

October 5, 2012

Mr. Matt Lepore – Director [Matt.Lepore@state.co.us](mailto:Matt.Lepore@state.co.us)  
Colorado Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203

RE: **Conceptual Overview of Amended Setback Rules**

Dear Mr. Lepore,

The La Plata County Energy Council (LPCEC) is a non-profit trade organization that promotes safe and environmentally responsible natural gas development in La Plata County, Colorado on fee, tribal, state and federal lands. Our forty individual and company members work to build community relations, increase public understanding, and address public issues relative to the industry. On behalf of LPCEC we submit these suggestions regarding setbacks in response to the Conceptual Overview of Amended Setback Rules prepared by the Colorado Oil and Gas Conservation Commission (COGCC).

The LPCEC supports the comments made by any member operators and offers additional comments as follows:

- I. **Setbacks from Occupied Buildings – a.i. 1**  
**Wells and production facilities are prohibited within 350 feet of a Building Unit absent written consent of all owners of surface property and Building Units within 350 feet; a.i.1. a:**  
**A drilling permit or location assessment will not be considered complete, and will not be approved, without the requisite consent.**

Comment: Consent is difficult to negotiate, particularly with subdivisions that have encroached closer to an existing well pad due to the number of land owners involved. Negotiations can be even more difficult, if not impossible, when the landowners are opposed to oil and gas development. At a minimum, existing oil and gas pads should be exempt from this rule, even if they are expanded. Here in La Plata County, there have been eighteen Memorandums of Understanding (MOU's) negotiated by operators and La Plata County in connection with COGCC 80 acre infill orders for coalbed methane (CBM) development. The MOU's, La Plata County Chapter 90 oil and gas regulations and COGCC Infill Orders limit 4 well pads per section with little room for exceptions. While surface owner considerations are referenced, the MOU's and Infill Orders do not mention non-consent of a landowner living nearby. The consent requirement will likely be in direct conflict with the county MOU's and Infill Orders for 80 acre CBM development in the San Juan Basin. The link below can be used to read all eighteen MOU's:

[http://www.co.laplata.co.us/departments\\_elected\\_officials/planning/natural\\_resources\\_oil\\_gas/mou](http://www.co.laplata.co.us/departments_elected_officials/planning/natural_resources_oil_gas/mou)

The purpose of the MOU's with La Plata County was to reduce footprint/surface disturbance by "ensuring that the development of oil and gas facilities is done in a manner that minimizes conflicts between differing land uses and land users." During negotiations, industry and La Plata County were concerned with encroachment by individual homeowners, subdivisions, and industrial development. This conceptual document has not addressed encroachment. There must be some provision for encroachment, including grandfathering all pre-existing oil and gas sites and extensions thereto from the new setback provisions, or waivers at the discretion of the COGCC similar to bonding provisions when operators cannot reach a Surface Use Agreement (SUA).

Perhaps notice is the solution. Under existing COGCC rules and La Plata County regulations, there are multiple notice provisions for landowners one quarter mile from the proposed wellbore. Another solution would be to insert language regarding "good faith effort" to obtain written consent. Operators can provide documentation to prove that a reasonable effort was made and the Director/staff can review the documentation. This is similar discretion used previously for water well testing programs and for consultation with landowners involving wildlife requirements. One non-consent could result in an APD being denied and this denial can affect the provisions of a Surface Use Agreement causing an operator to begin those negotiations with a different landowner. Here in La Plata County, over 95% of all well sites have negotiated (SUA's) that could be impacted if COGCC extends the setback. There is language that says the setbacks will meet or exceed the 150 foot COGCC Rules. There are SUA's that have plats attached with distances defined as a result of staking and permitting. Contractual obligations could be affected by additional setback distances.

**2. Detailed notice of proposed oil and gas operations to be provided to all owners of surface property or Building Units within 700 feet of proposed wellhead or production facility, as well as local government designee.**

Comment: According to the COGCC Rules building unit is defined as: "BUILDING UNIT shall mean a building or structure intended for human occupancy. A dwelling unit is equal to one (1) building unit, every guest room in a hotel/motel is equal to one (1) building unit, and every five thousand (5,000) square feet of building floor area in commercial facilities, and every fifteen thousand (15,000) square feet of building floor area in warehouses, or other similar storage facilities, is equal to one (1) building unit." This proposal duplicates what operators already do in La Plata County. This is a time consuming and costly process.

**3. Comment period extended from 20 days to 40 days**

Comment: It is not known why this is necessary. Twenty days has been working, and in areas where leases are not held by production and have expiring terms, delays to development and exploration may cause term leases to expire.

**4. Mitigation measures to include: i. Restrictions on operating hours;**

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Comment: This is extremely problematic. This could involve not allowing drilling during nighttime. Oil and gas facilities must meet COGCC noise standards and the requirement to limit the hours of operation is unrealistic for energy activities. This is not a gravel operation that can be addressed with hours of 7 AM to 6 PM. There are over 3,333 active oil and gas wells in La Plata County and none of these facilities have ever had a requirement to limit the hours of operation. This industry works at producing natural gas 24 hours a day.

**ii. Restrictions on, or prohibitions of, pits.**

Comment: This will re-open the 900 Series Rules; it is unclear as to why a setback rule may trigger opening up additional rules series.

**iii. Restrictions on allowable noise levels**

Comment: The COGCC has extensive language in Rule 802-Noise Abatement. A stakeholder group convened in 2005 to develop the current rule achieving a rule that represented the views of the stakeholders. If this changes the noise levels, then this is not acceptable. Colorado has the most restrictive noise regulation for oil and gas in the country. It addresses two frequencies, the A-scale and C-scale. This was designed to address noise levels more attenuated for the human ear (A-scale) and for low frequencies (C-scale). Regarding encroachment, again, this would be problematic. When designing a house, a landowner does not need to install measures to decrease the noise made by an existing oil and gas facility; it becomes the operator's responsibility to mitigate sound after a house moves closer than the facility was designed to address noise.

**iv. Development of traffic plan**

Comment: This has historically been worked out with a SUA or separate right of way with a private landowner for non-county roads and with the County for county roads. Additionally, Chapter 90, La Plata County oil and gas regulations requires this as part of the permit process. Additionally, within MOU's there is language regarding traffic use and entering into agreement with homeowner's associations to cost share road maintenance and payments as well as planned development county road impact fees collected from industry. This appears land use in nature and is not easily transferred to the State of Colorado.

**v. Green completions required:**

Comment: Contained within the MOU's operators have agreed to "utilize reasonable efforts to minimize methane emissions by using "green completion" techniques, and the installation of "low bleed" pneumatic instrumentation, when feasible." This is also part of the COGCC Rules developed in 2008 found in 805 b.Odors,(3). The EPA used the COGCC rule as a basis in developing a rule which is in the New Source Permit Standards for green completions which was recently finalized. Green completions cannot be used in every case. These work only where infrastructure is in place, such as an existing pipeline, which allows flowback gas from the test separator into the pipeline. There are also other technical limitations which were addressed in

the COGCC rule. We do not support COGCC moving further into this subject beyond what currently exists in their rule. There are additional drilling costs associated with this as well.

**vi. Emissions control devices required:**

Comment: This is also part of the COGCC Rules developed in 2008 found in 805 b.Odors,(3). This specific rulemaking was sponsored by the Colorado Department of Public Health and the Environment. It was written to address odor issues from condensate tanks, crude oil and produced water tanks, glycol dehydrators, pits and pneumatic devices. It focused on volatile organic compounds (VOC's) which could contribute to the odors. It was limited to the Piceance because that was where all the complaints about these types of odors were derived. This rule does not apply to the entire State because here in La Plata County we have had only one odor complaint. Additionally, most of the production in La Plata County and in 8 other counties in the state, is coalbed methane production, which has minimal VOC emissions, if any, due to the nature of the produced gas. Further Rule 805 b, wasn't applied in the DJ Basin because they already had VOC emission control regulations. There may be other agencies that have jurisdiction over these issues.

**vii. Operations and facilities consolidated where possible**

Comment: While we have agreed to this to protect land uses; it must be recognized that facility consolidation can expose an operator to becoming a major source of emissions, possibly being subject to Title V or Prevention of Significant Deterioration. Here in La Plata County we work closely with the Southern Ute Indian Tribe and the State of Colorado to inventory and aggregate sources for purposes of permitting and enforcement.

**viii. Blowout preventers:**

Comment: There are several existing COGCC rules on this topic including 317.a., 603.e.(4)&(5), and 603i.

**ii. Zone 2: a Building Unit is located more than 350 feet, but not more than 700 feet, from a wellhead or production facility. 1. Good faith consultation with owners of surface property or Building Units within 700 feet of any proposed wellhead or production facility, as well as local government designee.**

Comment: We appreciate the concept of good faith consultation here in Zone 2 and make the same request for Zone 1. One of the problematic measurements used in La Plata County when determining the distance from a wellhead is what part of a property, touched by the radius, is counted. Additionally, this rulemaking opportunity is intended for public health and safety and a surface property owner without a building or home or building unit, or what is considered raw land, what is the purpose of consultation? Many times landowners are what are defined as absentee. Absentee landowners do not live on the land being assessed; in other words you review the Assessor's records and find the landowner address is in another state or even out of the United States entirely.

**a. Form 2 or Form 2A will not be approved until Applicant certifies consultation was held**

Comment: What constitutes certification of a consultation? Is that a copy of a letter, a telephone log, landman notes, etc.?

**2. Detailed notice of proposed location to be provided to all owners of surface property or Building Units within 700 feet of proposed wellhead or production facility, as well as local government designee.**

Comment: See comment above regarding surface property owners.

**3. Comment period extended from 20 days to 40 days.**

Comment: See comment above for Zone 1.

**4. Mitigation measures to include:**

Comment: See comments above for Zone 1.

- i. Restrictions on operating hours;
- ii. Restrictions on, or prohibitions of, pits
- iii. Restrictions on allowable noise levels
- iv. Development of traffic plan
- v. Green completions required
- vi. Emissions control devices required
- vii. Operations and facilities consolidated where possible
- viii. Blowout preventers
- ix. Others

**iii. Zone 3: a Building Unit is located more than 700 feet, but not more than 1200 feet, from a wellhead or production facility.**

**1. Good faith consultation with owners of surface property or Building Units within 1200 feet of any proposed wellhead or production facility, as well as local government designee.**

Comment: See comments above in Zone 2

**a. Form 2 or Form 2A will not be approved until Applicant certifies consultation was held.**

Comment: See comments above.

**2. Surface owners and Building Unit owners invited to attend public meeting(s) to be held at convenient times and locations.**

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Comment: Advocating for public meetings are time consuming and costly. Getting a date and all the logistics will be problematic. This will be incredibly time consuming for a place like La Plata County where residents in this setback distance are commonplace. As stated before, some landowners are not owner occupied land owners. In some cases this may set up a meeting that is classified as public, which could and would in this county include the activist groups. Another concern is that these public meetings could be for people that live further away, not closer. The word “meeting(s)” suggests multiple meetings maybe necessary. Apparently the operators would lead these, but in experiences here in La Plata County you need a strong moderator as well as COGCC and county staff to attend. Further, if you have one meeting previously and have to come back to drill an additional well with a new APD, would that require another public meeting?

**b. High Occupancy Buildings: buildings such as schools, hospitals, nursing homes, with sensitive populations or identifiable difficulties with ingress or egress.**

**i. Locating a wellhead or production facility within 750 feet of a High Occupancy building requires Commission approval following a full public hearing.**

Comment: Again, these types of buildings have encroached on existing wells. For reference, a 750’ radius encompasses over 35 acres. In La Plata County, as an example a new High School encroached on an operator well location which was there long before the High School. In this particular unit there are more mineral owners than there are surface owners because the small lots that were created included ½ or ¼ mineral interests. It is strongly suggested that encroachment needs different consideration in a setback rule. As stated before, if this is for new wells only, that makes a difference.

**ii. The Director may approve a proposed wellhead or production facility located more than 750 feet, provided consultation with owners within 1200 feet is conducted.**

Comment: For reference, the radius of 1200’ is 104 acres. If the area has a number of subdivisions and businesses, the time to complete consultation could be extensive. Additionally, this seems like a land use issue that could be accommodated by the new LGL with county involvement, specific operator involvement. Here in La Plata County notice goes out ¼ mile from the wellhead. These differing footages are cumbersome.

**II. Other Setbacks. Except as modified by requirements for Building Units, High Occupancy Buildings, and DOAAs, setbacks from buildings, public roads, major above ground utility lines or railroads to be increased from 150 to 200 feet.**

Comment: This creates a rule with no reciprocal rule in place for land use by counties. A property developer has no requirement to set back from existing facilities 50 feet or

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200 feet. In La Plata County (and many other counties) do not have language in any Land Use Code chapters that require a landowner, builder, or developer to setback from existing oil and gas facilities or pipelines by any footage i.e. encroachment. Therefore, developers plat subdivisions with no knowledge of drilling windows, existing pipelines or existing wellpads. At a minimum, an Engineer's One Call should be required by all counties before platting (drawing lot lines), but obviously, the COGCC cannot make that requirement so land use conflicts will continue. This could be a project for the COGCC – LGL's.

### **III. Statewide Groundwater Sampling and Monitoring**

Comment: This proposal far exceeds anything that exists in COGCC special rules, infill orders, Rule 608 and the COGA voluntary program.

- a. Collect initial groundwater samples from 2 closest water wells, springs, or surface water features within 1 mile of proposed location prior to beginning construction of location.**

Comment: The one mile radius exceeds current COGCC special rules, infill orders and Rule 608 which is ½ mile. It is not clear why springs and surface water need to be tested. Springs can be very challenging because 1) many are not recorded or known and 2) their flow can be seasonal, thus sporadic. The COGCC already have surface water testing in Rule 317 B. This rule was strategically written to address intakes down gradient of oil and gas operations on certain stream segments for water treatment plants. Further, if a spill occurred and impacted standing water in a pond, sampling is required of the spilled material and the water in the pond. For a spill into a flowing stream, operators grab samples of the material spilled, as well as downstream and upstream samples. This should be limited to the two closest water wells within ½ mile consistent with all their other requirements. Sampling springs or surface water needs to be deleted or eliminated. The previously existing sampling programs were designed to evaluate groundwater. There is no reason to change that approach.

- c. A follow-up sampling event is to be conducted not less than 12 months, nor more than 18 months, following an initial sampling event.**

Comment: We respectfully request that this be revised. An operator may not drill the well within a 12-18 month window. The language needs to be consistent with the existing requirements: "post completion" not 12 to 18 months following the initial sampling.

- d. A follow-up sampling event to be conducted at time of final reclamation of oil and gas location.**

Comment: This is problematic and appears to offer no benefit. The time from the follow-up sample could be 25-30 years. What is the value in doing something at the end of life for an oil and gas well? The water well could have been impacted by any number

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of contaminants from the landowner's lack of attention to water wellhead protection. To protect a company from long term liability, all the wells tested may have to be tested periodically during the life of a gas well to prove any impacts later did not derive from the oil and gas well itself. This has never been required for any existing program across the state and is not needed.

**f. Constituents to tested for to be determined.**

Comment: This is simply too vague and causes great concern. The extremist, activist groups have always made a request for all constituents to be tested during water well sampling. Here in La Plata County, we consistently educate the public that there is no reason to test for all chemicals used either on the site or for hydraulic fracturing because if there was a communication incident, the Total Dissolved Solids or Chloride numbers are great tracer indicators of a breach because 1) it is both in the produced water and the frac fluids, 2) it is very mobile in groundwater and 3) it is already included in our general chemistry parameters for testing. We must maintain the constituents in the COGA protocol and for those found in 608 b. (2) for CBM wells.

**g. Copies of all test results obtained as a result of sampling program will be provided to the Commission and the water well owner. The analytical data and surveyed well locations will be publicly available through COGCC website database.**

Comment: Virtually all the current testing requirements imposed by the COGCC have this provision. However, landowners have shown reluctance in some cases due to the information being made public, even if their name with the data is not shown. In this day of computers and GIS maps, public Assessor's information, it is easy to find out the landowner name. This is public availability could make realtors uneasy as well as misused by activist groups.

We appreciate the opportunity to provide this input. We respectfully request that a cost analysis to implement these rules be developed prior to any rulemaking.

Sincerely,

*Christi Zeller*

Christi Zeller  
Executive Director

cc: Colorado Oil and Gas Association  
cc: Colorado Petroleum Association