

DRILLING IN A BLUE STATE

Energy & Environmental Symposium

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PASSAGE OF SB 19-181



IMPACT OF SB 19-181

- **It changed the Oil and Gas Conservation Act’s legislative declaration from directing the Commission to “[f]oster the responsible, balanced development, production, and utilization of the natural resources in the state of Colorado in a manner consistent with protection of public health, safety and welfare, including protection of environment and wildlife resources.”**
- **TO: “[r]egulate the development and production of natural resources in the state of Colorado in a manner that protects public health, safety and welfare, including protection of environment and wildlife resources.”**

IMPACT OF SB 19-181 (cont.)

- **The bill adds a new requirement that “[i]n exercising the authority granted by this article 60, 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” C.R.S. § 34-60-106(2.5)(a).**
- **Under the new definition, minimize adverse impacts means [deletes “wherever reasonably practicable” and “taking into consideration cost effectiveness and technical feasibility”] “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.”**

IMPACT OF SB 19-181 (cont.)

- **SB 19-181 adds a new section entitled “No land use preemption,” which provides that “[l]ocal governments and [certain] state agencies, . . . have regulatory authority over oil and gas development A local government’s regulations may be more protective or stricter than state requirements.”**
- **Authorized local governments to “regulat[e] the use of land on the basis of the use on the community or surrounding areas,” [and] regulat[e] the surface impacts of oil and gas operations in a reasonable manner to address [land use], location, water quality, noise, traffic, and all other nuisance type effects of oil and gas development.”**

IMPACT OF MISSION CHANGE RULEMAKING

- **The most financially stable and largest operators can avail themselves of a comprehensive bond in the amount of more than \$40 million, which is over \$10 million more than Alaska's comprehensive bond and over ten times more than other states' comprehensive bonds.**
- **Other operators with a strong active well fleet that don't qualify for or don't want to pay for a comprehensive bond will now pay anywhere from 3 to 7 times more for financial assurance than they previously did.**
- **And the smaller operators or operators that operate less productive wells have to pay full cost bonding – the full cost to abandon, plug and reclaim the well – for nearly every well in their fleet unless they can convince the Commission that a different amount is appropriate “due to circumstances that make it unnecessary or unreasonable to pay [the alternative option] amounts or for other exceptional circumstances.”**

IMPACT OF MISSION CHANGE RULEMAKING (cont.)

- **It established a presumptive 2000 Foot Presumptive Setback from Residences.**
- **There are several exceptions to the presumptive ban, one of which was whether the developer is able to have all owners and tenants within 2000 feet of the proposed wells sign a special waiver agreement agreeing to have the pad built closer than 2000 feet.**
- **Another exception is that the proposed location will provide “substantially equivalent” protection for public health, safety, welfare, the environment, and wildlife resources. Factors to be considered in this determination include the geology and topography of the site, the location of receptors, the size and duration of the proposed operation, the local governments’ disposition towards the permit, the Director’s recommendation, the ALA and measures adopted by the operator to mitigate impacts.**

IMPACT OF MISSION CHANGE RULEMAKING (cont.)

- **As part of the application for an Oil and Gas Development Plan, an operator must submit a Form 2B that provides quantitative and qualitative data to evaluate the cumulative impacts of the proposed operation, including an examination of any incremental increase in certain air pollutants, evaluation of potential water contaminant migration pathways to surface water or public water system intake and impacts to wildlife resources and public welfare (including noise, light, odor and dust).**

IMPACT OF AQCC RULEMAKING

Colorado Rulemakings Since 2014

- 2014 – Regulation 7 methane rule (Tanks, LDAR, pneumatics, glycol dehydrators, auto-igniters)
- 2016 – Reg 7 SIP revisions for auto-igniters and AVO
- 2017 – Reg 7 LDAR, RACT SIP, pneumatic controller find & fix
- 2019 – Reg 3 gas line venting, permit application deadline
- 2019 – Reg 7 LDAR frequency, tanks, new zero-bleed pneumatics, transmission methane intensity, inventory
- 2019-20 – COGCC
 - Flowlines
 - Wellbore Integrity
 - Mission Change
 - Cumulative Impacts
 - Ban routine flaring & venting
- 2020 – Reg 22 GHG reporting
- 2020 – Reg 7 tanks, LDAR frequency, engine NOx, flowback, pre- and early production monitoring, proximity LDAR
- 2021 – Reg 7 retrofit non-emitting pneumatics

COST OF RULEMAKINGS OVER PAST THREE YEARS

- 2019: AQCC Reg 3 & Reg 7 Rulemaking: **\$10 million per year**
 - COGCC Flowline Rulemaking: **No associated economic analysis**
- 2020: AQCC Engines, Flowback and Monitoring: **\$60 million a year**
 - COGCC Mission Change 200-600 (General Provisions, Permitting Process, Operations and Reporting, Rules of Practice and Procedure, Safety and Facility Operations Regulations): **\$79 million per year.**
 - COGCC Mission Change 800, 900, 1200 (Underground Injection for Disposal and Enhanced Recovery Projects, Environmental Impact Prevention, Protection of Wildlife Resources): **\$32 million per year.**
- 2021: COGCC Final Assurance Rulemaking: **\$35 to \$106 million a year. This estimate was completed in late October 2021. The actual cost is no doubt much higher.**
 - AQCC GHG Rulemaking: **\$127 million.**
- Just adding these up, the total cost a year identified in the cost benefit analysis for these rules is somewhere between **\$343-414 million a year.**

PATH TO APPROVAL OF COGCC PERMIT

- **There are 30 OGDPs in the pipeline for COGCC consideration. 15 are still going through completeness review, and a number of these were returned to the applicants “incomplete” because of minor misspellings and typos.**
- **There are another 15 OGDPs that have passed completeness and are undergoing further review. 4 of those 15 passed completeness last year and still haven’t come up for hearing.**

APPROVALS OF COGCC PERMITS

- **There were only five location permits granted in all of last year. 10 were approved in February and March of this year. The Commission approved four permits in one hearing on March 30, 2022.**
- **Many OGDG applications are now in the neighborhood of 400-700 pages for OGDG. And Weld County applications are often more than 300 pages.**
- **But the real problem is more complex than simply the comprehensiveness of the application. You have incredibly detailed regulations the Commission must apply with subjective criteria for approval, such as whether the application provides “substantially equivalent protection” if the proposed location is within 2000 feet of a residence or school.**

Rule 604b

- **Oil and Gas Location and conditions of approval will provide “substantially equivalent” protection for public health, safety, welfare, the environment, and wildlife resources.**
- **Factors to be considered in this determination include the geology, and topography of the site, the location of receptors, the size and duration of the proposed operation, the local governments’ disposition towards the permit, the Director’s recommendation, the ALA and of course measures adopted by the operator to mitigate impacts.**

RULE 604b IN STATEMENT OF BASIS AND PURPOSE

- **Throughout Rule 604.b.(4), the Commission's intent is to reflect that distance is only one way to protect public health, safety, welfare, the environment and wildlife resources.**
- **The Commission's Rules achieve the required protection in a variety of ways, including but not limited to alternative location analysis, considerations of facility design, adherence to best management practices, requiring use of specific control technologies, and permit conditions of approval.**
- **Depending on what type of impact is at issue, and the nature of the potential receptor that would be adversely impacted, all these methods to achieve protection may be equally effective or more effective than distances.**

POSITION OF CDPHE ON MCGAVIN PERMIT

- **In his comment letter recommending denial of the proposed oil and gas site, the CDPHE representative on the Commission interpreted Rule 604.(b) to mean that when oil and gas facilities are proposed within 2,000 feet of a number of homes, the most protective conditions of approval and best management practices must be used.**
- **During the hearing on this proposed site, the CDPHE representative went even further and called the viability of Rule 604.(b).(4) into question by suggesting no conditions of approval would make the location at issue in that hearing “safe.”**

WHAT'S WRONG WITH CDPHE'S POSITION?

- **It ignores the fact that the SBP and the language of 604.(b).(4) make it clear that a determination of whether a proposed location satisfies the “substantial equivalent” test of 604.(b).(4) must be made on a case-by-case basis looking at many different factors, and not primarily focus on the distance of the proposed well location from residences.**
- **Relatedly, in drafting Rule 604, the Commission made clear that the science of measuring what impacts oil and gas development may have on nearby residences was “rapidly evolving,” and indicated that the most recent data available should be used to make the “substantial equivalent” determination for a particular site.**

WHAT'S WRONG WITH CDPHE'S POSITION? (cont.)

- **Contrary to this intent in the SBP, CDPHE relied in its comment letter and subsequent statements on outmoded data. Specifically, CDPHE relied primarily on the 2019 CDPHE study, which had many issues, including the fact it based its conclusion on air modeling data collected between 2014 and 2016.**
- **This hardly constitutes reliance on the most recent air emissions data, since the period before 2016 predates significant regulatory changes and best management practices and facility design used today.**
- **An ample body of air sampling data since 2017 confirms that Colorado oil and gas development is safe and confirm that oil and gas can be located within 2,000 feet of a residence. Thousands of air sampling measurements taken near oil and gas development in Colorado during the past several years demonstrates that measured air concentrations of individual and combined VOCs are below short- and long-term health-based reference values.**

COMMISSION'S DELIBERATION ON MCGAVIN APPLICATION

- **On March 10, 2022, COGCC Commissioners voted 4-1, to deny the OGDG for the McGavin Site. About 75 people testified during the public comment period of the meeting, most in favor of the development, as was the Town of Firestone where the proposed pads were located.**
- **This will be a consequential decision for industry, as it highlighted the subjective nature of the “substantially equivalent” protections exception added into the Mission Change rules. It was the first denial by the Commission of an OGDG with receptors within 2000 feet of the pad.**
- **There were two different days of hearings separated by a month. On the last day, testimony and deliberation took 7 ½ hours.**

COMMISSION'S DELIBERATION ON MCGAVIN APPLICATION (cont.)

- **What is the benchmark for substantially equivalent protection – are you comparing what noise or VOC emissions will be from your location to an identical oil and gas location 2,000 feet from all residential building units? The SBP says no: “such a standard may be unachievable and would elevate distance as the sole or predominant regulatory tool to protect and minimize adverse impacts.”**
- **But the SBP doesn't then state what the standard is. So, to meet its burden, the operator has to show that its “location and conditions of approval will provide substantially equivalent protections for public health, safety, welfare and the environment” compared to what?**
- **A Platonic site in the clouds, or to some other hypothetical site some other distance within 2000 feet of a receptor? It's just unclear, and several commissioners struggled with the issue during the McGavin site application hearing.**

COMMISSION'S DELIBERATION ON MCGAVIN APPLICATION (cont.)

- **The Commissioners also struggled with what it means for a site to meet the “substantially equivalent” standard given the injunction in SB 19-181 that the Commission’s first goal is to avoid any potential impacts, then minimize and mitigate those impacts that can’t be avoided.**
- **Has an operator done enough to avoid impacts if there are only 30 receptors within 2000 feet of the proposed location? 10 receptors? Or none?**
- **The last position appears to be close to the CPDHE’s position in this matter. At least two Commissioners, along with CDPHE in its comment letter, invoked the historically dated 2019 CDPHE Health Risk Assessment as demonstrating that there may well be negative health risks for any receptor within 2000 feet of an oil and gas location.**

COMMISSION'S DELIBERATION ON MCGAVIN APPLICATION (cont.)

- **Finally, how does someone, especially a lay oil and gas Commissioner, bridge the gap between what it means to implement state-of-the-art BMPs at a site and tie that to precise improvements to public health impacts.**
- **This gap could be bridged by an operator having, say, presenting VOC and noise monitoring data taken at existing facilities with similar BMPs. But that didn't seem to resonate with several of the Commissioners when the issue was raised by the applicant.**
- **For CDPHE's part, it recommended that 11 different best-in-class BMPs (such as electrification of drill rigs, tankless pad design, low odor/VOC drilling mud) be used at the site. Yet the Commissioners still denied the application after the applicant agreed to implement all the ones that could be legally implemented.**