



COGCC OPERATOR GUIDANCE CDPHE AND COGCC STORMWATER PROGRAMS

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Overview

There will be some overlap in the CDPHE and COGCC programs related to regulating and inspecting oil and gas locations for adequate stormwater management. Both agencies believe this overlap can, and will, be managed with effective inter-agency communication. The agencies believe the two programs complement each other where stormwater quality overlap exists, as both agencies are looking for similar types of controls for stormwater discharges and do not see conflict between the programs. Meaning, the agencies do not see a situation where an operator's actions required to comply with one agency would result in noncompliance with the other agency. However, because there are additional requirements from both agencies that do not overlap, an operator complying with one agency cannot assume they are in full compliance with the other agency.

It is common for two agencies to have overlapping jurisdiction on certain programs. Examples include the following:

- BLM oil and gas permitting and state agency permitting.
- BLM inspections and COGCC inspections.
- Local government and CDPHE prohibitions on unpermitted discharges.
- Federal, state, and local control of solid waste.

It is a normal condition for there to be overlap in regulatory oversight of stormwater quantity and/or quality for all construction sectors from local land use agencies, special districts, property owners, state, and federal government. Because this is a common occurrence, regulatory programs have been developed to allow for flexibility to account for this overlap.

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Program Objectives

CDPHE

CDPHE's stormwater program objective is to ensure surface water quality is not impacted by sediment and pollution runoff from locations disturbed by construction activities, including oil and gas locations. CDPHE's stormwater program objectives start with the commencement of land disturbing activity and ends once the location achieves stabilization per the permit requirements.

Because of this, CDPHE's emphasis is on the adequacy of the documented best management practices (BMPs) to protect water quality and the review is detailed in nature to that end.

COGCC

COGCC's stormwater program objectives are more general in nature and, due to requirements in the Oil and Gas Conservation Act, focus on more than maintaining surface water quality. Specifically, COGCC's program includes the following objectives:

1. Surface water quality.
2. Minimize erosion and limit site degradation.
3. Ensure surface can be properly reclaimed.
4. Minimize alterations of natural features.
5. Minimize adverse impacts to wildlife.

COGCC's program starts when construction of an oil and gas location begins and ends when final reclamation is passed.

Because of this, COGCC will perform a more general and high level review not going into the details on any one item.

Inspection Methodology

CDPHE

CDPHE's inspection process is directed towards the adequacy of the stormwater management plan, adequate site design, and pollution prevention. CDPHE's inspection is a detailed review of the documentation and location and includes the following:

1. Review of the operator's stormwater management plan and self-inspection documentation.
2. Review of BMP site-specific design to ensure appropriate implementation (e.g., adequate sizing).

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3. Review of BMPs for proper maintenance and installation.

CDPHE requires operators to design and implement BMPs in compliance with the permit at all times, including maintaining an up to date plan. This often requires that operators conduct site inspections at a frequency greater than the 14-day minimum, especially during active construction.

The CDPHE compliance process for construction stormwater is based on point-in-time inspections. Sites with findings that meet the established enforcement escalation criteria are subject to formal enforcement, including potential penalties, regardless of whether corrections are made after the noncompliance is discovered. CDPHE typically does not conduct follow-up inspections, although they may target a site or operator for future oversight based on compliance history and responsiveness of the operator.

A more detailed discussion of the CDPHE stormwater construction compliance oversight and enforcement process, including a discussion on the rationale for the process used, is included in the HB12-1119 report, available here:

<https://www.colorado.gov/pacific/cdphe/clean-water-construction-compliance-assistance-and-guidance>

COGCC

COGCC's inspection process is performance based where inspectors look for impacts on the location and work backwards to identify BMPs. If impacts are discovered, COGCC inspectors will require the operator to implement or fix appropriate BMPs but won't specify which BMPs. COGCC inspectors do not review operator's stormwater management plans.

In addition, COGCC inspectors will perform a high level review of the identified BMPs for proper maintenance and installation. However, this again is performance based looking for obviously flaws or issues, with no detailed calculations being performed to address sizing.

While the CDPHE's compliance process is based on "point-in-time" findings, the COGCC's inspection process is more like a "check and confirm" approach where inspectors may find issues, provide the operators time to resolve the issues, and then re-inspect to confirm the specific issues identified were resolved.

Management of this Jurisdictional Overlap

As stated above, the CDPHE and the COGCC acknowledge that there is some overlap between the two agencies in regulating and inspecting oil and gas locations for adequate stormwater management. The two agencies believe the two programs complement each other as both agencies are looking for the same type of controls and

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do not see conflict between the programs. However, both agencies understand that with overlap comes the responsibility to ensure proper and adequate communication exists between the agencies.

Both agencies believe issues identified by the respective agency during an inspection should remain documented on their associated inspection reports. Meaning, if the COGCC and CDPHE inspect the same location, around the same time and find the same issues, those issues will remain documented on both inspection reports.

However, both agencies strongly feel that enforcement action for those same issues on the same location should not occur by both agencies. To prevent this, the agencies have implemented the below process:

1. CDPHE will communicate to the COGCC Field Inspector supervisor before inspecting an oil and gas location inviting them to attend if desired.
2. CDPHE will contact the COGCC prior to issuing a Notice of Violation (NOV) resulting from an inspection.
3. COGCC will contact the CDPHE prior to issuing a Notice of Alleged Violation (NOAV) related to stormwater management issues.
4. Based on the above two bullets, an analysis will be done to ensure both agencies are not moving to enforcement on the same issue at the same location. If so, then one agency will not pursue enforcement.

If an inspector from one agency is finding stormwater issues on a location, and operators know the other agency recently inspected that location, they are encouraged to let that agency know this.

Finally, the CDPHE and COGCC will create a conflict resolution process where operators can escalate instances where they feel dual enforcement is occurring.

There could always be incidents where the agencies deviate from this approach, however any such deviation will still include communication and coordination between the agencies.

Process Documentation

CDPHE

CDPHE's program and inspection process is documented in the HB 12-1119 report, referenced above. Further understanding of the process and compliance expectations is best obtained through the Red Rocks community college class and well established on the stormwater permit.

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COGCC

COGCC's inspection process is documented in a standard operating practice located on the COGCC's website.

Document Change Log

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May 6, 2015	Document created and finalized

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