended from 700 to 1,000 feet and fugitive dust must be controlled during all stages of drilling.

2013- Spills and Releases Rulemaking

In February 2014 the COGCC updated the spill reporting requirements and tightened thresholds for reporting spills. Per COGCC rules, a spill is defined as any observable release of exploration and production (E&P) fluids or produced fluids spilled onsite be it crude oil, condensate or salty water produced from a well, treatment fluids used during hydraulic fracturing, or diesel fuel used to power drilling rig generators.

³ See [COGCC Rule 608.b](#), for Coalbed Methane Wells in the San Juan Basin

⁴ http://cogcc.state.co.us/announcements/hot_topics/setbacks/Definitions_Zones_Exceptions.pdf

Rule 906 of the Colorado Oil and Gas Conservation Commission (COGCC) establishes requirements for spills and releases. Rule 906.a. requires operators investigate, clean up, and document impacts from spills to the COGCC and Rule 906.b. defines reportable spills and reporting requirements for spills/releases.

Under the rules updated in February 2014, an operator must report to the Director of the COGCC, verbally or in writing (within 24 hours of discovery), a spill or release in which one (1) barrel of more of E&P waste or produced fluids is spilled or released outside of berms or other secondary containment or a spill exceeding five (5) barrels within 24 hours after discovery.⁵ The threshold under the previous rule was within 24 hours for twenty (20) barrels. Additionally, the term “produced fluids” was added to clarify that spills of oil, condensate, or natural gas liquids must be reported along with other exploration and production (E&P) waste. The other key change under amended rule 906.b. requires operators to report certain spills to the surface owner and local governments within 24 hours.

2013- Wildlife Map Update Rulemaking

In July of 2013, the COGCC initiated a rulemaking to update state wildlife maps. On September 17, 2013, the COGCC formally adopted rules updating Sensitive Wildlife Habitat Maps and Restricted Surface Occupancy Maps. (See 1200 series rules & Appendix VII-VIII).⁶ These maps contain the ranges of species of interest to the state of Colorado. Specifically, these maps contain data about species range, habitat, and known migration patterns. When new data is available, these maps are updated, often in partnership with Colorado Parks and Wildlife (CPW).

Keeping these maps updated provides state regulators with information to ensure that sensitive species are appropriately accounted for through consultations required under Commission Rule 306.c. (see also Rule 1202).⁷ These consultations occur between the COGCC, CPW, surface owner(s), and operators to “minimize adverse impacts” from proposed oil and gas development.

Of interest in this rulemaking were updates species specific definitions of Sensitive Wildlife Habitat for Mule deer critical winter range, Lesser Prairie Chicken focal areas, Greater Sage Grouse priority habitat, and Gunnison Sage Grouse production areas.

2014- Air Emissions from Oil and Gas

On February 23, 2014, at the conclusion of a five-day public hearing, Colorado’s Air Quality Control Commission (AQCC) voted to adopt new precedent setting rules targeting air emissions from the oil and gas industry. These regulations fully adopted federal regulations (EPA’s NSPS OOOO) and added controls and strategies to reduce fugitive Volatile Organic Compounds (VOC’s) and hydrocarbon emissions from condensate tanks and other sources. This includes installation of emission control devices and implementation of leak detection and repair programs. These regulations became effective in the spring of 2014.⁸

Key elements of these air quality regulations include: leak detection and repair (LDAR), storage tank regulations, and expanded applicability to include pneumatics. The LDAR program is a tiered inspection requirement that requires operators to inspect components at natural gas compressor stations and well production facilities for leaks. The frequency of inspections for natural gas compressor stations is based on fugitive VOC emissions. The frequency of inspections for well production facilities is based on the uncontrolled actual VOC emissions from the highest emitting storage tank, or the total controlled actual VOC emissions from all permanent equipment and components for well production facilities without oil or condensate storage tanks.

⁵ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/900series.pdf>

⁶ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/1200Series.pdf>

⁷ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/300Series.pdf>

⁸ <https://www.colorado.gov/pacific/cdphe/summary-oil-and-gas-emissions-requirements>

Other provisions require storage tanks with uncontrolled VOC emissions ≥ 6 tons per year to control hydrocarbon emissions by 95%, and that all storage tanks utilized during the first 90 days of production must also reduce their emissions by 95%, unless total emissions are below a threshold of 1.5 tons during the first 90 days. Temporary frac tanks are excepted from this requirement.

The rules create additional requirements for operating without venting during normal operation, audio, visual, and olfactory inspections, and the development of storage tank emissions management (STEM) plans.

The rules expanded the existing ozone non-attainment area requirements for auto-igniters and low bleed pneumatics to the rest of the state. They also require no-bleed (zero emission) pneumatics where electricity is available (in lieu of using gas). The rules also require the gas stream at well production facilities either be connected to a pipeline or routed to a control device from the date of first production. Other measures include more stringent control requirements for glycol dehydrators. Additionally, they require the use of best management practices to minimize the need for—and emissions from—well maintenance, as well as comprehensive recordkeeping and reporting requirements to help ensure transparent and accurate information.

At the time of the rulemaking, CDPHE estimated that these regulations would reduce VOC emissions by approximately 93,500 tons per year and would reduce methane/ethane emissions by approximately 65,000 tons per year.

2015- Enforcement and Penalty Rulemaking

On January 5, 2015, the COGCC approved rule changes that increased the penalties for operators in violation of commission regulations.⁹ This rulemaking was spurred by a perception that the COGCC's penalties were inadequate. In response to this concern, Executive Order D 2013-004 was issued in May 2013, directing the COGCC to review its enforcement program, penalty structure, and imposition of fines. The Commission provided its Enforcement and Penalty Policy Review to the Governor's Office in December 2013. On June 6, 2014, House Bill 14-1356 amended the Act to strengthen the penalty authority of the Commission. The revisions to COGCC's enforcement and penalty rules adopted through this rulemaking served to implement HB 1356. Per the COGCC, the rule changes were intended to deter violations and to ensure operators prompt compliance with COGCC regulations. The increased penalties went in to effect on March 2, 2015. There were 20 non-enforcement rules amended as part of this rulemaking, which went in to effect February 14, 2015.

Under the new rules, the maximum daily penalty was increased from \$1,000 to \$15,000 for each violation, eliminating the \$10,000 overall cap for each violation. The rules included the creation of a penalty matrix which classifies each Notice of Alleged Violation (NOAV) as a major, moderate, or minor degree of impact, and classification of rules as Class 1, 2, or 3 based on the potential for harm under the violation. A Class 1 violation creates no risk or harm, a Class 2 violation creates possibility of harm, and a Class 3 violation creates probability of harm. The penalty assessed is dependent upon where the NOAV falls within this matrix. Operators are required to respond to NOAV's in a detailed and thorough manner and all documentation is available on the COGCC website. This rule also included new presumptions for determining the duration of a violation based on when they were, or should have been discovered, and when corrective action has commenced, and an additional matrix to determine penalties for long duration violations.

Another key component of this rule was the establishment of a new COGCC webpage for complaints, which allows members of the public to file and track complaints through an online database.

2015-Flood Lessons Learned Rulemaking

On September 9, 2013, a slow moving cold front stalled over Colorado, dropping record amounts of rainfall across 17 counties, and triggering a 100-year flood event.

⁹ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/500Series.pdf>

The oil and gas industry was prepared and able to respond to the flood immediately; opening incident command centers, shutting in wells, enacting emergency action plans, and activating around the clock monitoring and response at their facilities- all before the floodwaters started rising. The majority of operators in the DJ Basin had little to no impact to their well sites with the operations impacted ranging from standing water to fast moving flood waters. Of the 20,000 wells in the DJ Basin, 2,658 were shut-in at the peak of the flood, with only 13 notable releases of oil and 17 incidents of produced water releases.

In March 2014, the COGCC published a report “Lessons Learned in the Front Range Flood of September 2013”. This report contained several recommendations for oil and gas wells and production facilities located in flood impact zones, including:

- improved secondary containment and tank construction requirements; and
- locating structural fencing and barriers upstream of production facilities to deflect debris; adding remote automated controls to monitor and shut-in wells remotely; and
- alignment of production facilities outside of drainage or flow paths.

On March 2, 2015, the Commission adopted industry leading regulations, stemming from the above recommendations, to further enhance preparedness for natural disasters.¹⁰

Effective June 1, 2015 for all new wells and equipment, and April 1, 2016 for retrofitting of existing equipment, all new wells were required to be equipped with remote shut-in capabilities prior to commencing production and have secondary containment areas around tanks. Secondary containment must have a liner that is mechanically connected to a steel ring or another engineered technology that provides equivalent protection.

Finally, effective April 1, 2016, all operators will be required to maintain a current inventory of all existing wells, tanks, and separation equipment in a defined floodplain. This inventory must be filed with the Director of the COGCC and include information on how these locations can be remotely shut-in.

2016- Governor’s Oil and Gas Task Force Rulemaking

On August 4th, 2014, Governor John Hickenlooper announced the formation of an oil and gas development task force, which was established through Executive Order B2014-005 in September 2014.¹¹

The Task Force was comprised of 21 members representing local government, civic organizations, environmental interests, agriculture, and affected industries. It convened monthly from September 2014 through February 2015.¹²

At the final meeting, the Task Force put forth 9 recommendations, 7 of which were approved unanimously. Two of the unanimously approved recommendations, numbers 17 and 20, , required a formal rulemaking of the Colorado Oil and Gas Conservation Commission (COGCC) to implement. On November 16, 2015, the COGCC initiated a formal rulemaking hearing process to hear public comment, solicit feedback from the oil and gas industry and other stakeholders. The COGCC held two additional hearings before approving the final rules on January 25, 2016.

Task Force Recommendation 17 was to “Facilitate Collaboration of Local Governments, Colorado Oil and Gas Conservation Commission and Operators Relative to Oil and Gas Locations and Urban Planning.” Recommendation 17 called for COGCC to define and adopt a process for improved local government involvement during the COGCC permitting process for Applications to Drill (APD) concerning the location of large scale oil and gas facilities in Urban Mitigation Areas (UMA). The intent of this recommendation was give local governments tools to represent their constituents to a greater degree through added engagement with operators and, as needed, stakeholder groups.

¹⁰ <http://cogcc.state.co.us/documents/reg/Rules/2015/FloodPlain/FinalRule.pdf>

¹¹ <https://www.colorado.gov/pacific/governor/atom/18521>

¹² <http://dnr.state.co.us/ogtaskforce/Documents/OilGasTaskForceFinalReport.pdf>

Task Force Recommendation 20 was a “Recommendation to Include Future Oil and Gas Drilling and Production Facilities in Existing Local Comprehensive Planning Processes.” Recommendation 20 proposed that all operators would be required to register in the municipalities in which they have operations and provide information on their planned development and operations within those municipalities. Operators would be required to provide a good faith estimate of the number of wells that they intend to drill in the next five years, a map showing the location of existing well sites and related production facilities, sites undergoing permitting, and sites identified for development. This information would allow the planning department to develop comprehensive maps to identify areas of potential conflict, areas where minor issues are anticipated, and areas where there are no compatibility issues. This proposal was intended to be a framework to facilitate improved coordination of drilling plans in to municipal planning.

The final rules implementing Recommendation 17 include the following:

- 100 Series Rules: Definition of a large scale oil and gas facility in an urban mitigation area (Large UMA Facility) as any facility that proposes eight or more new wells or the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds 4,000 barrels.¹³
- Rule 305A: Any operator seeking to develop a Large UMA Facility is required to notify the local government with land use jurisdiction and offer to consult on siting and best management practices.¹⁴ The operator is also required to provide notice to the surface owner on which the Large UMA Facility is proposed. This notice must be provided 90 days prior to submitting a Form 2A oil and gas location assessment to the COGCC.
 - o Consultation is not required if the local government with land use authority has opted out of the consultation process OR if the local government with land use authority and the operator seeking to develop have an existing agreement, like a MOU, in place to guide the siting of a proposed location. (Additional exceptions may apply?)
- Rule 604.c.4: Operators are required to incorporate Required Best Management Practices in to their Form 2A Oil and Gas Location Assessment permit application.¹⁵ The Director of the COGCC may also require site specific mitigation measures as conditions of approval on an operator’s permit, including conditions regarding noise, ground and surface water protection, visual impacts, and remote stimulation operations.

The final rules implementing Recommendation 20 include the following:

- Rule 302.c.: Effective May 1, 2016, operators will be required to register with each municipal jurisdiction and county where they have approved drilling units or pending Form 2 or Form 2A.¹⁴ Additionally, municipalities, not counties, may request that an operator provide a good faith estimate of the number of wells they plan to drill in the next five years, in that local jurisdiction.

Of the conforming rule changes adopted, two were of significant importance to operators:

- Rule 303.c.: If no decision has been issued on a Form 2A for a Large UMA facility, an operator must wait 90 days before requesting a hearing IF there is agreement between the operator and local jurisdiction. In cases where agreement has not been reached between the local jurisdiction and the operator, operators must wait 120 days to request a hearing.¹⁶
- Rule 305.a.: Operators are required to provide no less than 45 days’ notice to proximate local governments that are within 1000 feet of any proposed Large UMA facility.¹⁶ The proximate local government will not have jurisdiction or authority to participate in the consultation process, however, they are permitted to file comments with the COGCC.

¹³ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/100Series.pdf>

¹⁴ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/300Series.pdf>

¹⁵ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/600Series.pdf>

¹⁶ <http://cogcc.state.co.us/documents/reg/Rules/LATEST/300Series.pdf>