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To: Commissioners
From: David Neslin, Acting Director
Date: December 8, 2008
Re: Limited Corrections to Final Draft Rule & SBP Language

Since submitting its response to party comments on the Final Draft Rule Language on November 26, 2008, the COGCC staff has met with the parties to discuss the outstanding issues. Based on these discussions, we have determined that certain limited revisions to Final Draft Rule and Final Statement of Basis, Specific Statutory Authority, and Purpose (SBP), language would better reflect the intent of the COGCC staff and Commission. We have also corrected several typographic errors in the Final Draft Rules and SBP.

Red language below reflects proposed amendments in the Final Draft Rules. Any yellow-highlighted language was recommended in Appendix A of the COGCC staff's November 26 submittal. Grey-highlighted language represents limited changes being suggested here. A brief rationale for each recommended change follows the alternative language.

1) Alternative SPB Language: Page 7

One subject where the Commission chose to defer action involves the application of these new rules and amendments ~~either~~ to projects subject to approval by the Federal Energy Regulatory Commission, to the safety aspects of projects that are regulated by the U.S. Department of Transportation, or to midstream operations until the Commission conducts a further regulatory proceeding to address the manner in which such amendments and new rules shall apply to such projects and operations. ~~operations.~~

Rationale: This change corrects typographical errors.

2) Alternative Rule Language: Definition of "RESTRICTED SURFACE OCCUPANCY AREA"

RESTRICTED SURFACE OCCUPANCY AREA shall mean. . . .

~~Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be attached as Appendix VII maintained by the Commission and made available on the Commission website.~~

RATIONALE: This change clarifies that the COGCC regulations include the Restricted Surface Occupancy Area maps.

3) Alternative Rule Language: Definition of "SENSITIVE WILDLIFE HABITAT"

SENSITIVE WILDLIFE HABITAT shall mean. . . .

~~Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be attached as Appendix VIII maintained by the Commission and made available on the Commission website.~~

RATIONALE: This change clarifies that the COGCC regulations include the Sensitive Wildlife Habitat maps.

4) Alternative Rule Language: Definition of "SOLID WASTE"

SOLID WASTE shall mean. . . . Solid waste does not include: ~~(4)~~(a) materials handled at facilities licensed

pursuant to the provisions on radiation control in Title 25, Article 11, C.R.S.; (b) excluded scrap metal that is being recycled; or (c) shredded circuit boards that are being recycled.

RATIONALE: This change corrects a typographical error.

5) Alternative Rule Language: Definition of “SURFACE WATER SUPPLY AREA”

~~SURFACE WATER SUPPLY AREA shall mean. . . . Surface Water Supply Areas include surface water intakes, springs, seeps, and groundwater which are under the influence of surface water, as defined in the Colorado Primary Drinking Water Regulations (5 C.C.R. 1003.1), used as a public water supply.~~

RATIONALE: By including groundwater under the influence of surface water within the definition of Surface Water Supply Area, the proposed regulations contemplate that public water systems that obtain their water from this particular groundwater source would be afforded the protections found in Rule 317B. During the refinement of the Public Water System Surface Water Supply Area Map and the Public Water System Surface Water Supply Area Applicability Determination Tool a number of issues related to the physical differences between surface water segments and groundwater under the influence of surface water were identified that staff now believes ought to be further analyzed before groundwater under the influence of surface water is included in the final rule. Staff, therefore, proposes that groundwater under the influence of surface water as well as springs and seeps be pulled from the proposed rule to allow COGCC and CDPHE staff to analyze how the public water systems that are supported by these waters can be appropriately protected consistent with Rule 317B. Staff intends to work with interested stakeholders and will report back to the Commission with its recommendations sometime in the fall of 2009. Attached is an updated Appendix VI which reflects this alternative definition of “Surface Water Supply Area.”

6) Accompanying SBP Language: Page 34

The definition of Surface Water Supply Area was originally proposed to include groundwater under the influence of surface water as well as seeps and springs to extend the protections of Rule 317B to those particular waters that serve as sources of public water systems. At the request of COGCC and CDPHE staff, the Commission has deleted the reference to these waters from the definition of Surface Water Supply Area because of the identification of issues that relate to the physical differences between surface water segments and groundwater under the influence of surface water, and the need to ensure that the protections afforded all public water systems under Rule 317B are consistent. It is the Commission’s intent that public water systems that utilize groundwater under the influence of surface water, seeps and springs enjoy the protections under Rule 317B, therefore the Commission expects staff to report back to the Commission by the fall of 2009 with its recommendations regarding the appropriate means to protect these public water systems.

7) Alternative Rule Language: Definition of “TIER 1 OIL AND GAS LOCATION”

~~TIER 1 OIL AND GAS LOCATION shall mean an . . . oil and gas location [whose] size is less than one (1) acre, measured by the amount of surface disturbance at the time of the termination of a construction stormwater permit issued by the Colorado Department of Public Health and Environment.~~

RATIONALE: This change accounts for sites that have undergone post-construction interim reclamation. Specifically, such sites should be exempt from the Post-Construction Stormwater Program requirements if their size is less than one acre after interim reclamation.

8) Alternative Rule Language: Draft Rule 317B.b.(1)

(1) Rule 317B is applicable to DCPS Operations within Surface Water Supply Areas. The applicability of Rule 317B will be determined by reviewing the Public Water System Surface Water Supply Area Map, attached as part of Appendix VI located on the Commission website, or by entering the longitude and latitude coordinates information into the Public Water System Surface Water Supply Area Applicability Determination Tool, also located on the Commission website.

RATIONALE: The first clarifies that the COGCC regulations include the map. The second change is necessary because the information to be entered involves township and range, rather than latitude and longitude.

9) Alternative Rule Language: Draft Rule 904.a.(2)

- (2) Production pits ~~in sensitive areas~~, other than skim pits, unless the operator demonstrates to the Director's satisfaction that. . . . Subject to Rule 901.c, this requirement shall not apply in Washington, Yuma, Logan, Morgan, Huerfano, or Las Animas Counties ~~until constructed before~~ May 1, 2011 on federal land or ~~until before~~ April 1, 2011 on other land.

RATIONALE: This change responds to concerns expressed by industry that the pit lining requirements could be read to apply to existing production pits in the six enumerated counties beginning in 2011. This change clarifies that the lining requirements will not apply to pits constructed before dates in 2011.

10) Alternative Rule Language: Draft Rule 904.a.(5)

- (5) Multi-well pits used to contain produced water, drilling fluids, or completion fluids that will be recycled or reused, except those pits where drilling fluids are moved from one oil and gas location to another such location for reuse there. Subject to Rule 901.c, this requirement shall not apply to multi-well pits used to contain produced water in Washington, Yuma, Logan, Morgan, Huerfano, or Las Animas Counties ~~until constructed before~~ May 1, 2011 on federal land or ~~until before~~ April 1, 2011 on other land.

RATIONALE: Morgan County was inadvertently left out of the proposed alternative rule language in Appendix A of staff's November 26 pleading, and this change would add it in to this provision. The rationale for the other changes is the same as that for the changes proposed in Draft Rule 904.a.(5), above.

11) Alternative SBP Language: Page 61

(Note: The parenthetical would be placed after "Multi Well Pits" and before "(TSD)" in the first column of the chart; the footnote would attach to "Multi Well Pits" and appear beneath the chart)

(Used for less than 3 years)

*** Lining requirements do not apply to multi-well pits used to contain produced water that will be recycled or reused located in Washington, Logan, Morgan, Yuma, Huerfano and Las Animas Counties constructed before dates in 2011 specified in rule.

*RATIONALE: The parenthetical is needed to avoid a potential overlap with the definition of "Centralized E&P Waste Management Facilities." The language added to the footnote will conform note "***" with note "*."*

12) Alternative Rule Language: Draft Rule 907A.a

- a. Certain wastes generated by oil and gas-related activities are non-E&P wastes and are ~~not~~ exempt from regulation as solid or hazardous wastes. . . .

RATIONALE: This change corrects a typographical error.

13) Alternative Rule Language: Draft Rule 908.g.(1).B

- B. ~~The preliminary closure plan shall include a~~An estimate of the cost to close and reclaim the entire facility and to conduct post-closure monitoring. Cost estimates shall be subject to review by the Director.

RATIONALE: The change strikes duplicative language.

14) Alternative SBP Language: Page 72

Burial of material would violate ~~of~~ the Regulations Pertaining to Solid Waste Sites and Facilities of the Hazardous Materials and Waste Management Division of the CDPHE unless prior approval were received.

RATIONALE: This change corrects a typographical error.

15) Alternative SBP Language: Page 74

In its place, language was added to clarify that any such burning or burial must comply with applicable local, state, or federal solid waste disposal regulations, must satisfy ~~with~~ the 900 Series Rules, and must be authorized in writing by the surface owner.

RATIONALE: This change corrects a typographical error.

16) Alternative Rule Language: Draft Rule 1003.d.(1)

(1) **Drilling pit closure on crop land and within 100-year floodplain.** . . . Closing and reclamation of drilling pits shall occur no later than three (3) months after drilling and completion activities conclude, ~~weather permitting.~~

RATIONALE: This change allows additional time for pit closures during periods of frozen soil.

17) Alternative Rule Language: Draft Rule 1201

Prior to the preparation of a Comprehensive Drilling Plan or the submittal of a Form 2A. . . an operator shall review the Sensitive Wildlife Habitat map ~~attached as Appendix VIII~~ and the Restricted Surface Occupancy map ~~attached as Appendix VII maintained by the Commission on its website~~ to determine whether the proposed oil and gas location falls within Sensitive Wildlife Habitat or a Restricted Surface Occupancy area.

RATIONALE: This change conforms Rule 1201 to the Alternative Definitions of Restricted Surface Occupancy Area and Sensitive Wildlife Habitat, above.

18) Accompanying SBP Language: Page 77

Rule 1201 requires operators to review maps ~~attached to the COGCC regulations and available and special data maintained~~ on the COGCC website. . . .

RATIONALE: This change conforms Rule 1201 to the Alternative Definitions of Restricted Surface Occupancy Area and Sensitive Wildlife Habitat, above.

19) Alternative Rule Language: Draft Rule 1205.b

b. As set forth in Rule 1205.a, new ground disturbing activities are to be avoided in Restricted Surface Occupancy areas. . . . **Notwithstanding the foregoing, non-emergency workovers may be performed with prior approval of the Director on a schedule that minimizes adverse impacts to the species for which the restricted surface occupancy area exists.**

RATIONALE: The COGCC staff recognizes that workovers are often necessary during the life of a well. This change provides guidance to operators of existing oil & gas locations within restricted surface occupancy areas.

20) Accompanying SBP Language: Page 82

The Commission considered the effect the provisions of Rule 1205 would have on non-emergency workovers of wells within restricted surface occupancy areas and anticipates that such activities would be allowed upon Director approval. The Commission intends that such workovers would be scheduled to occur during a period and in a manner that minimize impacts to the species for which the restricted surface occupancy area was created, developed in coordination with the CDOW.

RATIONALE: This language will provide guidance regarding non-emergency workovers of existing oil and gas locations within restricted surface occupancy areas.