



COGCC OPERATOR GUIDANCE

SB 19-181: HEARINGS AND PERMITTING GROUPS

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Last Updated By:	Jeff Robbins
Document Owner:	Jeff Robbins

Background:

On April 3, 2019, the Senate passed SB 19-181. The Governor signed SB 19-181 into law on April 16, 2019. SB 19-181 ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment and wildlife resources. SB 19-181's amendments to the Oil and Gas Conservation Act ("Act") are effective as of April 16, 2019, the date the Governor signed the bill into law.

SB 19-181 provides that the amendments to the Act apply to conduct occurring on and after April 16, 2019, and include permit and hearing applications pending before the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC"). The Commission has prepared this guidance to explain how the hearings and permitting units will process pending and new applications in consideration of SB 19-181. Specifically, this guidance addresses Application for Permit to Drill (Form 2), Oil and Gas Location Assessment Permit (Form 2A), Request to Vent or Flare (Form 4), Intent to Plug (Form 6), Centralized E&P Waste Management Facility Permit (Form 28), pooling applications, drilling and spacing unit applications, and comprehensive drilling plans.

This guidance sets forth an efficient and reasonable approach to ensuring that the Commission and the regulated community are following SB 19-181's mandate. As a starting point, the Director, in accordance with SB 19-181, has developed and made available for public comment Objective Criteria to apply when considering whether a permit requires additional analysis to ensure the protection of public health, safety, welfare or the environment. These Objective Criteria will be the lodestar for considering whether permits, drilling and spacing unit applications, and comprehensive drilling plan applications meet SB 19-181's mandate. Once the Commission completes the rulemakings required by SB 19-181, this guidance will be withdrawn.

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This is a guidance document, not a formal rule. The purpose of this guidance document is to inform all interested stakeholders of the Commission's interpretation of, and expectations concerning, the implementation of 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 Commission staff with questions concerning this guidance.

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Form 2 and Form 2A

Before an operator may drill a well, they must have an approved Form 2 and Form 2A. SB 19-181 requires that any permit necessary to drill an oil and gas well must include proof that the applicant sought a local government siting permit and the disposition of that permit application, or that the local government does not have siting regulations. To meet SB 19-181's requirements, all pending and future Form 2s and Form 2As must indicate:

1. whether the applicant has applied for a siting permit from the local government with jurisdiction over the siting of the proposed oil and gas location and the local government's disposition on the permit, or
2. that the local government does not have siting regulations.

As of April 16, 2019, operators must certify on all submitted Form 2 and Form 2A applications that they have applied for a local government siting permit, if applicable, and must indicate the local government's disposition on that siting permit application. Local government "disposition" as used in SB 19-181 is determined by the Director to mean a final determination by the local government.

COGCC electronic forms will be updated to allow for entry of this additional information on new permit applications. For all Form 2 and Form 2As pending on April 16, 2019, staff will request additional information from operators, which may include 1) identifying the local government with jurisdiction over the siting of the development, 2) specifying whether the local government has oil and gas location siting regulations, 3) indicating whether a siting application has been filed, if applicable, and 4) noting the disposition of that application. Once the operator completes and returns that spreadsheet to the COGCC, staff will enter that information into each pending Form 2 and Form 2A.

This guidance document establishes the following processes for Form 2 and Form 2As.

- If a siting permit application has not been filed with the local government because the local government does not have siting rules, staff will continue to process the pending Form 2 or 2A in accordance with SB 19-181's mandate, including the Director's Objective Criteria.
- If a siting permit application has been filed and the local government's disposition is known (i.e. approval or denial), staff will continue to process the pending Form 2 or 2A in accordance with SB 19-181's mandate, including the Director's Objective Criteria.

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- If a siting permit application has been filed with the local government, but no disposition of the permit has been made, staff will wait until there is a disposition of the permit before it continues to process the pending Form 2 or 2A in accordance with SB 19-181's mandate, including the Director's Objective Criteria.
- If a siting permit application has not been filed with the local government with local siting regulations, staff will not process a Form 2 or 2A until the local government permit has been applied for and the disposition of that permit is known.

Please note, Form 2s filed to deepen an existing well, sidetrack an existing well, or recomplete an existing well are exempt from this requirement since the well location at issue has already been approved and drilled.

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Pooling Applications

SB 19-181 amended the pooling provisions in § 34-60-116, C.R.S. Specifically, SB 19-181 requires that any statutory pooling application must provide that the applicant “owns, or has secured the consent of the owners of, more than forty-five percent of the mineral interests to be pooled.” § 34-60-116(6)(b)(I), C.R.S. Further, SB 19-181 requires that the Commission may not enter a pooling order unless it has been demonstrated that the lease offer was made in “good faith.” § 34-60-116(7)(d)(I), C.R.S.

To meet SB 19-181’s requirements, the pooling application must include sworn testimony that:

1. the applicant owns, or has secured the consent of the owners of, more than forty-five percent of the mineral interests to be pooled. However, mineral interests that are owned by a person who cannot be located through reasonable diligence are excluded from the calculation; and
2. all lease offers were made in good faith.

Applicants must meet SB 19-181’s pooling requirements in addition to the other existing pooling requirements set forth in the Act and the Commission’s Rules.

For all pending, unapproved pooling applications, including those submitted prior to the effective date of SB 19-181, supplemental sworn testimony must be filed to address whether the applicant owns or has secured the consent of more than forty-five percent of the mineral interests to be pooled and whether the lease offers were made in good faith.

Going forward all new pooling applications must include this sworn testimony with the application. For any pending pooling application, the sworn testimony must be submitted no later than May 28, 2019. If the hearings staff does not receive sworn testimony by May 28, 2019 for an already filed application, the pooling application will be withdrawn. If an application is withdrawn, the applicant may re-file the pooling application.

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Drilling and Spacing Unit Applications

SB 19-181 amended the drilling and spacing unit provisions in § 34-60-116, C.R.S. Specifically, SB 19-181 requires that any drilling and spacing unit application must include proof that a local government siting permit was applied for and the disposition of that permit application, or that the local government does not have siting regulations.

SB 19-181 further provides that all orders of the Commission establishing a drilling and spacing unit are subject to Section 2.5(a). § 34-60-116(3)(a), C.R.S. Section 2.5(a) states that the “Commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, welfare, the environment and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource.” § 34-60-106(2.5)(a), C.R.S.

In addition to the Commission’s current drilling and spacing unit application requirements concerning geologic, land and engineering testimony, applicants must now comply with the new SB 19-181 requirements. To meet SB 19-181’s requirements, all pending and future applications must include sworn testimony that:

1. the applicant has applied for a siting permit from the local government with jurisdiction over the oil and gas location and the local government’s disposition on the permit, or that the local government does not have siting regulations; and
2. demonstrates compliance with § 34-60-106(2.5)(a), C.R.S.

For all pending applications, this sworn testimony should be submitted to the hearings unit as soon as it is available. Until the hearings unit receives this sworn testimony it is unable to proceed with processing pending drilling and spacing unit applications.

When considering whether a drilling and spacing unit application satisfies SB 19-181’s public health, safety, welfare, environment and wildlife mandate, hearing staff will consider whether any of the Director’s Objective Criteria are present or implicated in the proposed application.

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Comprehensive Drilling Plans

The Act establishes that operators may “utilize comprehensive drilling plans and geographic area analysis strategies to provide orderly development of oil and gas fields.” § 34-60-106(11)(a)(I)(A), C.R.S. In Rule 216, the Commission has established a process by which operators can propose Comprehensive Drilling Plans (“CDPs”). The purpose of a CDP is to provide the Commission and operators the opportunity to consider oil and gas development in a more holistic manner. The regulatory review process of a CDP follows that of a Form 2A. See Rule 216.f.(1), (“... the Comprehensive Drilling Plan [will be] subject to procedures substantially equivalent to those required for a Form 2A...”).

Because the CDP review process follows that of a Form 2A, the Commission will apply the Director’s Objective Criteria to any pending or proposed CDP application. Specifically, the Commission will consider whether a CDP application satisfies SB 19-181’s public health, safety, welfare, environment and wildlife mandate. If the Director determines that a CDP meets SB 19-181’s mandate, the Director may find the CDP suitable and recommend that the application be brought before the Commission for consideration. If the Director determines that Commission consideration of the CDP does not meet SB 19-181’s mandate, the Director may delay final determination as to whether the CDP is suitable under Rule 216.d.(4).