

**COGCC Staff's Second Draft Proposed Rules
Implementing Governor's Oil and Gas Task Force
Recommendation Nos. 17 and 20
October 23, 2015**

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 that is pending but not yet approved as of, or submitted after, the effective date. For pending applications, pre-application notices and consultations otherwise required by the rules will be waived, but applicable best management practices and mitigation measures will be required.

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 cumulative total measured depth of all new wells planned for the Location exceeds **[90,000 feet]**; 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.** No less than 90 days prior to submitting a Form 2A to the Commission and before an operator has a final contract with the surface owner for a specific location, an operator proposing a Large UMA Facility shall provide **written** Notice of Intent to Construct a Large UMA Facility to the following:
 - (1) the local government with land use authority over the proposed location of a Large UMA Facility;
 - (2) local governments with land use authority within **[1,000 feet]** of the proposed Large UMA Facility (**for purposes of this Rule 305A, "Proximate Local Governments"**); and
 - (3) the surface owner of the lands on which a Large UMA Facility is proposed.

- 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;**
 - (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;
 - (4) an offer to meet with Proximate Local Governments regarding potential best management practices for the proposed Large UMA Facility; and
 - (5) an offer to meet with the surface owner of the lands on which the operator proposes to locate a Large UMA Facility regarding siting of the proposed facility.
- 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 45** 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 Director will participate in the consultation process between the local government and the operator at the request of either.
 - (2) The surface owner's siting requests and concerns will be considered as part of the consultation.
 - (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 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) Nothing in this Rule 305A is intended to or shall be interpreted to alter, impair, or negate any existing authority a local government may have to regulate an Oil and Gas Location, so long as such local regulation is not in operational conflict with the Act or regulations promulgated under the Act. This Rule 305A.c. does not prescribe any particular form of consultation or local land use planning or approval process, nor does it limit or supersede any local government land use planning or approval process.

d. Meeting with Proximate Local Governments.

- (1) Within 20 days of receiving the Notice of Intent to Construct a Large UMA Facility, a Proximate Local Government may request a meeting with the operator and the Director to discuss potential best management practices for the proposed Large UMA Facility 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.
- (2) The Director will schedule the meeting with a Proximate Local Government upon request.
- (3) The Director will provide a written response to a Proximate Local Government's written request for specific best management practices at a proposed Large UMA Facility.
- (4) A Proximate Local Government's approval of a proposed Large UMA Facility's site is not required, nor may a Proximate Local Government be an Applicant for a hearing on a Form 2A under Rule 507.b.(7).

e. Meeting with the Surface Owner. At the request of the surface owner of the lands on which the operator proposes to locate a Large UMA Facility, the operator and Director will meet with the surface owner regarding siting of the proposed Large UMA Facility.

f. Initiating the Form 2A Process.

- (1) The Director will reject as incomplete a Form 2A submitted for a Large UMA Facility if the operator has not certified one of the following is true:

- A. the operator reached agreement regarding siting with the local government with land use authority;
- B. the local government with land use authority waived the Rule 305A procedures or did not timely respond to the Notice of Intent to Construct; or
- C. the operator complied with the requirements of subsection 305A.c. of this Rule and was unable to reach agreement with the local government with land use authority regarding siting.

(2) An operator may initiate the Form 2A process 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, and the operator provides written confirmation of the agreement to the Director in accordance with Rule 303.b.(3)K.
- B. The local government with land use authority waives the Rule 305A procedures and the operator provides written confirmation of the waiver to the Director in accordance with Rule 303.b.(3)K.
- C. The local government with land use authority fails to respond in writing within 45 days of receiving the Notice of Intent to Construct a Large UMA Facility, and the operator submits a copy of the Notice of Intent to Construct a Large UMA Facility and evidence of receipt by the local government to the Director in accordance with Rule 303.b.(3)K.

(3) If the local government and the operator engage in consultation but are unable to reach agreement regarding the location for a proposed Large UMA Facility and the local government rejects the offer to mediate or the mediation does not result in an agreement regarding a proposed Large UMA Facility's site, the operator may initiate the Form 2A process with its preferred site.

- A. After the Director's technical review is complete, the Director will notice the Form 2A for a Commission hearing. 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 Section 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.
- B. 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 will be the respondent.

600 Series

604.c.(4) Large UMA Facilities. Large UMA Facilities should be built 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. **No best management practice, mitigation measure, or condition of approval required pursuant to this Rule 604c.(4) is intended to or shall be interpreted to alter, impair, or negate any existing authority a local government may have to regulate an Oil and Gas Location, so long as such local regulation is not in operational conflict with the Act or regulations promulgated under the Act.**

A. 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.

B. Required Mitigation Measures. The following mitigation measures will be imposed as permit conditions on all Large UMA Facility Oil and Gas Location Assessment Permits to effectively mitigate potential impacts to public health, safety, and welfare, including the environment.

- i. All Rule 604.c.(3).B 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.

ii. The Director, in consultation with the operator, will impose a time limit on the duration of drilling, completion, and stimulation operations for the location, measured from the move-in-rig-up date to the last day of stimulation operations. In establishing the duration limit, the Director will consider site-specific conditions, including but not limited to: the distance to and number of nearby Residential Building Units; operational features such as the number, horsepower, and fuel source of engines and generators anticipated to be in use; whether stimulation operations will occur on-site or remotely; stimulation water sources and delivery; and volume of heavy truck traffic to and from the location during drilling, completion, and stimulation operations. The Director will to grant a one-time extension of the duration limit, not to exceed 30 days, for bona fide, unexpected technical difficulties or force majeure conditions. The Director may confer with local governments that receive notice of a Large UMA Facility pursuant to Rule 305A, and the surface owner concerning the duration limit.

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, 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.
- iv. Remote stimulation operations.

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.

D. The Director retains discretion to require conditions of approval to address site-specific conditions other than those identified in subsection 604.c.(4)C., above, at any Large UMA Facility.

- E. Nothing in this Rule 604.c.(4) shall be construed to limit the Director's discretion to impose conditions of approval on a Form 2A for any Oil and Gas Location based on site-specific conditions.

Recommendation No. 20

300 Series

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

1. When used in this subpart, "local jurisdiction" means a home rule or statutory city, town, territorial charter city, or city and county.
2. Beginning on March 1, 2016, all operators that have filed a Form 1 with the Commission shall register with the Local Governmental Designee ("LGD") of each local jurisdiction in which it has current or planned oil and gas operations.
3. An LGD may request any operator registered within its jurisdiction to provide the following information to the LGD 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 **[,including the jurisdiction's growth management area]. [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 **[,including the jurisdiction's growth management area,]** 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 estimates requested pursuant to this subsection 3 using reasonable business judgment based on information known to the operator at the time the estimates are submitted. Estimates provided by the operator may be 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 the 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 received the pre-application notice required by Rule 305.a.(1).
- ii. For a Large UMA Facility, the operator shall certify on the Form 2A that it complied with Rule 305A, or that the local government with land use authority waived the notification and consultation procedures in Rule 305A.a.(1) and 305A.c. The operator shall also submit evidence that the Proximate Local Government received the Notice of Intent to Construct a Large UMA Facility no less than 30 days prior to the operator's Form 2A submittal.

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 thirty 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 sixty days.

(2) Request for Hearing.

A. An operator may request a hearing before the Commission on a permit application if the Director has not issued a decision on:

- i. An Application for Permit-to-Drill, Form 2, within seventy-five (75) days of a determination that the application is complete;

- ii. An Oil and Gas Location Assessment, Form 2A, for a Location that is not a Large UMA Facility within seventy-five (75) days of a determination that the application is complete; or
 - iii. An Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility within one hundred fifty (150) days of a determination that the application is complete.
- B. 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 Section 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.(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. If the local government and operator have reached agreement regarding the site for a proposed Large UMA Facility in accordance with Rule 305A, the notice requirement of this subpart does not apply.

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 twenty (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 twenty (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 five hundred (500) feet of a Building Unit, the Director shall extend the comment period to not more than forty (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 forty (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 twenty (20) days.
- (4) The Director shall post notice of an extension granted under this provision on the COGCC website within twenty-four (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 fourteen (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: