This Notice to Operators (“NTO”) documents how COGCC will implement Rule 1003 for both new and existing locations with delayed operations. COGCC may pursue enforcement for the failure to comply with the procedures outlined below based on a violation of Rule 1003.

Delayed operations may occur in the following scenarios: (1) an operator constructs a multi-well location but only drills or completes a portion of the planned wells; (2) an operator drills the wells but delays completion of the wells; (3) an operator constructs a well location but does not drill any wells; or (4) an operator constructs a production facility location but does not install any facilities.

This NTO is not applicable to an operator’s request for a variance on behalf of a surface owner, which is addressed in “COGCC Operator Guidance: Rule 1001.c.: Reclamation Variances and Waivers.”

I. Clarification of Interim Reclamation Terms

These terms are used in Rule 1003, but are undefined in the Rules. COGCC interprets these terms as follows and will apply these interpretations in the enforcement of Rule 1003:

a. “Areas reasonably needed for production operations” includes the areas immediately around preset conductors, wellhead equipment, prime movers, production tanks, separation equipment, air pollution control and treatment equipment, meter stations, LACT units, and lease roads. This term also includes the areas required for trucks to safely access the location to empty tanks and the areas necessary to support a workover rig. Areas reasonably needed for production operations are referred to in this NTO as “Production Areas.”

b. “Drilling or subsequent operations”, “subsequent drilling operations”, and “such operations” include the following activities: site construction, setting conductors, drilling, completion, hydraulic fracturing, flowback, drill-out and running of tubing, and facilities installation. These activities are referred to collectively as “Operations” in this NTO.

c. “First favorable season” refers to the first ecological planting season.

d. “Germination” is the process by which a plant starts to grow from a seed, not full vegetative cover.

e. “Uniform vegetative cover” requires uniform germination within a reasonable time period, which will depend on the season the seed was planted and the weather conditions since seeding.
II. Clarification of Interim Reclamation Commencement

Rule 1003.b. requires the following for the commencement of interim reclamation:

a. If future Operations are not planned in 12 months, interim reclamation must commence three months after the conclusion of Operations on crop land and six months after the conclusion of Operations on non-crop land.

b. If future Operations are planned and commenced within 12 months, interim reclamation must commence three months after the conclusion of the future Operations on crop land and six months after the conclusion of the future Operations on non-crop land.

c. If future Operations were planned, but not commenced, within 12 months, an operator will not have an additional three or six months to commence interim reclamation. An operator will be considered in violation of Rule 1003.b. at the expiration of the 12-month period unless it has commenced interim reclamation or has submitted an Interim Reclamation Variance Request prior to expiration of the 12-month period.

III. Clarification of Interim Reclamation Completion Standards

The combination of Rules 1003.b., 1003.e.(1), and 1003.e.(2) requires the following for completion of interim reclamation:

a. Interim reclamation on Production Areas requires stabilization and maintenance of the area by compaction, coverage, paving, or other methods to minimize dust and erosion. The establishment of uniform vegetative cover is also an effective method of stabilization.

b. Interim reclamation on land other than Production Areas requires the establishment of uniform vegetative cover.

Non-noxious weeds can impede or delay the revegetation required by Rule 1003.e.(2).

IV. Interim Reclamation Procedures for New and Existing Locations with Delayed Operations

New locations refer to locations constructed after [effective date of this NTO]. Within three months on crop land and six months on non-crop land, operators of new locations will either perform interim reclamation or complete the procedures described below.

Existing locations refer to locations constructed prior to [effective date of this NTO]. Within six months of [effective date of this NTO], operators of existing locations will either perform interim reclamation or complete the procedures described below.

A valid Form 2, Application for Permit to Drill, does not extend the time for commencing interim reclamation under Rule 1003 for either new or existing locations.
Operators may request a variance for an extension of up to five years for complying with Rule 1003.b. (commencement of reclamation), 1003.d. (drilling pit closure), or 1003.e. (restoration and revegetation) on a Form 4, Variance Request, for the location ("Interim Reclamation Variance Request").

The following is the minimum information on the Form 4 necessary for the Director to evaluate whether to approve the Interim Reclamation Variance Request:

a. The length of the requested extension (not to exceed five years);

b. The surface owner’s written consent to the extension, including consent to the duration of extension;

c. A description of the operational reasons for the delay of interim reclamation;

d. A schedule of planned Operations for the duration of the extension;

e. A statement attesting that the location is currently in compliance with Rule 1002.f., Rule 1003.a., and Rule 1003.f.;

f. An estimate of the cost to perform interim reclamation, prepared by a qualified third party consultant; and

g. An executed COGCC Operator Rule 1003 Tolling Agreement, which is attached to this NTO.

If the Interim Reclamation Variance Request is approved by the Director, it will include the following conditions of approval:

a. The operator will comply with all applicable rules for which the variance is not granted, including, but not limited to, Rule 1002.e. and Rule 1002.f.

b. The operator will post a sign with the following statement at the location: “A COGCC variance has been approved to delay the commencement of interim reclamation to no later than MM/DD/YY.”

Upon approval of the Interim Reclamation Variance Request, COGCC will execute the COGCC Operator Rule 1003 Tolling Agreement and attach this Agreement to the approved Variance Request.

Unless extraordinary circumstances exist, the Director will not approve a second Interim Reclamation Variance Request for that location.

Interim Reclamation Financial Assurance as a Condition of Approval

The Director may condition the approval of an Interim Reclamation Variance Request on the posting of additional financial assurance for the location ("Interim Reclamation Financial Assurance"). In these cases, the Director will petition the Commission for Interim Reclamation
Financial Assurance pursuant to Rule 702.a. The presumptive amount of the Interim Reclamation Financial Assurance will be the cost of performing interim reclamation, as estimated by a qualified third party.

Release of Interim Reclamation Financial Assurance

Operators will perform all the activities required for successful interim reclamation within the timeframe in the approved Interim Reclamation Variance Request. These activities include, but are not limited to: cross ripping the ground, planting seed, stabilizing the site, and protecting the seed while vegetation is established (e.g. straw mulch). If the required activities are not performed pursuant to the approved Interim Reclamation Variance Request, COGCC may pursue enforcement and/or claim the bond and commence reclamation.

Upon performance of all activities required for successful interim reclamation, the operator may request an interim reclamation inspection and the release of the Interim Reclamation Financial Assurance. COGCC will release the Interim Reclamation Financial Assurance if the inspection is satisfactory.

The purpose of this guidance document is to inform all interested stakeholders of the COGCC’s interpretation of, and expectations concerning, the COGCC rules discussed herein. Interpretative rules or general statements of policy are not meant to be binding as rules under the Administrative Procedures Act. § 24-4-103(1), C.R.S.