



COGA | SB19-181

Signed into law on April 16, 2019, the following is a summary of key elements of Senate Bill 181.

Section 3 – Emission Monitoring

- Directs the Colorado Air Quality Control Commission (AQCC) to adopt rules to minimize emissions from oil and natural gas operations, including a requirement (which may be phased-in by rule) for operators to install continuous emission monitoring equipment.
- The AQCC is directed to review and promulgate rules around Leak Detection and Repair standards and frequencies, inspection and monitoring of transmission lines and compressor stations, the installation of continuous methane monitors at facilities with large emissions potential and facilities in close proximity to occupied structures, and the use of pneumatic devices under appropriate circumstances that do not vent natural gas.

Section 4 – Local Authority

- Clarifies that local governments may regulate the surface impacts of oil and gas operations in a reasonable manner to regulate land use, the siting of oil and natural gas locations, impacts to public facilities, water quality, noise, odor, light, dust, air emissions and air quality, land disturbance, cultural resources, emergency preparedness, traffic, financial assurance, and nuisance-type impacts of oil and natural gas development.
- Local governments may also regulate surface impacts in a reasonable manner to protect and minimize adverse impacts to public health, safety and welfare and the environment. The term “minimize adverse impacts” means, “to the extent necessary and reasonable, to protect public health, safety and welfare and the environment by avoiding adverse impacts and minimizing and mitigating the extent and severity of those impacts that cannot be avoided.”
- Local governments may inspect all facilities subject to their regulation, impose fines for leaks, spills and emissions, and impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.

Section 6 – Legislative Declaration

- Replaces the term “foster” with “regulate.” The Colorado Oil and Gas Conservation Commission now is directed 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, and welfare, including protection of the environment and wildlife resources.”

Section 7 – Definitions

- As discussed below, Section 12 provides that the Commission shall regulate oil and natural gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources. Section 7 changes the definition of “minimize adverse impacts.” The previous definition provided that this term means “wherever reasonably practicable avoid adverse impacts from oil and gas operations on wildlife resources [and] minimize the extent and severity of those impacts that cannot be avoided . . . [taking] into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.” The new definition of “minimize adverse impacts” is “to the extent necessary and reasonable to protect public health, safety and welfare, the environment, and wildlife resources, to: (a) avoid adverse impacts from oil and gas operations and (b) minimize and mitigate the extent and severity of those impacts that cannot be avoided.”
- Nonproduction of the resource is no longer defined as “waste” if it results in protecting public health, safety, and welfare, the environment, or wildlife resources.

Section 8 – Restructuring the Colorado Oil and Gas Conservation Commission

- The current nine-member commission will be remade. Changes include dropping engineering and geology positions from the three oil and gas seats currently in place and leaving behind one oil and gas representative. The remade Commission will consist of:
 1. an oil and gas industry expert;
 2. a local government official;
 3. an environmental protection expert;
 4. a wildlife protection expert;
 5. an individual with technical expertise relevant to the issues considered by the Commission or a soil conservation or reclamation expert;
 6. an individual actively engaged in agricultural production or a royalty owner;
 7. a public health expert;
 8. the Executive Director DNR – ex-officio voting member; and
 9. the Executive Director CDPHE – ex-officio voting member

Section 9 – Professional Commission

- A professional commission will be established by the earlier of July 1, 2020, or the completion date of rulemakings to: 1) amend the flowline regulations, 2) establish an alternative site analysis process, 3) evaluate and address the potential cumulative impacts of oil and gas development in consultation with CDPHE, and 4) clarify the Commission’s regulation of oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources.
- The professional commission will decrease the number of members from nine to five, with four-year terms appointed by the governor and confirmed by the Senate. The new commission will consist of paid members with the following qualifications:
 1. oil and gas;
 2. planning / land use;
 3. environmental protection, wildlife protection, reclamation;
 4. professional experience to contribute to the Commission’s decisions;

5. public health

The directors of DNR and CDPHE will be ex-officio but non-voting members.

Section 10 – Director of the Commission

- Requires the director to hire at least one deputy director and allows the director to hire up to 2 deputy directors.
- Requires the director, at the request of a local government or operator, to appoint a Technical Review Board (TRB) to analyze disputed items between a local community and an operator. Economic effects are not permitted to be part of the preliminary or final determination of the TRB. Determinations are not legally binding, but they can be used to support an argument for or against development.

Section 12 – Powers of the Commission

- The director will have the authority to delay permits, based on objective criteria the director will publish 30-days after the legislation is signed into law. That power will exist until these rulemakings are complete: flowlines, alternative site analysis, consultation with CDPHE to address cumulative impacts of oil and gas development, and the Commission’s authority to regulate of oil and gas operations to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources.
- Clarifies that the Commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources . . .” This replaces language that the “Commission may regulate . . . oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on an air, water, soil , or biological resources resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost effectiveness and technical feasibility.”
- The Commission shall regulate the use of appointed administrative law judges (ALJs).
- The Commission shall establish new rules and amounts for application fees.
- The Commission shall adopt rules for a new alternative location analysis process, particularly for those near populated areas.
- The Commission shall consult with the Colorado Department of Public Health and Environment to evaluate and address the cumulative impacts of oil and gas development.
- The Commission shall conduct a rulemaking that considers increasing financial assurance for inactive wells and wells transferred to a new owner, as well as the establishment of a financial assurance account that would remain tied to the well in the event of ownership transfer.
- The Commission shall promulgate rules to ensure proper wellbore integrity of all oil and natural gas production wells.
- The Commission shall review and amend its flowline rules, particularly around public disclosure of flowline information.

- The Commission shall adopt rules to require certification of workers in oil and natural gas occupations that include working in confined spaces, handling hazardous materials, and welding process lines.

Section 14 – Pooling

- Establishes a pooling threshold percentage of 45 percent of a drilling unit and increases royalty rates for nonconsenting owners to 13 percent for a gas well and 16 percent for an oil well.
- Excludes all un-locatable interests from the threshold calculation.
- Prohibits an operator from using the surface owned by a nonconsenting owner without permission from that nonconsenting owner.

Section 16 – Wildlife

- Regarding permit-specific conditions for wildlife habitat protection, surface owner consent is required in those cases where the condition directly impacts the surface owner's property or use of that property. Consent is not required for permit specific conditions that do not directly impact the affected surface owner's property or use of that property, such as off-site compensatory mitigation.

Section 17 – Preemption

- Local government regulations may be more protective or stricter than state requirements.