

**COGCC Staff's First Draft Proposed Rules
Implementing Governor's Oil and Gas Task Force
Recommendation Nos. 17 and 20
October 6, 2015**

Effective Date: Following adoption by the Commission, these proposed new and amended rules will become effective upon publication by the Secretary of State. All provisions of these rules will be applied prospectively to any Application for Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility that is pending but not yet approved as of, or submitted after, the effective date. For pending applications, pre-application notices and consultations otherwise required by the rules will be waived, but applicable best management practices and mitigation measures will be required.

Recommendation No. 17

100 Series

LARGE UMA FACILITY shall mean any Oil and Gas Location proposed to be located in an Urban Mitigation Area and on which: (1) the cumulative total measured depth of all new wells planned for the Location exceeds **[90,000 feet]**; or (2) the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds **[4,000]** barrels.

300 Series

306.b.(4) Notification and Consultation for Large UMA Facilities.

- A. Notice of Intent to Construct a Large UMA Facility. No less than 90 days prior to submitting a Form 2A to the Commission and before an operator has a final contract with the surface owner for a specific location, an operator proposing a Large UMA Facility shall provide notice to the local government with land use authority over the proposed location. The Notice of Intent to Construct a Large UMA Facility must include:
- i. a description and depiction of the proposed location and the planned facilities;
 - ii. an offer to consult with the local government with land use authority over the proposed location to seek agreement regarding siting the Large UMA Facility, considering alternative locations and potential best management practices;
- and

[iii.] an offer to meet with local governments that exercise land use authority within **[1,000 feet]** of the proposed oil and gas location regarding potential best management practices for the proposed Large UMA Facility.

B. Consultation between the Operator and the Local Government. If the local government with land use authority over the proposed Large UMA Facility accepts an operator's offer to consult, the operator shall consult in good faith regarding siting of, and best management practices to be employed at, the proposed location. The surface owner's siting requests and concerns will be considered as part of the consultation.

i. This Rule 306.b.(4) does not prescribe any particular form of consultation or local land use planning or approval process, nor does it limit or supersede any local government land use planning or approval process.

ii. The Director will participate in the consultation process between the local government and the operator at the request of either.

iii. The operator shall notify the surface owner of the lands on which the operator proposes to locate a Large UMA Facility of the local government consultation. At the surface owner's request, the operator and Director will meet with the surface owner regarding siting of the proposed Large UMA Facility, and the local government may participate in the meeting at its discretion.

C. Offer to Mediate. If the local government and operator are unable to reach agreement regarding the location for a proposed Large UMA Facility, the operator shall offer in writing to engage in mediation with the local government.

i. If the local government agrees to mediation, the operator and the local government shall jointly select a mediator or mediators and share the cost of mediation.

ii. Upon selection of a mediator(s), the mediation shall conclude within 45 days unless the operator and local government agree to an extension of time.

iii. The Director is not a party to the mediation, but at the request of either the local government or the operator, the Director shall provide technical assistance to the parties or the mediator to the extent the Director is able.

[D. Notice to Adjacent Local Governments.] Concurrently with providing notice pursuant to Rule 306.b(4)A.i., the operator must provide a copy of the Notice of Intent to Construct a Large UMA Facility to all local governments that exercise land use authority within **[1,000 feet]** of the proposed oil and gas location.

- i. Within 20 days of receiving the Notice of Intent to Construct a Large UMA Facility, an adjacent local government may request a meeting with the operator and the Director to discuss potential best management practices for the proposed Large UMA Facility, which the Director shall schedule.
- ii. The Director will provide a written response to an adjacent local government's written request for specific best management practices at a proposed Large UMA Facility.
- iii. An adjacent local government's approval of a proposed Large UMA Facility's site is not required, nor may an adjacent local government be an Applicant for a hearing on a Form 2A under Rule 507.b.(7).

E. Initiating the Form 2A Process.

- i. If the local government and operator have reached agreement regarding a proposed Large UMA Facility's site, the operator may immediately initiate the Form 2A process and must provide written confirmation of the agreement to the Director in accordance with Rule 303.b.(3)K.
- ii. If the local government has waived the Rule 306.b.(4) procedures, the operator may immediately initiate the Form 2A process and must provide written confirmation of the waiver to the Director in accordance with Rule 303.b.(3)K.
- iii. If a response is not received from the local government with land use authority within 60 days of receiving the Notice of Intent to Construct a Large UMA Facility, the operator may begin the Form 2A process pursuant to Rule 305 for the proposed location and submit a copy of the Notice of Intent to Construct a Large UMA Facility to the Director in accordance with Rule 303.b.(3)K.
- iv. If the local government rejects the offer to mediate or the mediation does not result in an agreement regarding a proposed Large UMA Facility's site, the operator may submit its Form 2A to the Director with its preferred site. The Director will not approve a Large UMA Facility Form 2A for which no siting agreement has been reached between the local government with land use authority and the operator. After the Director's technical review is complete, the Director will notice the Form 2A for a Commission hearing. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement. The

hearing will be conducted pursuant to Rule 528.a. For purposes of the hearing, the operator will be the Applicant and the local government will be the respondent.

- v. The Director will reject as incomplete a Form 2A submitted for a Large UMA Facility if the operator has not certified either that: it reached agreement regarding siting with the local government with land use authority; the local government waived the Rule 306.b.(4) procedures; or that it complied with the requirements of subsections A through D of this Rule 306.b.(4) and was unable to reach agreement with the local government with land use authority regarding siting.

600 Series

604.c.(4) Large UMA Facilities. Large UMA Facilities should be built and operated using the best available technology and in conformance with state-of-the-science measures to avoid or minimize adverse impacts to adjoining land uses. To achieve this objective, the Commission will require a combination of best management practices, required mitigation measures, and site-specific mitigation measures related to operational and technical aspects of a proposed Large UMA Facility. No best management practice or mitigation measure required pursuant to this Rule is intended to or shall be interpreted to alter any existing land use authority a local government may have over such a facility.

- A. Required Best Management Practices. A Form 2A for a Large UMA Facility will not be approved until best management practices addressing all of the following have been incorporated into the Oil and Gas Location Assessment permit.
 - i. Fire, explosion, chemical, and toxic emission hazards, including lightning strike hazards.
 - ii. Fluid leak detection, repair, reporting, and record keeping for all above and below ground on-site fluid handling, storage, and transportation equipment.
 - iii. Automated well control measures to prevent gas venting during emission control system failures or other upset conditions.
 - iv. Zero flaring or venting of gas upon completion of flowback, excepting upset or emergency conditions.
 - v. Storage tank pressure and fluid management.

vi. Fracture proppant dust control.

B. Required Mitigation Measures. The following mitigation measures will be imposed as permit conditions on all Large UMA Facility Oil and Gas Location Assessment Permits to effectively mitigate potential impacts to public health, safety, and welfare, including the environment.

i. All Rule 604.c.(3).B Exception Zone Setback mitigation measures are required for all Large UMA Facilities, regardless of whether the Large UMA Facility is located in the Buffer Zone or the Exception Zone.

ii. The Director, in consultation with the operator, will impose a time limit on the duration of drilling, completion, and stimulation operations for the location, measured from the move-in-rig-up date to the last day of stimulation operations. In establishing the duration limit, the Director will consider site-specific conditions, including but not limited to the distance to and number of nearby Residential Building Units; operational features such as the number, horsepower, and fuel source of engines and generators anticipated to be in use; whether stimulation operations will occur on-site or remotely; stimulation water sources and delivery; and volume of heavy truck traffic to and from the location during drilling, completion, and stimulation operations. The Director will to grant a one-time extension of the duration limit, not to exceed 30 days, for bona fide, unexpected technical difficulties or force majeure conditions. The Director may confer with local governments that receive notice of a Large UMA Facility pursuant to Rule 306.b.(4)A. and D concerning the duration limit.

C. Site Specific Mitigation Measures. In addition to the requirements of subsections A. and B. of this Rule 604.c.(4), the Director may impose site-specific conditions of approval to ensure that anticipated impacts are mitigated to the maximum extent achievable. The following non-exclusive list illustrates types of potential impacts the Director may evaluate, for which site-specific conditions of approval may be required:

i. Noise. Ambient sound studies, continuous sound monitoring, strategies for minimizing C-scale noise (vibrations), or other best management practices not explicitly required by rule may be considered.

ii. Ground and surface water protection.

iii. Visual impacts associated with placement of wells or production equipment.

iv. Remote stimulation operations.

- D. The Director retains discretion to require conditions of approval to address site-specific conditions other than those identified above at any Large UMA Facility. Nothing in this Rule 604.c.(4) shall be construed to limit the Director's discretion to impose conditions of approval on a Form 2A for any Oil and Gas Location based on site-specific conditions.

Recommendation No. 20

300 Series

302.c. Operator Registration with Local Governments for Advance Planning

1. When used in this subpart, "local jurisdiction" means a home rule or statutory city, town, territorial charter city, or city and county.
2. Beginning on March 1, 2016, all operators that have filed a Form 1 with the Commission shall register with the Local Governmental Designee ("LGD") of each local jurisdiction in which it has current or planned oil and gas operations.
3. An LGD may request any operator registered within its jurisdiction to provide the following information to the LGD and the Commission's Local Government Liaison ("LGL"):
 - a. Based on an operator's current business plan, a good faith estimate of the number of wells the operator intends to drill in the next five years in the local jurisdiction **[,including the jurisdiction's growth management area]. [A publicly traded company's well estimates may be based on reserves classified as "proved undeveloped" for SEC reporting purposes.]**
 - b. A map showing the location within the local jurisdiction **[,including the jurisdiction's growth management area,]** of an operator's existing well sites and related production facilities; sites for which the operator has approved, or has submitted applications for, **[drilling and spacing orders,]** Form 2s or Form 2As; and, sites the operator has identified for development on its current drilling schedule for which it has not yet submitted applications for Commission permits.
 - c. An operator will provide estimates requested pursuant to this subsection 3 using reasonable business judgment based on information known to the operator at the time the estimates are submitted. Estimates provided by the operator may be subject to change at any time.

Conforming Rule Changes

303.b.(3)K. Certification of Local Government Notification in Urban Mitigation Areas.

- i. If the proposed Oil and Gas Location is within an Urban Mitigation Area, but is not a Large UMA Facility, the operator shall submit evidence that the local government received the pre-application notice required by Rule 305.a.(1).
- ii. For a Large UMA Facility, the operator shall certify on the Form 2A that it complied with Rule 306.b.(4), or that the relevant local government waived the Rule 306.b.(4) procedures.

303.c. PROCESSING TIME FOR APPROVALS UNDER THIS SECTION.

(1) In accordance with Rule 216.f.(3), where a proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or, where applicable, Oil and Gas Location Assessment, Form 2A, that is not a Large UMA Facility within thirty days of a determination that such application is complete pursuant to Rule 303.h, unless significant new information is brought to the attention of the Director. The Director shall give priority to a Form 2A proposing a Large UMA Facility that is consistent with a Comprehensive Drilling Plan, or a local government comprehensive plan that specifies locations for oil and gas facilities, and shall approve or deny such an application within sixty days.

(2) Request for Hearing.

- A. An operator may request a hearing before the Commission on a permit application if the Director has not issued a decision on:
- i. An Application for Permit-to-Drill, Form 2, within seventy-five (75) days of a determination that the application is complete;
 - ii. An Oil and Gas Location Assessment, Form 2A, for a Location that is not a Large UMA Facility within seventy-five (75) days of a determination that the application is complete; or

- iii. An Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility within one hundred fifty (150) days of a determination that the application is complete.
- B. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement.

305.a.(1) Urban Mitigation Area Notice to Local Government. For Oil and Gas Locations within an Urban Mitigation Area, an Operator shall notify the local government in writing that it intends to apply for an Oil and Gas Location Assessment. Such notice shall be provided to the Local Governmental Designee in those jurisdictions that have designated an LGD, and to the planning department in jurisdictions that have no LGD. The notice shall include a general description of the proposed Oil and Gas Facilities, the location of the proposed Oil and Gas Facilities, the anticipated date operations (by calendar quarter and year) will commence, and that an additional notice pursuant to Rule 305.c. will be sent by the Operator. This notice shall serve as an invitation to the local government to engage in discussions with the Operator regarding proposed operations and timing, local government jurisdictional requirements, and opportunities to collaborate regarding site development. A local government may waive its right to notice under this provision at any time by providing written notice to an Operator and the Director. If the local government and operator have reached agreement regarding the site for a proposed Large UMA Facility, the notice requirement of this subpart does not apply.

305.d. Comment Period. The Director shall not approve a Form 2A, or any associated Form 2, for a proposed Well or Production Facility during the comment period, and shall accept and immediately post on the Commission's website any comments received from the public, the Local Governmental Designee, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife regarding the proposed Oil and Gas Location.

- (1) The comment period for a Form 2 or a Form 2A for an Oil and Gas Location that is not a Large UMA Facility is twenty (20) days from posting pursuant to Rule 305.b.

- A. The Director shall extend the comment period to thirty (30) days upon the written request during the twenty (20) day comment period by the Local Governmental Designee, the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, the Surface Owner, or an owner of surface property who receives notice under Rule 305.c.(1)(A).iii.
 - B. For Oil and Gas Locations proposed within an Urban Mitigation Area or within five hundred (500) feet of a Building Unit, the Director shall extend the comment period to not more than forty (40) days upon the written request of the Local Governmental Designee received within the original 20 day comment period.
- (2) For a Large UMA Facility, the comment period is forty (40) days from posting pursuant to Rule 305.b.
- (3) The Director shall post notice of an extension granted under this provision on the COGCC website within twenty-four (24) hours of receipt of the extension request.

306.d.(1) Consultation to Occur.

- A. The Commission shall consult with the Colorado Department of Public Health and Environment on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, where:
 - i. Within fourteen (14) days of notification pursuant to Rule 305, the Local Governmental Designee requests the participation of the Colorado Department of Public Health and Environment in the Commission's consideration of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, based on concerns regarding public health, safety, welfare, or impacts to the environment;
 - ii. The operator seeks from the Director a variance from, or consultation is otherwise required or permitted under, a provision of one of the following rules intended for the protection of public health, safety, welfare, or the environment:
 - aa. Rule 317B. Public Water System Protection;
 - bb. Rule 325. Underground Disposal of Water;
 - cc. Rule 603. Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

dd. Rule 604. Setback and Mitigation Measures for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

ee. Rule 608. Coalbed Methane Wells;

ff. Rule 805. Odors and Dust;

gg. 900-Series E&P Waste Management; or

hh. Rule 1002.f. Stormwater Management.

All requests for variances from these rules must be made at the time an operator submits a Form 2A.

iii. The operator submits an Application for an Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility.