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Memorandum

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TO: Interested Persons

FROM: Andrea Denka, Research Analyst, 303-866-4781

SUBJECT: Colorado Oil and Gas Conservation Commission Senate Bill 19-181 Rulemaking

Summary

In 2019, the General Assembly enacted Senate Bill 19-181, which changes how the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources regulates the development of oil and natural gas in Colorado. Since July 2019, the COGCC has conducted rulemaking hearings to adopt rules required in the bill. This memorandum summarizes Senate Bill 19-181 and the new rules adopted by the COGCC as of December 2020.

Overview of Senate Bill 19-181

[Senate Bill 19-181](#) modified how the COGCC regulates oil and natural gas. The bill also reauthorized the COGCC, changed the requirements for appointed commission members, and granted the commission new authority.

COGCC mission. SB 19-181 modified the charge of the COGCC to clarify its authority to regulate oil and natural gas relative to the protection of public health and the environment. Prior to SB 19-181, the COGCC was required to *foster* the development of oil and gas in a manner consistent with protecting public safety and the environment, but was also required to consider the technical and economic feasibility of regulations to minimize any adverse impacts on development. SB 19-181 changed COGCC's mission to the *regulation* of oil and gas in a manner that protects public health and the environment. The commission must now consider if its rules are reasonable and necessary. The bill also transitioned the COGCC from volunteers to a full-time, five-member professional commission.

New COGCC rules. The law requires that the COGCC develop new rules addressing:

- wellbore integrity of all oil and natural gas production wells;
- flowlines and inactive or abandoned wells;
- financial assurance and drilling permit fees paid by operators;
- worker certification requirements; and

- the use of administrative law judges for contested matters.

Updated COGCC rules. In addition to new rules, the bill requires the COGCC to update existing rules related to public participation and public health and environmental protection. According to the COGCC, the commission plans to make the following change:

- Public participation:
 - create broader access to the COGCC; and
 - expand standing to allow citizens the ability to participate in hearings, permit applications, and requests from operators for a variance or waiver from a rule.
- Increase protections, such as:
 - ensure environmental justice for disproportionately impacted communities and allow them to be involved in the permit process;
 - create a cumulative impacts data gathering system with an annual reporting requirement;
 - establish protective setbacks for oil and gas development from residential building units, schools, and high priority habitat, including riparian areas;
 - end routine flaring and venting; and
 - increased protections for wildlife management and water.

Local government authority. The law gives local governments the authority to regulate the surface impacts of oil and gas operations in a reasonable and necessary manner to protect public health and the environment. Local government regulations may be stricter than state requirements. Local governments are authorized to regulate (1) land use, (2) location and siting, (3) water quality, (4) noise, (5) vibration, (6) odor, (7) light, (8) dust, (9) air quality, (10) land disturbances, (11) reclamation, (12) cultural resources, (13) emergency preparedness, (14) security, (15) traffic, (16) transportation, and all other nuisances related to the surface impacts of oil and gas development. When an operator applies for a drilling permit from the COGCC, it must include proof that an application has been filed with the local government with jurisdiction (including the local government's disposition of the application) or proof that the local government does not regulate the siting of oil and gas well locations.

Local governments are authorized to inspect all facilities within their jurisdiction and to impose fines and fees. A local governments may also request that the COGCC appoint a technical review board to conduct a review and issue a report related to the siting of an oil and natural gas facility within its jurisdiction. Operators may also request a similar review from the COGCC.

Mineral pooling requirements. The bill modifies the mineral pooling requirements in the state. Pooling applications submitted to the COGCC must include proof either that the application has been filed with the local government with jurisdiction or that the local government does not regulate the siting of oil and natural gas locations. In the absence of voluntary pooling, a person who owns or has the consent of the owners of more than 45 percent of the mineral interests to be pooled may submit an application to the COGCC for approval to pool the mineral interests. The COGCC may not issue a pooling order unless the nonconsenting mineral owners have received a good faith lease offer. Nonconsenting owners must be paid a 13 percent royalty for natural gas wells and a 16 percent royalty

for oil wells. Additionally, land surface owned by a nonconsenting mineral owner may not be used without consent.

Status of COGCC Rulemaking

In the summer of 2019, the COGCC began discussing the future policy and rule changes necessary to meet Senate Bill 19-181's new requirements. As of December 2020, the COGCC has received input, conducted hearings, and developed new and modified rules for:

- wellbore integrity;
- flowlines;
- the use of administrative law judges; and
- rules related to the revised mission of the COGCC.

More information about how the COGCC has been conducting rulemakings for Senate Bill 19-181 may be found [here](#). The following sections provide more information on completed COGCC rulemakings.

Wellbore integrity. When oil and gas is extracted, a wellbore is created, which is the term used to describe the hole drilled into the ground, as well as all of the casing, cement, and drilling fluids within the hole. Ensuring proper wellbore integrity is necessary to protect any groundwater and geologic formations surrounding the wellbore. Senate Bill 19-181 requires the COGCC to review and update wellbore integrity regulations. These modified regulations focus on:

- permitting, construction, operation, and closure of production wells;
- requiring that wells be constructed using best practices and standards to protect water zones, including isolation of all fluids associated with the well from escaping to protect groundwater;
- enhancing safety and environmental practices during operations such as hydraulic fracturing;
- requiring regular integrity assessments for all oil and gas production wells; and
- addressing the use of nondestructive testing of weld joints.

The complete list of new and modified wellbore integrity rules adopted by the COGCC may be found [here](#).

Flowlines. Current law requires that the COGCC review and amend rules regulating flowlines and temporarily abandoned or shut-in wells. This examination also included revising the process of posting public information about flowlines and adding new inspection requirements for temporarily abandoned and shut-in wells before they can be used again. Three main changes were made to existing flowline and inactive well rules. These new rules:

- require publically available geographic information system (GIS) data for all off-location flowlines and crude oil transfer lines;
- authorize COGCC staff to conduct inspections when an operator wants to use an inactive flowline, temporarily abandoned well, or shut-in well;
- require third-party verification for lines abandoned in place; and
- create a process for operators to report oil and gas leaks.

The complete list of new and modified flowline well rules may be found [here](#).

Rules Addressing COGCC's Mission

Senate Bill 19-181 changed the charge of the COGCC from *fostering* oil and gas development to *regulating* oil and gas development. This mission change specifically required the COGCC to update three areas of regulations: alternative location analysis, cumulative impacts, and drilling and spacing units. The COGCC addressed all three topics during the same rulemaking process, which updated and amended rules within their 200, 300, 400, 500, 600, and 800/900/1200 series. A list of the modified rules addressing the mission change can be found [here](#).

200 Series. The 200 series addresses the general provisions for the COGCC, including the purpose of the commission, commission powers, and documentation required by oil and gas operators. The COGCC has made numerous updates and changes to the 200 series. Significant changes include new record requirements for operators, updated requirements for transferring wells between operators, and COGCC authorization to require operators to properly plug abandoned wells when they are no longer used.

300 Series. The 300 series regulates commission procedures for receiving, reviewing, and either approving or denying drilling or spacing unit permits. New rules were developed in the 300 series to create a one permit process, to clarify the role of local governments, and to require operators to prepare an alternative location analysis during the course of local government permitting.

The law requires that the COGCC adopt rules to evaluate and address the potential cumulative impact of oil and gas development, and to adopt an alternative location analysis process. New rules under this series include the requirement that operators submit cumulative impact plans when applying for a drilling permit. These plans must address how an operator will avoid, minimize or mitigate the cumulative impacts of proposed oil and gas operations.

400 Series. The COGCC consolidated rules pertaining to operational and reporting requirements into its 400 series. The COGCC adopted a new rule prohibiting the use of certain chemical additives in hydraulic fracturing fluid. This rulemaking series also modified numerous operator regulations that address safety, prevention of water pollution during drilling, public water system protections, and operation notice to surface owners.

This set of rules also added reporting requirements for operators. New reporting requirements include integrity tests for temporarily abandoned wells and mitigation plans for surface impacts such as noise, light, dust, and water.

500 Series. The 500 series rules update internal commission procedures related to applications for new wells, and the hearings conducted to consider those applications. The COGCC updated the 500 series to allow administrative law judges and hearing officers to conduct hearings on contested matters. This rule series also updated how pooling applications are submitted to the commission. The rules series also updated the definition of an "affected person" in relation to oil and gas development, which increases standing to appear before the COGC by impacted parties during the public comment process.

600 Series. 600 series rules address safety and facility operations. The commission added blanket provisions within this series requiring operators to operate and maintain all oil and gas facilities in a safe manner. Updated rules require that operators' employees be familiar with COGCC rules and receive adequate training. Additionally, the COGG adopted a rule authorizing operators to create and maintain an operations safety management program for all oil and gas procedures.

Finally, under this rule series, the COGCC developed a regulation requiring location siting criteria. According to the COGCC, this location siting criteria will: deter well locations within 2,000 feet of a school facility, child care center, or residential building; and allow requests for siting exceptions provided the request is equally protective of people and wildlife

800/900/1200 Series. The final rule series are the 800, 900, and 1200 series. A full list of the regulations added or modified for these series may be found [here](#). The 800 series altered COGCC regulations governing underground injection for disposal and enhanced recovery projects. The 900 series updates and consolidates all COGCC rules that focus on preventing and remediating environmental impacts. Finally, the 1200 series creates the COGCC framework and process for operators to address how oil and gas operations will impact wildlife resources. These wildlife mitigation plans are agreements between operators and the Department of Natural Resources Parks and Wildlife Division, and focus on how to avoid, minimize, and mitigate adverse impacts to wildlife.

The COGCC rules addressing fees, worker certification, and financial assurance provided by operators are expected to be completed in 2021. Appendix A provides an overview of required rules and COGCC's timeline for adoption.

Appendix A
COGCC Rulemaking Timeline

SB 181 Rulemakings	Timing
Mission Change - Public Health, Safety, Welfare (200-600, 900, 1200 Series Rules)	
§ 34-60-106 (2.5)(a),(b) Public Health, Safety, Welfare, and the Environment	August 2020-November 2020
§ 34-60-106 (11)(c)(I) Alternative Location Analysis	August 2020-November 2020
§ 34-60-106 (11)(c)(II) Cumulative Impacts	August 2020-November 2020
§ 34-60-116 (1)(b)(I) Drilling and Spacing Units	August 2020-November 2020
Financial assurance (700 Series)	
§ 34-60-106 (13)	2020-2021
Wellbore integrity (Across multiple rule series)	
§ 34-60-106 (18)	June 2020
Flowline, inactive, temporarily abandoned and shut-in wells (Across multiple rule series)	
§ 34-60-106 (19)	November 2019, June 2020
Worker certification (New rules)	
§ 34-60-106 (20)	2021
Fees (New rules)	
§ 34-60-106 (7)(a)	2021

Source: Colorado Oil and Gas Conservation Commission.