

# INSIGHTS INTO COGCC RULEMAKING FROM 30,000' – (intended to be a conversation)

An update on the COGCC rulemaking process, presented by Director Jeff Robbins  
Glenwood Springs, August 21, 2019



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# COGCC - where we've been

- Since 2007, the COGCC has undertaken many rule changes to address the regulation and policy affecting the oversight of oil and gas development in Colorado
- Over 19 rulemakings between 2007-2017



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# Mission Statement – before SB19-181

(1) “**Foster** the responsible, balanced, **development and production and utilization** of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources”

§ 34-60-102(1)(a), C.R.S



# SB 19-181 Passed into Law April 16, 2019

**BUSINESS > ENERGY**

## Gov. Jared Polis ushers in new era of drilling regulation, but are “oil and gas wars” over?

Governor signs SB 19-181, which gives commission and local governments more say over industry, but efforts to repeal law are already underway

**BUSINESS > ENERGY**

## Public has been “loud and clear” on push for new oil, gas rules to protect health and environment, regulators say

COGCC to meet with interest groups on writing regulations

**POLITICS > COLORADO POLITICS**

## In “new era” of oil and gas regulation, Colorado communities waste no time writing own rules

Pro-industry forces watching closely for regulatory “overreach”

THE DENVER POST



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# Mission Statement – after SB19-181

“the Commission shall **regulate** oil and gas operations in a reasonable manner to **protect and minimize adverse impacts** to public health, safety, and 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



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# COGCC – We’ve been busy!

- Since January, the Director/staff have held over 200 meetings with stakeholders to solicit input on policy and rule changes regarding implementation of SB19-181
- The staff of the COGCC have submitted over 160 suggestions to change current rules and propose new rules to achieve the COGCC’s mission goals as it relates to SB-181



# -DISCLAIMER -

- These slides are a demonstration of some of the potential rule and policy changes being considered as a result of SB19-181
- Staff designed these objectives to help shape and inform the COGCC rulemakings
- This is another initial step as part of an ongoing process—there will be continued opportunities for stakeholder engagement in the rule drafting



# COGCC's Objectives for Rulemakings Implementing SB19-181

- Mission Change: Increasing Public Health, Safety, Welfare, Environment and Wildlife Protections and Addressing Cumulative Impacts
- Creating a Neutral Regulatory Framework
- Establishing a Holistic and Contextual Decision Making Process
- Continuing to Develop Trust in the COGCC
- Restructuring the State-Local Government Relationship



# SB19-181: Mission Change

“the Commission shall **regulate** oil and gas operations in a reasonable manner to **protect and minimize adverse impacts** to public health, safety, and 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

# SB19-181: Cumulative Impacts

- Develop and incorporate cumulative impacts into COGCC decisionmaking process

“In consultation with the department of public health and environment, evaluate and address the potential cumulative impacts of oil and gas development.”

§ 34-60-106(11)(c)(II), C.R.S.

# Mission Change: Increase Public Health, Safety, Welfare, Environment and Wildlife Protections

- *How do we reorient our rules away from vertical well development framework to reflect the current exploration and production techniques (recognizing that LUMA and UMA rules were developed to begin to address multi-well horizontal development)?*
- *How should exploration and production waste be managed in Colorado?*
- *How can we use our rules to better equip local first responders with the information they need to respond to emergencies near and at an oil and gas location?*
- *How can our rules better address basin specific operations, while maintaining high standards for all operations in the State?*



# Mission Change: Potential New Rules & Practices

- Require emergency response plans and tactical response plans upon permit filings
- Incorporating new protections to apply to existing facilities
- Requiring takeaway capacity to minimize flaring and truck traffic
- Improve Mechanical Integrity Testing requirements
- Reform spill reporting
- Evaluate Best Management Practices in context of multi-well horizontal developments
- Alternative Site Analysis? In conjunction with local governments?
- Create basin-wide spacing



# Mission Change: Potential New Rules & Practices

- Use cumulative impacts to inform and develop permit review and best management practices; Revisit CDPs
- Right-sizing or right location of well pads
- Use cumulative impact noise, odor, and other nuisance rules
- Evaluate and incorporate management of change and process safety management protocols
- Address liability for historic spills



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# SB19-181 Rules regarding Neutral Framework

- Shift from FOSTER to REGULATE

“the Commission shall ~~foster~~ regulate the ~~responsible, balanced~~ development and production and utilization of the natural resources of oil and gas in the state of Colorado in a manner ~~consistent with protection of~~ that protects public health, safety, and welfare, including protection of the environment and wildlife resources

§ 34-60-102(1)(a)(I), C.R.S



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# SB19-181 Rules regarding Neutral Framework

- Remove the consideration of cost-effectiveness and technical feasibility

~~(c) Mitigate the effects of unavoidable remaining impacts; and~~

~~(d) Take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.~~

§ 34-60-103(15.5)(c-d), C.R.S.



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# SB19-181 Rules regarding Neutral Framework

- Regulate in a way that first avoids, then minimizes and mitigates, adverse impacts on the environment

(5.5) "Minimize adverse impacts" means, to ~~wherever reasonably practicable~~ THE EXTENT NECESSARY AND REASONABLE TO PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES, TO:

§ 34-60-103(5.5), C.R.S



# Creating a Neutral and Regulatory Framework

- *How best to recalibrate rules from historic “foster” to 181 “regulate”?*
- *How do we integrate “avoid, minimize, mitigate” into the rules?*
- *“Technical feasibility” and “cost effectiveness” to “reasonable and necessary”*
- *How can we open up the permitting process to allow for broader stakeholder involvement and input?*
- *What is the appropriate permit lifespan to ensure that mineral estate development uses the current highest standards at all times? How do ensure Highest BMPs later on in life of well?*
- *What does the burden of proof look like post SB 19-181?*
- *How do we integrate cumulative impacts into our rulemaking?*



# Neutral Framework: Potential New Rules & Practices

- Remove “Shall Approve” from decision-making language
- Remove “technically feasible and cost effective” from rules and replace with “reasonable and necessary” to protect public health, safety, welfare, wildlife and the environment?
- Minerals left in the ground are no longer considered “waste”
- Reorienting COGCC rules to horizontal development
- Rewrite standing rules to allow for increased community engagement in the permitting process



# SB19-181: Holistic Decision-Making

- Commission is directed to protect and minimize adverse impacts

(2.5) (a) IN EXERCISING THE AUTHORITY GRANTED BY THIS ARTICLE 60, THE COMMISSION SHALL REGULATE OIL AND GAS OPERATIONS IN A REASONABLE MANNER TO PROTECT AND MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND 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.



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# Holistic Decision Making

- *What additional information do we need to consider the context of a decision?*
- *What can improve our current permit filing process for operators and stakeholders?*
- *How do we adequately address regional differences?*
- *How can we incorporate cumulative impact considerations into our permitting process?*
- *How can we increase the public's access to specific and regional oil and gas information?*



# Holistic Decision-Making: New Rules and Practices

- Create a more comprehensive drilling permit application process
- Require spacing, drilling and location permit applications at the same time
- Increase number of local public forums
- Identify denial criteria based on long-term impact on public health safety, welfare, and the environment
- Require oil and gas location permit to include facility layout and as-built drawings to the COGCC
- Re-examine nuisance rules and definitions in relation to cumulative impact



# SB 181 Build trust

- Redefining waste
- Codify right to approve and/or deny
- Provide hand to local government siting
- Avoid, minimize mitigate 34-60-103 (5.5)
- Cumulative impacts
- Professional commission
- Have to get this done quickly?
- Multi-agency role in oversight and regulation 34-60-105-1

# SB19-181: Continuing to Build Trust

- Resources left in the ground are no longer waste

(b) DOES NOT INCLUDE THE NONPRODUCTION OF GAS FROM A FORMATION IF NECESSARY TO PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES AS DETERMINED BY THE COMMISSION.

§ 34-60-103(5.5) (b), C.R.S

(b) THE NONPRODUCTION OF OIL AND GAS RESULTING FROM A CONDITIONAL APPROVAL OR DENIAL AUTHORIZED BY THIS SUBSECTION (2.5) DOES NOT CONSTITUTE WASTE.

§ 34-60-106 (1)(f)(B)(2.5)(b), C.R.S.



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# SB19-181: Continuing to Build Trust

- Empowering the Commission to create denial criteria based on public health, safety, welfare, environment and wildlife

“the Commission shall regulate the development and production and utilization of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources

§ 34-60-102(1)(a)(I), C.R.S



# SB19-181: Continuing to Build Trust

- Incorporating cumulative impacts into COGCC regulations

“In consultation with the department of public health and environment, evaluate and address the potential cumulative impacts of oil and gas development.”

§ 34-60-106(11)(c)(II), C.R.S.



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# SB19-181: Continuing to Build Trust

- Establishing a Professional Commission

**SECTION 9.** In Colorado Revised Statutes, **add** 34-60-104.3 as follows:

**34-60-104.3. Oil and gas conservation commission - report - publication.** (1) THERE IS HEREBY CREATED, IN THE DEPARTMENT OF NATURAL RESOURCES, THE OIL AND GAS CONSERVATION COMMISSION.

(2) (a) THE COMMISSION CONSISTS OF SEVEN MEMBERS, FIVE OF WHOM SHALL BE APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR THE EXECUTIVE DIRECTORS' DESIGNEES, ARE EX OFFICIO NONVOTING MEMBERS. A MAJORITY OF THE VOTING COMMISSIONERS CONSTITUTE A QUORUM FOR THE TRANSACTION OF ITS BUSINESS.

§ 34-60-104.3 (1-2b), C.R.S.



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# SB19-181: Continuing to Build Trust

- Avoid, Minimize and Mitigate

(a) Avoid adverse impacts from oil and gas operations; ~~on wildlife resources~~; AND

(b) Minimize AND MITIGATE the extent and severity of those impacts that cannot be avoided.

§ 34-60-103 (5.5) (a-b), C.R.S.



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# Continuing to Building Trust in the COGCC

- *What does an improved notice process look like?*
- *How can we harness new technology to increase access to data?*
- *How can we increase access to COGCC information in a way that is useful and informative to the public?*
- *How can we create more transparency in the COGCC rulemaking process?*
- *How can we ensure meaningful access to flowline data?*



# Trust Building: Potential New Rules and Practices

- Establish an ombudsperson for communities
- Reform local government outreach and designee program
- Expand and simplify notices to include more impacted citizens and communities, maps, and site diagrams
- Rewrite standing rules to allow for increased community engagement in the permitting process
- Use the newly created communications officer position to increase public awareness of COGCC activities
- Require flowline mapping consistent with SB 181 mandate



# SB19-181: Restructuring the state-local relationship

- Creation of the Technical Review Board to assist local communities

(b) A TECHNICAL REVIEW:

(I) MUST ADDRESS THE ISSUES IN DISPUTE AS IDENTIFIED BY THE OPERATOR AND THE LOCAL GOVERNMENT, WHICH MAY INCLUDE IMPACTS TO THE RECOVERY OF THE RESOURCE BY THE PRELIMINARY OR FINAL SITING DETERMINATION OF THE LOCAL GOVERNMENT; WHETHER THE LOCAL GOVERNMENT'S DETERMINATION WOULD REQUIRE TECHNOLOGIES THAT ARE NOT AVAILABLE OR ARE IMPRACTICABLE GIVEN THE CONTEXT OF THE PERMIT APPLICATION; AND WHETHER THE OPERATOR IS PROPOSING TO USE BEST MANAGEMENT PRACTICES; AND

(II) MUST NOT ADDRESS THE ECONOMIC EFFECTS OF THE PRELIMINARY OR FINAL DETERMINATION AND MUST RESULT IN THE ISSUANCE OF A REPORT.

§ 34-60-104.5 (5.5) (b)(I-II), C.R.S.

# SB19-181: Restructuring the state-local relationship

- Incorporating local government siting authority in permit process

**34-60-106. Additional powers of commission - rules - repeal.**

(1) The commission also ~~has authority to~~ SHALL require:

(f) (I) That no operations for the drilling of a well for oil and gas shall be commenced without first:

(A) ~~Giving to the commission notice of intention~~ APPLYING FOR A PERMIT to drill, WHICH MUST INCLUDE PROOF EITHER THAT: THE OPERATOR HAS FILED AN APPLICATION WITH THE LOCAL GOVERNMENT WITH JURISDICTION TO APPROVE THE SITING OF THE PROPOSED OIL AND GAS LOCATION AND THE LOCAL GOVERNMENT'S DISPOSITION OF THE APPLICATION; OR THE LOCAL GOVERNMENT WITH JURISDICTION DOES NOT

§ 34-60-106 (1) (f), C.R.S.

# SB19-181: Restructuring the state-local relationship

- Drilling and Spacing Units

(b) THE APPLICATION MUST INCLUDE PROOF THAT EITHER:

(I) THE APPLICANT HAS FILED AN APPLICATION WITH THE LOCAL GOVERNMENT HAVING JURISDICTION TO APPROVE THE SITING OF THE PROPOSED OIL AND GAS LOCATION AND THE LOCAL GOVERNMENT'S DISPOSITION OF THE APPLICATION; OR

(II) THE LOCAL GOVERNMENT HAVING JURISDICTION DOES NOT REGULATE THE SITING OF OIL AND GAS LOCATIONS.

(3) The order establishing a drilling unit:

(a) IS SUBJECT TO SECTION 34-60-106 (2.5); AND

§ 34-60-116 (1)(b), C.R.S.

# SB19-181: Restructuring the state-local relationship

- Incorporating cumulative impacts into COGCC permitting process

“In consultation with the department of public health and environment, evaluate and address the potential cumulative impacts of oil and gas development.”

§ 34-60-106(11)(c)(II), C.R.S.

# SB19-181: Restructuring the state-local relationship

- Empowering local communities through alternative site analysis

(11) (c) THE COMMISSION SHALL ADOPT RULES THAT:

(I) 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; AND

§ 34-60-106 (11) (c), C.R.S.

# Restructuring the State-Local Relationship

- *How can we best share the expertise of the COGCC to empower local governments to make decisions?*
- *How do state and local governments work together through joint regulatory initiatives?*
- *How do our sister-State agencies like CDPHE and CPW work with our communities?*



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# State-Local: Potential New Rules and Practices

- Create a Technical Review Board; Provide hand to local governments who are involved in siting
- Establish ombudsperson for local communities
- Ensure COGCC expertise is available to local governments
- Provide hand to regional local governments who are addressing siting practices for oil and gas development near each other's borders
- Coordination with local governments, CDPHE, CPW, and COGCC on siting
- Increase number of local public forums



# Rulemaking Calendar Update



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# Online Portals for Public Comment

- Flowline
- Mission Change
- Cumulative Impacts
- Alternative Site Analysis
- Open on September 3, 2019
  - <https://cogcc.state.co.us/sb19181.html#/overview>



# COGCC Rulemaking Schedule

Please visit [http://cogcc.state.co.us/sb19181\\_calendar.html#/calendar](http://cogcc.state.co.us/sb19181_calendar.html#/calendar) for the most up to date rulemaking calendar.



# Questions?



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