

April 29, 2019

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RE: SB 19-181 Draft Required Director Objective Criteria

Jeff Robbins  
Director  
Colorado Oil and Gas  
Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

Dear Director Robbins:

I am writing on behalf of American Petroleum Institute, d/b/a Colorado Petroleum Council (CPC), to provide comments on the Draft Objective Criteria proposed by the Director and staff of the Colorado Oil and Gas Conservation Commission (Commission or COGCC) on April 19, 2019. CPC appreciates the timely proposal of Objective Criteria and the opportunity to comment on those criteria. CPC looks forward to working with the Commission staff to finalize these criteria and in their implementation.

CPC has several general comments on the proposed criteria. First, CPC understands and appreciates that the criteria will be used to identify those pending permit applications that require additional review or stakeholder input but that if the Director determines a permit meets the intent of SB 19-181, the Director may approve the permit prior to the completion of several mandatory rulemakings. It would be helpful for the Director and staff to set out their view of the legislation's intent and the practical steps that operators should take to ensure their permits satisfy the intent of SB 19-181. Similarly, in the case of permits the Director determines cannot be finalized, CPC believes that simple fairness will require that the staff and Director provide a reasoned explanation for that decision. Otherwise, it will be impossible for the affected operator, and other operators, to conform their applications to the intent of SB 19-181.

Second, CPC has a number of questions about the proposed criterion that would identify for additional review any permit application that includes one or more locations within 1,500 feet of a building unit or high occupancy building. We would appreciate an explanation of how the staff derived this number and the role it will play going forward. For example, surface owners often have strong feelings about the selection of locations, even though those locations may be closer to occupied dwellings than 1,500 feet or even 1,000 feet. We hope that surface owner preferences will be taken into consideration.

Third, CPC understands the rationale for reviewing pending Form 2As, since those provide a comprehensive view of the surface development that is proposed by an operator. However, CPC is less clear on the purpose for review of Form 2s, since they focus principally on the downhole aspects of development as opposed to surface development. We would appreciate an explanation of how the proposed criteria will be applied to Form 2s. We are particularly concerned about the role of agency and stakeholder engagement in review of Form 2s, which are not intended to and do not address the surface aspects of development. We have similar questions about whether, and how the criteria would be applied to drilling and spacing applications (DSUs), which typically do not even identify a location. We are anxious to work with you in defining how the Commission's and local governments' permitting processes can address DSUs as well as how the Objective Criteria will apply at this very early stage.

Fourth, while CPC understands there will be circumstances where stakeholder engagement will be appropriate, CPC would appreciate some clarification of what the phrase "appropriate stakeholder" might entail. We have already expressed our questions about application of the proposed criteria to Form 2s; we also have questions about who might be "appropriate stakeholders" in review of Form 2s, as opposed to Form 2As.

Fifth, CPC acknowledges that in general states may apply appropriate environmental regulations to oil and gas development on federal lands. However, that authority does not extend to regulating locations that are the subject to an application for permit to drill (APD) that is being considered by a federal land management (FLM) agency. Such an APD will have been the result of a series of increasingly site-specific land use planning exercises on the part of the FLM and falls within the FLM's authority. The Memoranda of Understanding executed by the Colorado Bureau of Land Management and the Commission appear to affirm that distinction.

Sixth, we understand that pending CDPs must meet the requirements of SB 19-181. Yet by their very nature, CDPs receive intensive review by Commission staff, the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, affected local governments, and the public. In addition, CDP applicants still must file Form 2As for review by Commission staff. Finally, CDPs must be approved by the full Commission. The process is, as noted above, intensive. It is also lengthy. In light of this, it seems to us that it is unnecessary and duplicative to subject CDPs suitability to additional review over and above the review they already must undergo.

Finally, the text that accompanied the proposed criteria stated that "it is the intent of the Objective Criteria review process to allow the Director, the applicant, and where applicable other stakeholders, the opportunity to engage in a timely and constructive dialogue to ensure permit compliance with SB 19-181." CPC strongly encourages the development of a timeline for these consultations to encourage all parties to engage promptly and productively.

*Criterion 1. Locations Within 1,500 Feet of a Building Unit or High Occupancy Building*

We have already expressed our concerns about this criterion and would appreciate an explanation of how the staff derived this number and the role it will play going forward. At a minimum, CPC believes the staff should explain the derivation of this number and better explain how the 1500 foot criterion will be used in various circumstances.

*Criterion 2. Locations Within a Municipality. Criterion 3. Locations Within 1,500 feet of a Municipal Boundary, Platted Subdivision, or County Boundary. Criterion 10. Locations Where the Relevant Local Government, or State or Federal Agency Requests Additional Consultation*

Criterion 2 and 3 appear to duplicate proposed Criterion 10, which provides that additional review will occur when the “relevant local government” requests additional consultation. CPC suggests that these criteria could be collapsed in favor of cases where a local government requests additional process. At the same time, CPC cautions the staff that proposed Criterion 10 may inadvertently induce conflict between the local government with siting authority (defined by Commission regulations as the “relevant local government”) and another local government that asserts it is “affected.” One solution would be to clarify that these criteria apply only when a surface location would be situated within a municipality, or within a specified distance of a municipality, county boundary, or platted subdivision.

*Criterion 4. Locations Within 2,000 Feet of a School Property Line*

CPC is disappointed to see that the staff is proposing to require additional review if a proposed facility is within 2,000 feet of a school property. A broad range of stakeholders reached consensus late in 2018 on provisions for notice to schools, school facilities, and child care centers. The notice rule adopted as the result of that stakeholder process is comprehensive and addresses situations that a simple reference to a school property line in all circumstances does not. CPC submits that using different notice requirements as part of the Objective Criteria will simply create confusion without enhancing protection of public health, safety, and the environment.

CPC urges that the staff honor the results of that stakeholder process and rulemaking and limit additional review to any proposed locations within 1,320 feet of

- (i) The property line of a parcel currently owned by the school, child care center, or school governing body as identified through county assessor records;
- (ii) The property line of a parcel considered a future school facility as identified on the final approved plat that may be obtained from the planning department of the relevant local government;
- (iii) What reasonably appears to be a school facility (regardless of property

ownership) based on the operator's review of current aerial maps that show surface development or surveys in the area.

*Criterion 5a. Locations Within (a) a Floodplain*

To avoid confusion, CPC suggests that the staff relate the term "floodplain" to the definition of that term in the Commission's regulations. CPC also would appreciate an explanation of whether application of the Objective Criteria would utilize COGCC rules 603.g and 603.h. in evaluating siting near or in floodplains or whether a different analysis will be applied. In addition, CPC calls to staff's attention the fact that some local governments use different standards and criteria for determining whether a location is in a floodplain. For example, Weld County uses a flood hazard development permit. The Commission's own Form 2A allows the applicant to select from one of four Floodplain Data Sources in determining whether a location is in a floodplain. CPC suggests that deference to local government is warranted in assessing proximity to a floodplain.

*Criterion 5c. Sensitive Area for Water Resources*

To avoid confusion, CPC suggests that the staff relate the term "sensitive area for water resources" to the definition of "sensitive area" in the Commission's regulations.

*Criterion 6. Locations Within Mapped Restricted Surface Occupancy Areas (RSO) and Sensitive Wildlife Habitat (SWH)*

The maps of RSO and SWH formally adopted by the Commission are outdated but are still used in some cases. In other cases, such as in preparation of CDPs, operators are using the most recent wildlife overlays provided by Colorado Parks and Wildlife at that agency's request. In still others, operators develop wildlife mitigation plans in cooperation with Colorado Parks and Wildlife. The staff should clarify that these alternative approaches are acceptable.

*Criterion 8. Locations With More Than 18 Tanks or 5,200 Barrels of Hydrocarbon or Produced Liquid Storage*

We are unclear of the intent of this criterion and the derivation of the limit of 5,200 barrels. CPC would appreciate an explanation of this criterion's purpose, especially since any facility within 1,500 feet of a building unit or high occupancy building unit will be flagged by Criterion 1. As such, these criteria appear to be duplicative. Moreover, we are unclear why this criterion would apply in rural areas, or why this criterion differs so markedly from the criteria for a Large Urban Mitigation Area. We also want to emphasize that this criterion could have the unintended effect of discouraging consolidation of facilities to minimize surface disturbance. Finally, in the interest of

efficiency, we suggest that COGCC eliminate the reference to tank numbers and focus exclusively on storage capacity.

*Criterion 9. Locations Where the Operator Does Not Have Surface Use Agreement*

For the reasons stated below, CPC believes this criterion is inapposite and should be removed. To the best of our knowledge, the presence or absence of a surface use agreement has no bearing on protection of public health, safety, welfare, the environment, and wildlife resources. In addition, we do not read SB 19-181 to have amended any of the surface owner provisions of the Act. As a result, the Reasonable Accommodation Act remains the governing law. Colo. Rev. Stat. 34-60-127. We also want to point out that in cases where the surface owner also is the owner of the mineral estate and has executed a lease, the lease typically provides for a location. In those cases, a surface use agreement is not necessary. Finally, we also note that COGCC's *Onsite Inspection Policy Where the Oil and Gas Location is Not Subject to a Surface Use Agreement* provides a surface owner up to ten business days after the first day of Rule 306 surface owner consultation to request the COGCC to conduct an onsite inspection if the surface owner requests. The Director is required to withhold approval of the permit until the expiration of the ten-day period and may impose additional conditions of approval.

*Criterion 12. Locations With an Access Road Within 200 Feet of a Building Unit on Lands not Subject to a Surface Use Agreement*

CPC would appreciate additional explanation of this proposed criterion as it is unclear under what circumstances it would potentially apply. For example, is it intended to apply to public roads? Is it intended to apply to public or non-public roads where the road is not subject to a surface use agreement or where the Building Unit is located on an adjacent tract which is not subject to a surface use agreement? If it is intended to apply to instances where a Building Unit is on adjacent lands not subject to a Surface Use Agreement, there is a potential for unintended consequences if an operator selects a less direct access road.

*Criterion 15. An Intent to Plug for (a) a Location Within 1,500 Feet of a Building Unit or High Occupancy Building Unit, or (c) a Well Subject to a Stray Gas Investigation*

CPC is very concerned about the potential for unintended and adverse consequences that could flow from delaying proposals to plug a well. Wells that are within neighborhoods and are designated to be plugged should be a high priority and plugging operations should be expedited, not delayed. Many operators have significant programs in place to identify and plug and abandon wells. They have workover rigs under contract under a schedule that maximizes the number of wells that can be plugged. They rely upon expeditious approval of Form 6s in order to meet those schedules. If approval of a Form 6 for a particular site is delayed, the workover rig may have to be moved to the next well

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in the schedule, even if the well being passed over has a higher priority. If the staff retains this criterion, CPC strongly encourages the staff to develop an expedited process for approving Form 6s, perhaps with standard best management practices or conditions of approval for wells in urban or suburban neighborhoods. Similarly, CPC submits that a Form 6 submitted to conduct a stray gas investigation is precisely the kind of proposal that should be expedited, given the potential for adverse impacts to public health and the environment. CPC urges the staff to develop a process for quickly and efficiently processing such applications.

As I stated at the outset, CPC appreciates the opportunity to offer these comments. We recognize that you and the Commission staff are working on an abbreviated schedule and CPC stands ready to assist you and the Commission staff in any way we can as you work to implement SB 19-181.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike Paules", with a stylized flourish at the end.

Mike Paules  
Associate Director  
Colorado Petroleum Council

CC. Julie Murphy, Department of Natural Resources  
Mimi Larsen, COGCC