



COGCC OPERATOR GUIDANCE

SB 19-181: HEARINGS AND PERMIT APPLICATIONS

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Background:

On April 16, 2019, the Governor signed SB 19-181 into law. SB 19-181 amends the Oil and Gas Conservation Act (“Act”) and addresses the authority of local governments to regulate oil and gas operations. SB 19-181 ensures that the Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”) regulates oil and gas development and operations in Colorado in a manner that protects public health, safety, welfare, the environment, and wildlife resources. Additionally, SB 19-181 vests local governments with greater regulatory authority over the surface impacts of oil and gas operations. This enlargement of local governments’ regulatory authority requires the Commission to redefine its regulatory relationships with local governments.

SB 19-181 was effective on April 16, 2019. SB 19-181 provides that the amendments to the Act apply to all conduct occurring on and after April 16, 2019, including permit and hearing applications pending before the Commission. *See* SB 19-181, Section 19, Applicability. Accordingly, SB 19-181 requires the Director and Commission Staff to review and modify its processes to comply with the legislation. To that end, the Director has prepared this Operator Guidance Document to explain how the Director and the hearings and permitting units will process pending and new applications in consideration of SB 19-181. Specifically, this Operator Guidance Document addresses the Application for Permit to Drill (Form 2), the Oil and Gas Location Assessment (Form 2A), Pooling Applications, drilling and spacing unit applications, and Comprehensive Drilling Plans.

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In accordance with SB 19-181, the Director issued Objective Criteria¹ on May 16, 2019, following receipt and consideration of comments from the public, industry, local governments, and non-governmental organizations. The Director will use the Objective Criteria to determine whether permits, including Form 2s and Form 2As, require additional analysis to ensure the protection of public health, safety, welfare, the environment, or wildlife resources. Once the Commission completes the rulemakings required by SB 19-181, this Operator Guidance Document and the Director's Objective Criteria will no longer be necessary, and both will be withdrawn.

This is a guidance document, not a formal rule. The purpose of this Operator Guidance Document is to inform all interested stakeholders of the Director's interpretation of, and expectations concerning, the administrative changes necessary to implement SB 19-181. Interpretative documents or general statements of policy, such as this Operator 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 Hearing Officer Elias Thomas at elias.thomas@state.co.us with questions or comments concerning this Operator Guidance Document. Hearing Officer Thomas will collect this information and Staff and the Director will review the information and update this Operator Guidance Document on an as-needed basis.

¹ The Director's Objective Criteria is available on the COGCC's website, <https://cogcc.state.co.us>.

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Form 2 and Form 2A

Application for Permit to Drill (Form 2)

SB 19-181 provides that when “applying for a permit to drill,” operators must include proof that they sought a local government siting permit and the disposition of that permit application, or that the local government does not have siting regulations. § 34-60-106(1)(f)(I)(A), C.R.S. Accordingly, in jurisdictions where the local government has siting regulations, as of April 16, 2019, operators must certify on all submitted Form 2 applications that they have applied for a local government siting permit, if applicable, and indicate the local government’s disposition of that siting permit application. “Disposition” means that the local government has made the final siting determination or waived the statutory provision that allows it to undertake siting first.

In instances where the local government has waived the siting determination, an operator may apply for and the Director will process and may approve a Form 2. However, if there is not a waiver, the Director may process, but will not make a final determination on the Form 2 until the local government has made a final determination on the local siting permit. The Director and Staff are gathering a list of those local governments that have siting regulations and those local governments who have indicated to the Commission that they waive application of their siting regulations first.

Form 2s filed to deepen an existing well, sidetrack an existing well, or recomplete an existing well are exempt from the requirement for a local government siting disposition.

Oil and Gas Location Assessment (Form 2A)

SB 19-181 vests local governments with greater regulatory authority over the surface impacts of oil and gas operations. § 29-20-104(1)(h), C.R.S. SB 19-181 also provides the Commission with additional regulatory authority over surface locations, such as:

- “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 resulting from oil and gas operations.” § 34-60-106(2.5)(a), C.R.S.
- “The Commission shall adopt rules that adopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process.” § 34-60-106(11)(c)(I), C.R.S.

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The Commission requires an operator to obtain an Oil and Gas Location Assessment, Form 2A, which permits the siting of oil and gas surface locations. The Form 2A must be obtained even when a local government elects to regulate the siting and surface impacts of oil and gas operations.

Operators should include the current status of the applicable local government siting application on all submitted Form 2A applications. The Director encourages operators to coordinate the preparation and filing of a Form 2A with the local government siting permit application, if applicable, to allow for concurrent permit review. Coordination between the operator and all other permitting authorities is helpful as it allows for productive and efficient permitting processes. The Director may process Form 2As concurrently with the local government or following the local government's determination because SB 19-181's "disposition" requirement applies only to Form 2s, not Form 2As. *See* § 34-60-106(1)(f)(I)(A), C.R.S. The Director and Staff will continually seek input from local governments and operators regarding how to efficiently coordinate local and state site permitting processes for jurisdictions that elect to regulate siting.

Information Submission Requirements

COGCC electronic forms allow for entry of the local government siting information on new permit applications. For all Form 2s pending on April 16, 2019, Staff requires operators to provide the local government siting information as set forth above before the Director and Staff will act upon the Form 2. For all Form 2As pending on April 16, 2019, Staff encourages operators to provide the local government siting information as set forth above so that the Director and Staff can determine when it can act upon the Form 2. There is no deadline by which this information must be provided, however, Staff cannot proceed to act on a Form 2 without this information.

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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. These amendments include SB 19-181's mandate that the Commission regulate oil and gas development in a reasonable manner so as "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. SB 19-181 also requires that the 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 has waived the statutory provision that allows it to undertake siting first, or that the local government does not have siting regulations. § 34-60-116(1)(b), C.R.S.

To ensure that all drilling and spacing unit applications meet SB 19-181's requirements, the Commission must have information that addresses the full extent of the oil and gas development proposed for the drilling and spacing unit. Accordingly, applicants are encouraged to provide the following information for all pending² and future drilling and spacing unit applications³:

1. the Form 2A(s) and Form 2s for the proposed development of the unit;
2. testimony or evidence that specifically demonstrates compliance with § 34-60-106(2.5)(a), C.R.S., this includes, but is not limited to, compliance with the Objective Criteria or demonstrated efforts to show issues arising out of application of the Objective Criteria are being addressed; and
3. percentage mineral ownership interest, if the applicant expects to file a statutory pooling application.

When a proposed drilling and spacing unit application is located in a jurisdiction where the local government regulates siting, operators are strongly encouraged to engage COGCC Staff and local governments before submitting a drilling and spacing unit application. COGCC Staff will consider the local government's siting as it conducts its § 34-60-106(2.5)(a) analysis.

² For all drilling and spacing unit applications pending with the Commission as of April 16, 2019, applicants and protestants (if applicable) are encouraged to submit this information and testimony as soon as possible. Until Staff receives this information, the hearings unit is unable to proceed with processing pending drilling and spacing unit applications.

³ Applicants are still required to provide testimony addressing waste, correlative rights, and geologic and engineering considerations.

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Staff will conduct an independent analysis of each drilling and spacing unit application. As part of Staff's analysis, it will engage and confer with the applicant and relevant local government. Once a drilling and spacing unit application is complete, COGCC Staff will issue a final written assessment to approve or deny a proposed drilling and spacing unit.⁴ This final written assessment and recommendation will be a public document filed with the hearing officer, served on the applicant and any parties to a drilling and spacing unit application.

Where a local government regulates siting, COGCC Staff may process a drilling and spacing unit application before the local government determines whether to grant the local siting permit. However, unless the local government waives the provision allowing it to undertake siting first, the Commission will not approve a drilling and spacing unit until after local government final disposition.

Pooling Requirements

All drilling and spacing unit applications should indicate whether the applicant expects to file a statutory pooling application for the proposed unit. If the applicant does expect to file a statutory pooling application, it should indicate whether it has forty-five percent or more of the interests in the unit and, if not, whether another mineral owner has fifty-five percent or more of the interests in the unit. § 34-60-116(6)(b)(I), C.R.S.

Competing Drilling and Spacing Unit Applications

Frequently operators file competing applications for some or all of the lands proposed in a pending drilling and spacing unit application. In cases where operators have competing plans, the Commission will evaluate the merits of both plans to determine which plan best satisfies § 34-60-106(2.5)(a) and § 34-60-116, C.R.S.⁵ A protestant or applicant is not required to submit Form 2A(s) or 2s for its proposed unit. However, for the Commission to evaluate the merits between competing plans, it must have evidence to evaluate whether § 34-60-106(2.5)(a), C.R.S., is satisfied.

If a protest is filed on grounds other than the allegation that the mineral resource can be developed more efficiently through a different plan, the protestant should provide such support and evidence as necessary, and as contemplated by the Commission's Rules, for the Commission to evaluate the merits of the protest.

⁴ The COGCC Staff recommendation is to be distinguished from a hearing officer recommended order.

⁵ COGCC Staff will not give preference or additional weight to a drilling and spacing unit filed prior to a competing application. Date of the filing is not determinative of whether COGCC Staff recommends a plan for approval.

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Wellbore Spacing Units

In addition to drilling and spacing units, the Commission regulates the spacing of wells in the Greater Wattenberg Area through Rule 318A wellbore spacing units. Wellbore spacing units space lands for mineral development well-by-well, rather than through the drilling and spacing unit application process. Operators seeking a wellbore spacing unit must file a Form 2A for the location and a Form 2 for the well. SB 19-181's amendments to the drilling and spacing unit provisions in § 34-60-116, C.R.S., apply to wellbore spacing units. Accordingly, operators should include with its Form 2:

1. certification that the operator has applied for a local government siting permit, and the disposition of that permit (if applicable), and
2. the percentage mineral ownership interest, if the applicant expects to file a statutory pooling application.

Operators seeking a wellbore spacing unit must file a Form 2A for the location and a Form 2 for the well for the unit. The Form 2A should provide adequate evidence addressing § 34-60-106(2.5)(a), C.R.S. considerations.

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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. SB 19-181 also directs the Commission not to 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(s) who cannot be located through reasonable diligence are excluded from the calculation.
2. All lease offers were made in good faith.

For all unapproved pooling applications pending as of April 16, 2019, supplemental sworn testimony must be filed to address these two requirements. This sworn testimony is in addition to the existing pooling requirements set forth in the Act and the Commission’s Rules. As detailed in the April 19, 2019 initial version of this Guidance, the sworn testimony is required to be submitted no later than May 28, 2019. If the hearings Staff did not receive sworn testimony by May 28, 2019 for a pending application, the pooling application will be withdrawn regardless of when the application is scheduled to be heard by the Commission. If an application is withdrawn, the applicant may re-file the pooling 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...”).

SB 19-181 provides that the amendments to the Act apply to all conduct occurring on and after April 16, 2019, including pending CDP Applications. Specifically, the Director and the Commission will consider whether a CDP Application satisfies SB 19-181’s public health, safety, welfare, environment, and wildlife protection mandate. For all future CDP Applications, operators are strongly encouraged to work with COGCC Staff and local governments early in the CDP planning process.

The Director will only bring before the Commission for consideration a CDP that meets SB 19-181’s mandate. 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).

Document Change Log

Change Date	Description of Changes
April 19, 2019	Initial Release
May 29, 2019	Revisions to Form 2 and Form 2A Permit Applications and DSU Application requirements