



PO Box 89
Grand Junction, CO 81502

760 Horizon Drive, Suite 100
Grand Junction, CO 81506

Phone 970.733.2198
www.WSCOGA.org

FOR DELIVERY BY ELECTRONIC MAIL

<https://cogcc.state.co.us/comments/view>
jeff.robbins@state.co.us

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:

The West Slope Colorado Oil & Gas Association (WSCOGA) submits this letter to provide public comment on the Colorado Oil and Gas Conservation Commission's (COGCC) draft Objective Criteria (April 19, 2019). WSCOGA represents operators in the Piceance basin in the west slope of Colorado. WSCOGA looks forward to working with the Commission and its staff to finalize these criteria.

The Objective Criteria being proposed will delay nearly all WSCOGA member's pending and future permit applications because they meet one or more of the draft Objective Criteria, creating uncertainty, regulatory inefficiency, and serious legal implications on federal lands. This draft Objective Criteria thus compounds the existing permitting backlog and severely burdens the administrative capacities of the COGCC.

WSCOGA has outlined general and specific concerns below. WSCOGA has introduced its specific concerns in the order used by the draft Objective Criteria and not necessarily in the order of importance to WSCOGA. However, we urge the COGCC to address the federal land permitting as a top priority for the west slope.

General Concerns Regarding Applicability of Objective Criteria

WSCOGA has questions and recommendations about the applicability of the draft Objective Criteria. Specifically, WSCOGA believes permits involving federal surface locations should be exempt from the Objective Criteria, as the federal government already has an extensive siting process for oil and gas locations and facilities proposed to be located on federal lands. This process includes specific federal regulations on mineral leases that delays would place operators in jeopardy.

We refer you to the 2009 Memorandum of Understanding (MOU) with COGCC, the Bureau of Land



PO Box 89
Grand Junction, CO 81502

760 Horizon Drive, Suite 100
Grand Junction, CO 81506

Phone 970.733.2198
www.WSCOGA.org

Management and US Forest Service that specifically details the permitting coordination for federal drilling permits. We also refer you to two prior cases, the first being Cause No. 1R, Docket No. 803-RM-02 dated 2008 before the COGCC that provided the basis for a federal preemption from state statutes. Secondly, the Commission's siting analysis regarding a proposed location on federal lands infers federal land use planning, where such state involvement in federal land use planning is preempted. *See California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987).

WSCOGA also believes that the Objective Criteria should not apply to locations approved in Comprehensive Drilling Plans (CDP). Because the concerns raised by the Objective Criteria will have already been reviewed by the Director and addressed in the approval of the overarching CDP, it is not necessary to subject a specific Location within an approved CDP to the same review twice.

Additionally, WSCOGA understands the rationale for reviewing certain pending Form 2As indicating the surface development that is proposed by an operator. There is no reason for the Objective Criteria to apply to the review of Form 2s, which by definition, establish the downhole aspects of development. WSCOGA would appreciate an explanation of why and how the proposed criteria will be applied to Form 2s and the review process the COGCC will employ.

Finally, the stated intent of the Objective Criterion is to delay processing of a very limited number of controversial permit applications. Accordingly, a pre-requisite to applying any additional review where any of the Objective Criteria are met should be that public comments on the application were received during the COGCC public comment period. If no public comments were received on either a Form 2 or Form 2A during the public comment period, then such permit applications should be exempt from the Objective Criteria. Further, where public comment on an application was received but the operator has addressed the public comment to the COGCC's satisfaction, such application should be exempt from additional review under the Objective Criteria.

Specific Comments on Criteria

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

WSCOGA believes that requiring additional review for Locations within 1,500 feet of a Building Unit or High Occupancy Building is too broad. WSCOGA believes the relevant point from which to measure regulatory distances should be the wellhead or production facility, as those terms are defined by the COGCC. Without understanding the Commission's basis for that number, this "objective" criterion appears to have been arrived at subjectively. This arbitrary distance applies to other criteria as well.

Finally, where the resident of a Building Unit has a Surface Use Agreement with the operator, this criterion should not apply as the potentially impacted party has already consented to the Location. WSCOGA also proposes that operators who have already obtained a local government permit or other authorization, such as an operator agreement or memorandum of understanding, should be exempt from this criterion since the relevant local government has already approved the siting of the proposed operation.



PO Box 89
Grand Junction, CO 81502

760 Horizon Drive, Suite 100
Grand Junction, CO 81506

Phone 970.733.2198
www.WSCOGA.org

Criterion 2. Locations Within a Municipality.

WSCOGA proposes that locations for which there is a local government permit or other authorization should be exempt from this criterion. In those instances, the relevant municipality has already conducted its review of the Location and granted its approval.

WSCOGA also believes this criterion should not apply where a municipality does not have siting regulations or does not desire any additional consultation. If an operator submits a letter from the relevant municipality stating that it has no issues with the pending state application, the criterion should automatically not apply.

Criterion 3. Locations Within 1500 feet of a Municipal Boundary, Platted Subdivision, or County Boundary.

WSCOGA seeks clarity regarding the scope of the adjacent local government's participation in the permitting process under this criterion. As you know, the drafters of SB19-181 adopted language specifying that the local government relevant to permitting decisions and applications for establishing pooling units and drilling and spacing units is the "local government having jurisdiction[.]" By granting authority to adjacent local governments, WSCOGA does not believe this criterion is within the intent of SB19-181.

WSCOGA would also like to know how the COGCC will determine if a Location is within 1,500 feet of a platted subdivision, since information regarding platted but undeveloped subdivisions could be difficult to obtain.

Finally, WSCOGA believes this criterion should not apply where the relevant municipality or county does not desire additional consultation or where the operator has already obtained a local government permit or other authorization.

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

This criterion is inconsistent with the School Setback Rulemaking that concluded just months ago. In the course of that rulemaking, legitimate reasons were presented as to why the school property line should not be used as a measurement endpoint, including the undisputed fact that often schools own large tracts of property that are not used by students, teachers or staff. WSCOGA recommends this criterion track the notice requirement from the School Setback Rulemaking, namely that this criterion be amended to include Locations proposed to be within 1,320 feet from the School building or School Facility as defined in COGCC Rules.

Criterion 5. Locations Within (a) a Floodplain, floodways, and sensitive areas.

WSCOGA notes initially that completing a Form 2A application already requires an operator to indicate the presence of floodplains, floodways and sensitive areas. Because of these existing requirements, WSCOGA is unclear what, if anything, this criterion is supposed to change from the current process.



PO Box 89
Grand Junction, CO 81502

760 Horizon Drive, Suite 100
Grand Junction, CO 81506

Phone 970.733.2198
www.WSCOGA.org

Criterion 6. Locations within a Colorado Parks and Wildlife (“CPW”) mapped Restricted Surface Occupancy Area (“RSO”) or Sensitive Wildlife Habitat (“SWH”), or locations receiving site- or species-specific CPW comments.

WSCOGA recommends that this criterion should not apply where an operator has already consulted with Colorado Parks and Wildlife (CPW) and a Wildlife Mitigation Plan is in place. We recommend dropping this criteria or placing a check box on the application that CPW has been consulted and exempt those applications from the delay process.

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

WSCOGA submits that this criterion could have the unintended consequence of discouraging consolidation of oil and gas surface development. This is particularly of concern in the west slope, where pipelines are being used and therefore truck traffic is not a concern, WSCOGA believes that this criterion is misguided and would result in more surface disturbance as operators develop sites with fewer numbers of tanks.

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

We do not understand the rationale for this criterion. An operator may own the surface or have the right to construct a Location on a surface pursuant to lease rights. This is a particular regular occurrence on federal leases. In these instances, a surface use agreement would not exist and would not be needed because the right is established and uncontroversial.

Moreover, any issues that might be addressed by this criterion are already covered by the “COGCC Policy For Onsite Inspections on Lands Where The Surface Owner is not a Party to a Surface Use Agreement or Other Relevant Agreement.” Because any concerns by a surface owner are already addressed under this Policy, there is no need for this criterion.

Criterion 10. Locations where the relevant local government or state or federal agency requests additional consultation.

WSCOGA first requests that the COGCC relate the term “relevant local government” to its capitalized COGCC definition or use “jurisdictional”. As mentioned, SB 19-181 limited local government involvement to the local government that has jurisdiction over a proposed location. The same limitation should apply to this criterion.

Criterion 12. Locations with an access road in a RSO, SWH, 317B buffer zone, or within 200 feet of a Building Unit on lands not subject to a Surface Use Agreement.

WSCOGA seeks clarity regarding whether a public and all access roads , especially on



PO Box 89
Grand Junction, CO 81502

760 Horizon Drive, Suite 100
Grand Junction, CO 81506

Phone 970.733.2198
www.WSCOGA.org

federal lands, over which an operator has no control can be considered part of an access road. This would trigger a delay for nearly all permits on federal lands in the west slope. WSCOGA believes an operator working with BLM through the NEPA process, as well as with CPW to develop a Wildlife Mitigation Plan should be exempt from this criteria. WSCOGA recommends exempting this criteria for all operator owned/ split estate lands and federal lands that are implementing a Wildlife Mitigation Plan by simply adding a checked box to the application forms.

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.

This criterion is a major source of concern for WSCOGA and its members. WSCOGA wishes to impress upon the COGCC the consequence of adopting this criterion without modification, and is very concerned about the potential for unintended consequences that would result from delaying proposals to plug a well under these circumstances. Indeed, nearly all Form 6s submitted would meet this criterion, leading to significant delay in plugging wells and reclaiming older Locations. The requirements of this criterion present exactly the circumstances under which well plugging and abandonment should be expedited. Wells designated to be plugged should be a high priority and plugging operations should be expedited, not delayed. Similarly, a Form 6 submitted to conduct a stray gas investigation is the kind of proposal that should be expedited, given the potential for adverse impacts to public health and the environment.

Operators rely upon the efficient approval of Form 6s in scheduling workover rigs to maximize the number of wells that can be plugged. If approval of a Form 6 for a particular site is delayed because of this criterion, the workover rig may have to be moved to the next well in the schedule, even if the well being passed over has a higher priority. Accordingly, WSCOGA strongly urges you to delete this criterion. If this criterion is not deleted, the COGCC should develop an expedited process for implementing this criterion to assure quick approval of Form 6s.

Conclusion

WSCOGA appreciates the opportunity to offer these comments and suggestions. WSCOGA respectfully submits that the draft Objective Criteria need substantial clarification and modification to promote operational certainty and consistency and to mitigate the impacts to business. WSCOGA looks forward to collaborative engagement with the COGCC and all stakeholders as the implementation of SB19-181 continues.

Respectfully,

Eric Carlson
Executive Director

