

# Notice to Operators: Interim Reclamation Procedures for Delayed Operations

January 5, 2017

This Notice to Operators (“NTO”) outlines COGCC Staff’s interpretation of Rule 1003 interim reclamation requirements when delayed operations occur. Staff will evaluate an operator’s compliance with Rule 1003 when delayed operations are involved at new or existing locations based on the interpretation and guidance set forth in this NTO. An operator’s failure to follow the practices or procedures in the NTO may result in Staff determining that the operator is not in compliance with Rule 1003.

Delayed operations may occur in the following scenarios: (1) an operator constructs a multi-well location but only drills or completes a portion of the planned wells; (2) an operator drills but delays completion of wells; (3) an operator constructs a well location but does not drill any wells; or (4) an operator constructs a production facility location but does not install any facilities.

This NTO is not applicable to an operator’s request for a variance on behalf of a surface owner; surface owner variance requests are addressed in “COGCC Operator Guidance: Rule 1001.c.: Reclamation Variances and Waivers.”

## I. Clarification of Interim Reclamation Terms

The following terms are used in Rule 1003 but are not defined in COGCC Rules or the Oil and Gas Conservation Act. COGCC staff’s interpretation of these terms follows. Staff will evaluate an operator’s compliance with Rule 1003 based on these interpretations.

- a. *“Areas reasonably needed for production operations”* includes the areas immediately around preset conductors, wellhead equipment, prime movers, production tanks, separation equipment, air pollution control and treatment equipment, meter stations, LACT units, and lease roads. This term also includes the areas required for trucks to safely access the location to empty tanks and the areas necessary to support a workover rig. Areas reasonably needed for production operations are referred to in this NTO as “Production Areas.”
- b. *“Drilling or subsequent operations”, “subsequent drilling operations”, and “such operations”* include the following activities: site construction, setting conductors, drilling, completion, hydraulic fracturing, flowback, drill-out and running of tubing, and facilities installation. These activities are referred to collectively as “Operations” in this NTO.
- c. *“First favorable season”* refers to the first ecological planting season.
- d. *“Uniform vegetative cover”* requires uniform germination (evenly distributed, without large bare areas) within a reasonable time period, which will depend on the season the seed was planted and the weather conditions since seeding. *“Germination”* is the process by which a plant starts to grow from a seed, not full vegetative cover.

## **II. Clarification of Interim Reclamation Commencement**

Under Rule 1003.b. an operator must commence interim reclamation within the following timeframes:

- a. Three months on crop land and six months on non-crop land after the conclusion of Operations unless additional Operations are planned *and commenced* within 12 months;
- b. If planned additional Operations were commenced within 12 months, interim reclamation must commence three months on crop land and six months on non-crop land following conclusion of the additional Operations;
- c. If planned additional Operations were not commenced within 12 months COGCC Staff will consider the operator to be in violation of Rule 1003.b. unless the operator has submitted an Interim Reclamation Variance Request as described in this NTO prior to expiration of the 12-month period;
- d. Once an operator has commenced interim reclamation, work should be pursued diligently to complete interim reclamation in a timely fashion.

## **III. Clarification of Interim Reclamation Completion Standards**

Rules 1003.b., 1003.e.(1), and 1003.e.(2), collectively, include the following interim reclamation requirements:

- a. Interim reclamation on Production Areas requires stabilization and maintenance of the area by compaction, coverage, paving, or other methods to minimize dust and erosion. The establishment of uniform vegetative cover is also an effective method of stabilization.
- b. Interim reclamation on land other than Production Areas requires the establishment of uniform vegetative cover.

Non-noxious weeds can impede or delay the revegetation required by Rule 1003.e.(2).

## **IV. Interim Reclamation Procedures for New and Existing Locations with Delayed Operations**

*New locations* refer to locations constructed after January 3, 2017. Within three months on crop land and six months on non-crop land, operators of new locations will either commence interim reclamation or complete the variance request procedures described below.

*Existing locations* refer to locations constructed prior to January 3, 2017. Within six months of January 3, 2017 operators of existing locations will either commence interim reclamation or complete the variance request procedures described below.

A valid Form 2, Application for Permit to Drill, does not extend the time for commencing interim reclamation under Rule 1003 for either new or existing locations. Interim reclamation must commence within the time frames specified in Rule 1003 regardless of the duration of a Form 2. Thus, if Operations are completed within 9 months following approval of a Form 2 and no future

Operations are planned, the operator must commence interim reclamation within three months (by month 12) on crop land and six months (by month 15) on non-crop land even though the Form 2 still will be valid for several more months. Similarly, if initial Operations were completed within 9 months following approval of a Form 2 and future operations were planned but were not commenced within 12 months, commencement of interim reclamation would be overdue, giving rise to a potential violation of Rule 1003, even if the Form 2 was still valid. Re-filing a Form 2 does not alter or reset timing for commencement of interim reclamation in any way.

#### A. Interim Reclamation Variance Request Procedures

Operators may request a variance for an extension of up to five years for complying with Rule 1003.b. (commencement of reclamation), 1003.d. (drilling pit closure), or 1003.e. (restoration and revegetation) on a Form 4, Variance Request, for the location ("Interim Reclamation Variance Request"). Any extension of time approved by the Director pursuant to an Interim Reclamation Variance Request will commence on the date the Director approves the Request.

The Director will require the following information to evaluate an Interim Reclamation Variance Request:

1. The length of the requested extension (not to exceed five years);
2. The surface owner's written consent to the extension, including consent to the duration of extension;
3. A description of the operational reasons for the delay of interim reclamation;
4. A schedule of planned Operations for the duration of the extension;
5. A statement attesting that the location is currently in compliance with Rule 1002.f., Rule 1003.a., and Rule 1003.f.;
6. An estimate of the cost for a third-party contractor (i.e., not the site operator) to perform interim reclamation; and
7. An executed COGCC Operator Rule 1003 Tolling Agreement, which is attached to this NTO.

#### B. Staff Evaluation of Interim Reclamation Variance Requests

COGCC Staff will notify the applicant within 15 business days of receipt of an Interim Reclamation Variance Request if additional information is required for COGCC to evaluate the Request. If COGCC does not approve or deny a Request within 30 business days following receipt of all requested information, COGCC will toll any potential enforcement action until the Request has been approved or denied and will not count the intervening days for purposes of calculating the duration of any alleged violations arising from failure to timely commence interim reclamation under Rule 1003.

In most cases, the Director will condition approval of an Interim Reclamation Variance Request on the Operator's agreement to specific conditions, including the following:

1. The operator will comply with all applicable interim reclamation rules for which the variance is not granted, including, but not limited to, Rule 1002.e. and Rule 1002.f.
2. The operator will post a sign at the location stating: "A COGCC variance has been approved to delay the commencement of interim reclamation to no later than MM/DD/YY." This statement may be appended to an existing sign on location provided it is plainly visible.
3. The Operator and COGCC will execute the COGCC-Operator Rule 1003 Tolling Agreement and attach this Agreement to the approved Interim Reclamation Variance Request.
4. An increase in Financial Assurance for the Oil and Gas Location pursuant to Rule 702.a. ("Interim Reclamation Financial Assurance"). The presumptive amount of the Interim Reclamation Financial Assurance will be the cost for a qualified third party to perform interim reclamation at the location. In these cases, the Director will petition the Commission for Interim Reclamation Financial Assurance pursuant to Rule 702.a.

The Director will not approve a second Interim Reclamation Variance Request for a location absent extraordinary circumstances.

#### C. Staff Evaluation of Interim Reclamation and Release of Financial Assurance

An operator with an approved Interim Reclamation Variance will be obligated to perform all the activities required for successful interim reclamation within the timeframe approved in the variance. These activities include, but are not limited to: cross ripping the ground, planting seed, stabilizing the site, and protecting the seed while vegetation is established (e.g. straw mulch). If these activities are performed pursuant to the approved variance, COGCC staff will consider interim reclamation to be "in-process" even though uniform vegetative cover has not yet been attained.

COGCC will release the Interim Reclamation Financial Assurance upon a satisfactory interim reclamation inspection for the Oil and Gas Location pursuant to Rule 1003.e.

*The purpose of this guidance document is to inform all interested stakeholders of the COGCC's interpretation of, and expectations concerning, the COGCC rules discussed herein. Interpretative rules or general statements of policy are not meant to be binding as rules under the Administrative Procedures Act. § 24-4-103(1), C.R.S.*