



## COGCC OPERATOR GUIDANCE

### SB 19-181: DIRECTOR'S OBJECTIVE CRITERIA

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#### Background

Pursuant to SB 19-181, the Director may “delay the final determination regarding a permit application” if the Director determines, “pursuant to objective criteria ... that the permit requires additional analysis to ensure the protection of public health, safety, welfare or the environment or requires additional local government or state agency consultation.” This authority remains in place until the Commission completes rulemaking implementing the following statutory provisions:

- Change the COGCC mandate from fostering to regulating oil and gas in a manner that protects and minimizes adverse impacts to public health, safety and welfare, the environment, and wildlife resources resulting from oil and gas operations;
- Alternative location analysis process for oil and gas locations or facilities;
- Evaluate and address the potential cumulative impacts of oil and gas development; and
- Flowline and inactive, temporarily abandoned, and shut-in wells to the extent necessary to ensure compliance with SB 19-181.

SB 19-181 does not require the Director to delay all permit determinations until these rules are promulgated. Rather, the Director may delay specific permit determinations until the Director is satisfied that the permit complies with the intent of SB 19-181. If the Director determines that a permit meets the intent of SB 19-181, the Director may approve the permit prior to completion of the referenced rulemakings.

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## Amendments to the Director's Draft Objective Criteria

On April 19, 2019, the Director released draft Objective Criteria. Pursuant to SB 19-181, the Director made the draft Objective Criteria available for public comment. The Commission received 340<sup>1</sup> public comments, which are available on the COGCC's website. The Director's review of the comments resulted in several amendments to the draft Objective Criteria. Some comments suggested additional criteria and some comments suggested removing certain criteria. Other comments suggested refinement of the proposed criteria by making the criteria stricter, and other comments suggested refinement of the proposed criteria by making the criteria less strict. The Director and staff determined that in general the draft criteria appropriately captured the intent of SB 19-181. However, the Director added Objective Criteria No. 16, which provides that when an operator is subject to additional individual or blanket financial assurance requirements in accordance with Commission Rule 702.a., its Oil and Gas Locations will be subject to additional Director review. The Director also capitalized certain terms to cross-reference the Definitions contained within the Commission's 100 Series Rules.

<http://cogcc.state.co.us/documents/reg/Rules/LATEST/100Series.pdf>

## Applicability and Implementation of Director's Objective Criteria

The Objective Criteria apply to an Application for Permit to Drill (Form 2), an Oil and Gas Location Assessment (Form 2A), a Request to Vent or Flare Permit (Form 4), an Intent to Plug Permit (Form 6), and a Centralized E&P Waste Management Facility Permit (Form 28). If a permit meets one or more Objective Criteria, it will be subject to additional review by the Director and staff pursuant to SB 19-181. It is the intent of the Objective Criteria review process to allow the Director, the applicant and, where appropriate, other stakeholders, the opportunity to engage in a timely and constructive dialogue to ensure permit compliance with SB 19-181. The process by which this will occur is generally as follows:

1. Staff reviews the permit and any proposed Best Management Practices ("BMPs") and Conditions of Approval ("COAs") to ascertain whether the permit satisfies SB 19-181's requirements, which can include whether the permit "requires additional local government or other state agency consultation."

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<sup>1</sup> One public comment was not published because of its use of profane and threatening language.

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2. If the permit satisfies SB 19-181 and does not require additional local government or state agency consultation, staff will recommend to the Director that the permit be approved.
3. If the permit does not satisfy SB 19-181 or requires additional local government or state agency consultation, staff will either:
  - a. work with the applicant to develop additional analysis or permit BMPs or COAs that would satisfy SB 19-181 and, following this work, recommend to the Director that the permit be approved; or
  - b. in complex situations work with the Director to develop a process for engaging with the applicant and other stakeholders, if appropriate, or with the local government or state agency, to address SB 19-181's requirements. Staff will then timely communicate with the operator and other stakeholders (if any).
4. Staff and the Director will meet weekly, and as necessary, to discuss permits identified for additional review pursuant to the Objective Criteria.

Staff continues to prioritize review of Form 2s and 2As based upon the operator's priority list. Thus, the Objective Criteria will primarily be applied against priority permits. The Director encourages operators to review the priority lists submitted to the COGCC to determine whether any of the priority permit requests meet one or more of the Objective Criteria. If an operator finds that one of its pending permit applications does meet one or more Objective Criteria, coming to staff with additional analysis, information, or proposed solutions would be helpful and well received. The sooner operators engage in discussions with staff on pending permit applications that meet one or more Objective Criteria the sooner staff can begin working with the operator to determine how to address the Objective Criteria. The Director and staff plan to undertake the Objective Criteria review analysis in a timely and efficient manner and encourage operators and other stakeholders, including local governments and state agencies, to do the same.

Staff is also reviewing all previously received local government and state agency comments to pending Form 2s and 2As. Resubmission of these comments to staff is unnecessary. A local government, a Local Governmental Designee, or state agency may contact Commission staff directly with any new requests for consultation,

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comments, or additional information regarding any Form 2 or 2A in their jurisdiction that is currently in process or on hold for review. Additional requests for consultation, comments, or additional information, should be directed to the COGCC Local Government Liaison or Oil and Gas Location Assessment Specialist responsible for the technical review of the Form 2A. Finally, if a municipality affirmatively elects in writing, Oil and Gas Locations that are subject to Objective Criteria Nos. 2 or 3 may be exempt from these Criteria. The Director will still apply Objective Criteria No. 3 to Oil and Gas Locations within 1,500' of a platted subdivision or county boundary.

This is a guidance document, not a formal rule. The purpose of this guidance document is to inform all interested stakeholders of the Director's interpretation of, and expectations concerning, the administrative changes necessary to implement SB 19-181. Interpretative rules or general statements of policy, such as this guidance document, are not meant to be binding as rules under the State Administrative Procedure Act. § 24-4-103(1), C.R.S.

Operators, counsel and members of the public are encouraged to contact Hearing Officer Elias Thomas at [elias.thomas@state.co.us](mailto:elias.thomas@state.co.us) with questions or comments concerning this Guidance. Hearing Officer Thomas will collect this information and staff and the Director will review the information and update this Guidance Document on an as needed basis.

### Document Change Log

Change Date	Description of Changes
May 16, 2019	Initial Release