

**COGCC's Adopted Rules  
Implementing Governor's Oil and Gas Task Force  
Recommendation Nos. 17 and 20  
February 1, 2016**

**Effective Date:** Following adoption by the Commission, these proposed new and amended rules will become effective twenty days after publication by the Secretary of State pursuant to §24-4-103(5), C.R.S. 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 submitted after the effective date. For Form 2A applications submitted but not approved prior to the effective date, pre-application notices and consultations otherwise required by Rule 305A will be waived, but applicable best management practices and mitigation measures pursuant to Rule 604.c.(4) will be required.

**Rules Implementing 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 operator proposes to drill 8 or more new wells; or (2) the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds 4,000 barrels.

**300 Series**

**305A. LOCAL GOVERNMENT NOTIFICATION AND CONSULTATION FOR LARGE UMA FACILITIES.**

a. **Notice of Intent to Construct a Large UMA Facility.** Subject to the exceptions specified in subsection 305A.e., an operator proposing a Large UMA Facility shall deliver a written Notice of Intent to Construct a Large UMA Facility not less than 90 days prior to initiating the Form 2A process with the Commission and before the operator has finalized a specific location with the Surface Owner as follows:

(1) The Notice must be delivered to:

A. The local government with land use authority over the proposed location of a Large UMA Facility; and

B. The Surface Owner of the lands on which a Large UMA Facility is proposed.

(2) The operator must deliver the Notice by hand delivery; certified mail, return-receipt requested; electronic mail, return receipt requested; or by other delivery service with receipt confirmation unless an alternative method of notice is pre-approved by the Director.

b. **Content of Notice of Intent to Construct a Large UMA Facility.** A Notice of Intent to Construct a Large UMA Facility shall include the following information:

- (1) A description and depiction of the proposed Oil and Gas Location and the planned facilities;
- (2) A description of the siting rationale for proposing to locate the facility within the Urban Mitigation Area, including a description of other sites considered and the reasons such alternate sites were rejected; and
- (3) 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.

c. **Consultation between the Operator and the Local Government with Land Use Authority.** If the local government with land use authority over the proposed Large UMA Facility accepts an operator's offer to consult in writing within 30 days of receipt of a Notice of Intent to Construct a Large UMA Facility, the operator shall consult in good faith regarding siting of, and best management practices to be employed at, the proposed location.

- (1) The operator will invite the Surface Owner to participate in the local government consultation so the Surface Owner's siting requests and concerns can be considered.
- (2) The Director will participate in the consultation process between the local government and the operator at the request of either.
- (3) 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.
  - A. If the local government agrees to mediation, the operator and the local government shall jointly select a mediator or mediators and equally share the cost of mediation.
  - B. 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.

- C. 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.
- (4) This Rule 305A.c. does not prescribe any particular form of consultation or local land use planning or approval process.
- d. **Meeting with the Surface Owner.** Within 30 days of receiving the Notice of Intent to Construct a Large UMA Facility, the Surface Owner of the lands on which the operator proposes to locate a Large UMA Facility may request a meeting with the operator and Director regarding siting of the proposed Large UMA Facility. The Director will schedule the meeting.
- e. **Exceptions to Large UMA Facility Notification and Consultation Process.**
- (1) An operator proposing a Large UMA Facility is not required to provide a Notice of Intent to Construct a Large UMA Facility or to engage in the consultation processes described in Rule 305A.a.-d. in any of the following circumstances:
- A. The local government with land use authority over the proposed location of a Large UMA Facility has opted out of the Rule 305A notification and consultation processes. A local government may opt out of the Rule 305A notification and consultation processes by notifying the Director in writing that the local government does not wish to receive Notices of Intent to Construct Large UMA Facilities for such Facilities proposed within its jurisdiction.
- B. The operator and the local government with land use authority over the proposed location of a Large UMA Facility have an existing agreement regarding siting of oil and gas locations and the proposed Large UMA Facility is within the scope of the agreement. An operator relying on this exception shall submit a copy of relevant provisions of the agreement with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.
- C. The Large UMA Facility is proposed to be located within an approved site specific development plan (as defined in §24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in §24-68-103, C.R.S.), and which expressly governs the location of Wells or Production Facilities on the surface estate. An operator relying on this exception shall submit a copy of relevant portions of the plan and approval by the local government

with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.

- D. The Location of the Large UMA Facility is within acreage identified as an oil and gas operations area included in an approved “Application for Development” as that is defined under §24-65.5-101, et. seq., C.R.S. An operator relying on this exception shall submit a copy of relevant portions of the plan and approval by the local government with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.
- (2) For a Form 2A submitted pursuant to (1)B., (1)C, or (1)D. of this Rule 305A.e., the Director within 30 days may verify with the local government with land use authority that the proposed Large UMA Facility is within the scope of the cited agreement or development plan. If, after conferring with the local government with land use authority and the operator, the Director determines the proposed Large UMA Facility is not within the scope of the cited agreement the Director will reject the Form 2A and notify the operator that it must comply with Rule 305A.a.-d.
- (3) All Rule 604.c.(4) requirements apply to all Large UMA Facilities regardless of whether a proposed Large UMA Facility is excepted from the Rule 305A.a-d. requirements pursuant to this Rule 305A.e.

**f. Initiating the Form 2A Process.**

- (1) An operator may initiate the Form 2A process by submitting its pre-application notices pursuant to Rule 305.a. once any of the following occur:
- A. The operator and the local government with land use authority reach agreement regarding a proposed Large UMA Facility’s site.
  - B. The operator asserts the proposed Large UMA Facility is subject to an exception pursuant to Rule 305A.e.
  - C. The local government with land use authority waives the Rule 305A procedures in writing.
  - D. The local government with land use authority fails to respond in writing within 30 days of receiving the Notice of Intent to Construct a Large UMA Facility.
  - E. At least 90 days have passed since the local government with land use authority received a written Notice of Intent to Construct a Large UMA Facility and the local government and the operator have engaged in

consultation pursuant to Rule 305A.c., but have not reached agreement. In these cases, the operator may initiate the Form 2A process with its preferred site, but must state on the Form 2A that the local government does not agree with the site for the proposed Large UMA Facility. A Form 2A submitted under these circumstances will be docketed for a Commission hearing as follows:

- i. The Director will notify the operator and local government with land use authority when the Director's technical review is complete and will confirm whether an agreement has been reached regarding the site for the proposed location.
  - ii. If an agreement has been reached, the Director will issue a decision on the Form 2A.
  - iii. If an agreement has not been reached, the Director will notice the Form 2A for a Commission hearing.
    - aa. 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 §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.
    - bb. 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 with land use authority may intervene as a matter of right.
- (2) The Director will reject a Form 2A submitted for a Large UMA Facility if the documentation submitted with the Form 2A pursuant to Rule 303.b.(3)K. does not demonstrate compliance with Rule 305A for the proposed Large UMA Facility.

## 600 Series

604.c.(4) **Large UMA Facilities.** Large UMA Facilities should be built as far as possible from existing building units and operated using the best available technology to avoid or minimize adverse impacts to adjoining land uses. To achieve this objective, the Director will require a combination of best management practices and required

mitigation measures, and may also impose site-specific conditions of approval related to operational and technical aspects of a proposed Large UMA Facility.

A. All Rule 604.c.(3) 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.

B. 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 shut-in 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, or with prior written approval from the Director for necessary maintenance operations.

v. Storage tank pressure and fluid management.

vi. Proppant dust control.

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, and for which site-specific conditions of approval may be required:

i. Noise;

ii. Ground and surface water protection;

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

iv. Remote stimulation operations.

- D. In considering the need for site-specific mitigation measures, the Director will consider and give substantial deference to mitigation measures or best management practices agreed to by the operator and local government with land use authority.

### **Rules Implementing Recommendation No. 20**

#### **300 Series**

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

- (1) When used in this subpart, “municipal local jurisdiction” means a home rule or statutory city, town, territorial charter city, or combined city and county.
- (2) Beginning on May 1, 2016, all operators that have filed a Form 1 with the Commission shall register with each municipal local jurisdiction and county in which it has an approved drilling unit or a pending or approved Form 2 or Form 2A. An operator registers by complying with the local registration process established by the municipal local jurisdiction or county. If a local registration process does not exist, an operator may comply by delivering current copies of its Form 1 and Form 1A to the Local Governmental Designee (“LGD”) in jurisdictions that have designated an LGD, and to the planning department in jurisdictions that do not have an LGD.
- (3) A municipal local jurisdiction may request any operator registered within its jurisdiction provide the following information to the municipal local jurisdiction and the Commission’s Local Government Liaison (“LGL”):
  - A. Based on an operator’s current business plan as of the date of the request, a good faith estimate of the number of wells the operator intends to drill in the next five years in the local jurisdiction. 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 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 the well estimates requested pursuant to this subsection 3 using reasonable business judgment based on information known to the operator as of the date the estimates are requested. Well estimates are subject to change at any time at the operator's sole discretion.

### **Conforming Rule Changes**

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

- i. If a 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 with land use authority received the pre-application notice required by Rule 305.a.(1).
- ii. For a proposed Large UMA Facility, the operator shall certify on the Form 2A that the operator complied with Rule 305A and submit documentation supporting its certification demonstrating one of the following:
  - aa. The operator and local government with land use authority reached agreement regarding the site for the proposed Large UMA Facility;
  - bb. The proposed Large UMA Facility was subject to an exception under Rule 305A.e.;
  - cc. The local government with land use authority waived the notification and consultation procedures in Rule 305A.a.(1) and 305A.c. in writing;
  - dd. The local government with land use authority did not timely respond to the Notice of Intent to Construct Large UMA Facility; or
  - ee. The operator and local government with land use authority engaged in consultation and at least 90 days passed after the local government received the Notice of Intent to Construct Large UMA Facility but no agreement was reached regarding the siting of the proposed Large UMA Facility.
- iii. For a proposed Large UMA Facility, the operator shall submit evidence that Proximate Local Governments received the pre-application notice required by Rule 305.a.(3).

### **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 30 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 90 days.

#### **(2) Request for Hearing.**

- A. An operator may request a hearing before the Commission on an Application for Permit-to-Drill, Form 2, and on an Oil and Gas Location Assessment, Form 2A, that is not a Large UMA Facility if the Director has not issued a decision within 75 days following a determination that the application is complete;
- B. An operator may request a hearing before the Commission on an Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility if the Director has not issued a decision within:
  - i. 90 days following a determination that the application is complete, if:
    - aa. At the time the Form 2A is submitted, the operator and the local government with land use authority reached agreement regarding the site for the proposed Large UMA Facility;
    - bb. The Form 2A was excepted from the Rule 305A consultation process;  
or
    - cc. The local government with land use authority waived the 305A procedures in writing or did not timely respond in writing to the Notice of Intent to Construct.
  - ii. 120 days following a determination that the application is complete, if, at the time the Form 2A is submitted, the operator and the local government

with land use authority had not reached agreement regarding the site for the proposed Large UMA Facility.

- C. A hearing pursuant to either subpart A. or B. shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by §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. Pre-application notifications.** For Oil and Gas Locations proposed within an Urban Mitigation Area or within the Buffer Zone Setback, an Operator shall provide a "Notice of Intent to Conduct Oil and Gas Operations" to the persons specified in subparts (1) and (2) not less than 30 days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director.

- (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. The notice requirement of this subpart does not apply to local governments that received notice and accepted the offer to consult pursuant to Rule 305A.a.

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- (3) Large UMA Facility Notice to Proximate Local Governments. For a proposed Large UMA Facility, an operator shall notify any home rule or statutory city, town, territorial charter city, combined city and county, or county (for purposes of this section "Proximate Local Governments") within 1,000 feet of the proposed site that a permit to construct a Large UMA Facility is being sought not less than 45

days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director. A local government may waive its right to notice under this provision at any time by providing written notice to the operator and the Director.

- A. The Notice shall include the following: the operator's contact information; a description of the location and a general description of the proposed Large UMA Facility; and state that the Proximate Local Government may provide comments as provided in Rule 305.d.
- B. The Director will respond in writing to any Proximate Local Government comments regarding specific best management practices reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy for the proposed Large UMA Facility.

**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 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 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 500 feet of a Building Unit, the Director shall extend the comment period to not more than 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 40 days from posting pursuant to Rule 305.b.
- (3) At the Director's sole discretion, the comment periods identified above may be extended or re-opened for a period not to exceed 20 days.

- (4) The Director shall post notice of an extension granted under this provision on the COGCC website within 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 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.

**604.b.(1) Existing Oil and Gas Locations.** The Director may grant an exception to setback distance requirements set forth in Rule 604 within a Designated Setback Location when a Well or Production Facility is proposed to be added to an existing or approved Oil and Gas Location if the Director determines alternative locations outside the applicable setback are technically or economically impracticable; mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable; the operator has complied with the notice and consultation requirements of Rule 305A, if applicable; the proposed location complies with all other safety requirements of these Commission Rules; and: