



## MISSION CHANGE WHITEPAPER

Date: November 1, 2019

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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. Specifically, SB 19-181 provides:

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.

This mandate is a critical tenet of SB 19-181, one that requires realignment and reform of Commission Rules.

This whitepaper was developed to provide stakeholders and the public with an outline and discussion of some of the larger concept rule changes that Commission staff is considering in the Mission Change rulemaking. The large concept ideas identified in this

whitepaper are only some of the rule revisions staff is considering as part of Mission Change. Moreover, staff's work on the Cumulative Impacts and Alternative Location Analysis rulemakings will necessarily influence and buttress the Mission Change rulemaking. Accordingly, this whitepaper does not identify or discuss all of the Mission Change rule revisions under consideration.

These large concepts are in addition to the removal of language that is inconsistent with SB 19-181. For instance, SB 19-181 directs that no longer is "cost-effectiveness and technical feasibility" to be applied when regulating oil and gas operations. Page 8, Senate Bill 19-181. Accordingly, "cost-effectiveness and technical feasibility" will be removed from the Commission's rules. Further, under SB 19-181 the Commission is to "to protect and minimize adverse impacts to public health, safety, and welfare and the environment." "Minimize adverse impacts" means, to the extent necessary and reasonable "to protect public health, safety, and welfare[,] to "avoid adverse impacts[,] and to "minimize and mitigate the extent and severity of those impacts that cannot be avoided." § 34-60-103(5.5)(b), C.R.S. Commission rules will be revised to implement this directive.

As outlined below, certain rule sets require a more robust review and redevelopment to align with the mandate of SB 19-181. Other rule sets, such as the 700 Series, will be addressed in separate rulemakings. This whitepaper discusses some of the large concept rule changes under consideration for each rule series, if applicable.

This whitepaper is not the final word on the Mission Change rulemaking. While it was developed solely by staff, stakeholder input is critical to the next stage of staff's rule language development. Staff expects this whitepaper to facilitate meaningful stakeholder

conversations and rule language development. The topics staff expects to discuss with stakeholders include 1) potential limitations to implementing some of the large concept ideas in this whitepaper and 2) additional large conceptual reforms that should be considered. These stakeholder conversations will continue to provide COGCC staff with insight and information as it develops draft rules.

The first stakeholder meeting is scheduled for Thursday, November 7<sup>th</sup> at 10:00 am. The Mission Change Rulemaking hearing is scheduled for February 26 and 27, 2020. Staff's proposed draft rules will be made available well in advance of that hearing. Finally, the Commission continues to receive public comment to the Mission Change rulemaking through the SB 19-181 comment portal. That portal can be accessed [here](#).

## **100 Series-Definitions**

SB 19-181 revised the definition of “waste” to provide that it does not include nonproduction of the mineral resource if it is necessary to protect public health, safety, welfare, the environment or wildlife resources. § 34-60-103(11)(b), C.R.S. Accordingly, the Commission’s definition of “waste” will be revised to reflect the statutory change. The 100 Series will continue to be revised as new terms or revisions to existing definitions are made in the course of amendments to the various rule sets.

## **200 Series-General Rules**

The 200 Series Rules address, among other things, the office and duties of the director and the secretary of the Commission, record keeping, reporting of information to the Commission, and Comprehensive Drilling Plans.

### **200 Series Generally**

SB 19-181 provides that the current volunteer Commission will be replaced with a full time professional commission. § 34-60-104.3, C.R.S. Amendments to the 200 Series are necessary to facilitate the transition from a volunteer Commission to a professional Commission, which includes consideration of the duties of the professional commissioners, the director, and the secretary.

### **Rule 205**

Staff proposes amendments to Rule 205 that would clarify that all documents, records, data, tests, and reports that must be created per a Commission Rule, also must be maintained and made available to the Commission upon request.

*Rule 216 – Comprehensive Drilling Plans*

Comprehensive Drilling Plans (“CDPs”) allow for the consideration of oil and gas development in a specific area. CDPs consider oil and gas development in a holistic manner through landscape level planning and regulatory review. Taken as a whole, SB 19-181 directs the Commission to encourage and incentivize holistic oil and gas development, rather than single well location approvals. Staff will suggest revisions to Rule 216 to incentivize this development approach. In addition, building upon the current Rule 216, staff recommends revisions that incorporate a phased approach to planning and development, with the CDP design elements updated throughout the application and evaluation process.

**300 Series-Drilling, Development, Production, Abandonment**

The 300 Series addresses the permitting, drilling and operation of locations and wells for oil and gas production. Staff proposes several substantive changes to the 300 Series designed to accomplish necessary structural improvements to the permitting process to better address environmental impacts from oil and gas development, provide a comprehensive approach to permitting, and facilitate alternative location analysis and cumulative impacts evaluation.<sup>1</sup>

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<sup>1</sup>The alternative location analysis rulemaking is expected to be heard at the Commission’s March 25 and 26, 2020 hearing. The cumulative impacts rulemaking is expected to be heard at the Commission’s April 22 and 23, 2020 hearing.

*Oil and Gas Development Plan*

Currently, oil and gas development is permitted through three different decision points. First, an operator applies for, and the Commission must issue, an order approving a drilling and spacing unit, if necessary. Once a drilling and spacing unit is in place, an operator will submit to Commission staff a Form 2A, which permits the proposed oil and gas location. Then, the operator will submit a Form 2 to permit each well proposed on the oil and gas location.

This current process is deficient in several respects. First, it does not easily allow the Commission to have a comprehensive understanding of an operator's proposed development plan for an area. Second, it does not readily facilitate a) staff's consideration of how one proposed development will affect the larger development of the resources in an area, and b) the impacts on people, the environment, and wildlife. Third, it does not lend itself to SB 19-181's comprehensive planning approach. Fourth, it is inefficient to have three separate review and comment processes for staff, operators, and stakeholders. Fifth, it does not lend itself to SB 19-181's expectation that local governments, if they choose to do so, may be involved in the siting of an oil and gas location before the Commission proceeds to make decisions on drilling and spacing unit applications, Form 2As, and Form 2s.

Staff proposes that the 300 Series be revised so that all new oil and gas development be permitted through a single, comprehensive application. The single application would include a proposed drilling and spacing unit (assuming one is necessary and has not already been created); and identify the site(s) of the oil and gas locations, the number of wells and production facilities on each pad, and flowlines or other plans for moving fluids. The plan

would also include and address, as needed, all other COGCC permits necessary for the operation of the location.

### **Who Decides to Approve an Application, and what is Staff's Role?**

Currently, permitting decisions for oil and gas locations and wells are made by the Director and not the Commission. With the move from a volunteer Commission to a Professional Commission, consideration should be given to whether the Professional Commission makes the final determination on oil and gas applications.

Staff would be a party to the application, recommending the application be approved, denied, or approved with modifications. Before SB 19-181, the Act charged the Commission to “foster the responsible, balanced development” of oil and gas resources. Page 6, Senate Bill 19-181. Fostering oil and gas development impeded staff's ability to deny a permit. Operators would withdraw permits or staff would work with the operator to put in place the most protective best management practices on the location. SB 19-181 removed “foster” and instead directs the Commission to “regulate the development and production” of oil and gas resources. § 34-60-102(1)(a)(I), C.R.S. Consistent with this amendment, staff would realign its application review process to recognize that under certain circumstances an oil and gas development plan could be recommended for denial.

### **Pre-filing Notice**

Currently, various notices are required by statute and rule that result in some persons receiving multiple notices and other persons not receiving notices at all. In an effort to streamline and improve notices, staff is proposing to consolidate notice requirements to avoid redundancy and provide more information to the notice recipient.

At least 60-days before submitting the application, the operator must give notice of its intended development to:

1. all mineral owners within the proposed or existing drilling and spacing unit;
2. all surface owners within the proposed or existing drilling and spacing unit;
3. all surface owners within 2,640 feet of the edge of the plan's proposed oil and gas location(s);
4. all residents within 2,640 feet of the edge of the plan's proposed oil and gas location(s);
5. the relevant local government<sup>2</sup>;
6. the local government within which the minerals proposed for development are located;
7. all neighboring local governments within 2,640 feet of the edge of the plan's proposed oil and gas location(s);
8. the Colorado Department of Health and Environment;
9. the Colorado Parks and Wildlife;
10. the Colorado State Land Board (if a mineral owner); and
11. the U.S. Bureau of Land Management (if a mineral owner).

### **Application**

No less than 60 days after completing the notice requirements, the operator will submit its application to the COGCC. In the application, the operator must identify whether

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<sup>2</sup> Relevant Local Government is an existing defined term. 100 Series.



the plan would have impacts on certain receptors and, if so, to what degree. For instance, is the proposed location in close proximity to a subdivision or a wildlife habitat? What are the impacts to air quality? What are the lighting, visual, and noise impacts? These and other criteria must be addressed in the application. If one or more criteria are present in an application, then staff will undertake a site specific protection analysis (“SSPA”).

### **Non- SSPA Applications**

If the application does not trigger any criteria, then a SSPA is not required and the application, per SB 19-181, could be presumed to protect against adverse impacts. The application would be noticed for hearing and public comment. Taking into consideration public comment, staff would make a recommendation to the Commission whether the application protects against adverse impacts. Consistent with SB 19-181, the Commission must “minimize adverse impacts”, to the extent necessary and reasonable “to protect,” and to “minimize and mitigate the extent and severity of those impacts that cannot be avoided.” § 34-60-103(5.5)(b), C.R.S.

### **SSPA Applications**

If a SSPA is required, staff will conduct an analysis of the application to make an initial evaluation of whether the oil and gas activities proposed will protect against adverse impacts. If staff’s evaluation finds that the oil and gas activities proposed will protect against adverse impacts, then the application can proceed to be noticed for hearing before the Commission.

Once the application is noticed for hearing, it would be made available for public comment. The applicant would also submit its final SSPA at this time. Taking into

consideration public comment and evaluation of the final site-specific analysis, staff would make a recommendation to the Commission whether the application protects against adverse impacts.

*Rule 312 - Transfer of Permits*

The Commission's Rule 312 requires operators to file no later than "30 days after initial sale of oil and gas a Certificate of Clearance and/or Change of Operator." Rule 312.a. A Change of Operator occurs when an existing oil and gas facility is sold or transferred to a new operator. Under the current Rule 312, staff is not made aware of the pending transfer of an oil and gas facility. There are many reasons that staff may need to know when and to whom a facility is proposed to be transferred. For instance, staff must ensure that the new owner take ongoing responsibility for remediation of a spill or release. .

Staff proposes that Rule 312 be amended to require an operator to apply to the Commission for a Change of Operator 60 days before the transfer or assignment of ownership or operation of an oil and gas facility. Until the Change of Operator is approved, the current operator will remain responsible for maintaining the oil and gas facilities, reporting operations in compliance with the Commission's Rules, and for any spill, release, remediation or other ongoing work. The Director has discretion to deny a Change in Operator request if staff determines that the new operator is unable to operate the oil and gas location in compliance with Commission Rules. The Director's decision would be appealable to the full Commission. Upon approval of the Change of Operator, the new operator will become responsible for maintaining the oil and gas facilities in compliance with the Commission's Rules. This responsibility includes any latent or existing

environmental impacts, known or unknown, resulting from management of produced fluids or exploration and production waste.

*Rule 333 - Seismic Operations*

Operators are required to submit a Form 20 Notice of Intent to Conduct Seismic Operations prior to commencement of shothole drilling or recording operations. Staff is considering revising Rule 333 to require additional planning and notification requirements. Staff is also proposing distance requirements for vibroseis trucks operating within municipal boundaries in close proximity to homes, underground utilities, and other structures.

*Rule 324 - Pollution*

Rule 324A requires operators to take “precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety, and welfare, including the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility...”

Consistent with SB 19-181, staff proposes removal of “cost-effectiveness and technical feasibility” from the Rule. Moreover, staff proposes revising Rule 324A to clearly require that operators must conduct operations in a manner that prevents adverse impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety, and welfare, including the environment and wildlife resources.

### **400 Series-Unit Operations, Recovery, Storage**

The State Oil and Gas Regulatory Exchange (“SOGRE”) is conducting a review of the Commission’s Natural Gas Storage Rules in the 400 Series. Once that review is complete, the Commission will evaluate what rulemaking is to be completed for the 400 Series.

### **500 Series-Rules of Practice and Procedure**

The 500 Series Rules set forth the process and procedures for all proceedings before the Commission. The 500 Series Rules are relied upon by members of the regulated community, mineral owners, surface owners, local governments, and other interested stakeholders who appear before the Commission.

In July of this year, the Commission adopted amendments to the 500 Series Rules to satisfy several of SB 19-181’s provisions regarding the Commission’s hearings process. The July amendments allow the Commission to appoint hearing officers to conduct hearings and revise the evidentiary requirements for pooling and drilling and spacing unit applications. The July rulemaking was a prelude to staff’s proposed 500 Series revisions as part of the Mission Change rulemaking.

#### ***Rule 508 - Local Public Forum***

The current Rule 508 establishes a complicated and antiquated process by which local communities and local governments may seek a local public forum on applications that would result in more than one well site or multi-well pad per 40-acre quarter-quarter section. Rule 508 was infrequently invoked. The intent behind Rule 508 is to provide local communities with the opportunity to have a Commission hearing in communities that are affected by large-scale oil and gas development. Staff proposes eliminating the current Rule

508 and replacing it with a simplified rule that provides “affected persons,” including affected local governments, the ability to request the Commission hold a local public hearing to gather feedback on proposed oil and gas operations.

*Rule 509 - Standing*

In the course of the July rulemaking, the Commissioners unanimously approved a motion that directed staff to ensure that the issue of standing be addressed in the Mission Change Rulemaking. Under current Commission Rules, relatively few persons have the right to protest applications, including permitting and spacing applications. In response to the Commission’s directive, and in furtherance of a neutral regulatory framework, staff proposes that standing be broadened to provide that any “affected person” have standing to protest hearing applications.

An “affected person” is someone who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by an application. Affected persons can be individuals, an organization, or a local government. Staff proposes adding to the 100 Series a definition of “affected person.”

Proposed amendments to Rule 509 would set forth criteria that the Commission can consider when determining whether a person has demonstrated a justiciable interest that is impacted by an application. The Commission may consider among other things:

1. whether there is a legally protected interest at issue;
2. the person’s distance from the activity proposed in the application;
3. whether a reasonable relationship exists between the proposed activity and the person’s interest;

4. the likely impact of the regulated activity on the person's health, safety, welfare or use of property;
5. the likely impact of the proposed activity on the use of the impacted natural resource by the person; and
6. for governmental entities, the authority over or interest in the issues relevant to the application.

*Rule 524 - Responsible Party*

Rule 524 governs hearing procedures when there is a question of who the responsible operator is for a violation of a Commission rule. Rule 524.e. provides that “an operator will enjoy a rebuttable presumption against mitigation liability under § 34-60-124(7), C.R.S., for ongoing significant adverse environmental impacts where the violation which led to such impacts was committed by a predecessor operator” and the operator conducted an environmental investigation of the location which did not identify “significant adverse environmental impacts” at the location. A “rebuttable presumption” means that the Commission must take as true that the current operator is not responsible for the environmental impact and therefore is not responsible for remediating the impact.

When staff becomes aware of an environmental impact to a location, they engage with the current operator to have the environmental impact cleaned up. Some operators will work with staff and clean the location up even though they did not cause the impact. However, there are instances when operators do not cooperate with staff and instead refuse to conduct the cleanup of the location they own and operate because the environmental impact was the fault of a prior operator. Under Rule 524.e., these operators enjoy a “rebuttable

presumption” that they are not liable for the cleanup. Staff proposes removing the “rebuttable presumption” language from Rule 524.e. to address this issue.

### **600 Series-Safety Regulations**

The 600 Series Rules set forth the safety and facility operation requirements.

#### *Rule 602 - General Safety Requirements*

Staff is considering requiring operators establish and maintain a process safety management program for all oil and gas operations. The process safety management program will include at a minimum:

1. Management of Change program;
2. Operational practices and procedure program; and a
3. Pre-Startup Safety program.

Implementation of a process safety management program will work to ensure that operations are conducted with due regard for the preservation and conservation of property and for the protection of public health, safety, welfare, the environment, wildlife, and safety of employees and people.

#### *Rule 603.f. - Statewide equipment, weeds, waste, and trash requirements*

Staff proposes revising 603.f. to prohibit the storage, placement, or maintenance of equipment, vehicles, trailers, commercial products, chemicals, drums, totes, containers, materials, and all other supplies not necessary for use on an oil and gas location.

*Rule 604. - Setback and Mitigation Measures For Oil and Gas Facilities, Drilling, And Well Servicing Operations*

The current buffer zones, urban and non-urban mitigation area, and mitigation measure rules were developed over the course of the last decade. In considering the oil and gas location application process discussed in the 300 Series above, staff will consider necessary revisions to Rule 604., including the role of best management practices in the permitting of an oil and gas location.

*Rule 605. - Oil and Gas Facilities*

Staff proposes that operators conduct a visual inspection of all production tanks on a monthly basis to look for leaks and damage to the tank(s). Operators would also be required to conduct an annual inspection of all steel aboveground storage tanks according to the requirements of STI SP001 “Standard for the Inspection of Aboveground Storage Tanks.”

*Rule 609 - Statewide Groundwater Baseline Sampling & Monitoring*

Staff proposes consolidation of the statewide groundwater baseline sampling rules. This change would result in the removal of Rule 608.b. for water well sampling near coalbed methane wells and removal of Rule 318A.f., the Greater Wattenberg Area specific groundwater baseline sampling and monitoring rule. Staff proposes that these rules be consolidated and updated with Rule 609 for statewide sampling and monitoring.

*Emission Reductions from Pre-Production Activities*

Commission Rules currently require reduced emission completions (i.e. “green completions”). See Rules 604.c.2.C, and 805.b.3. In addition to these current requirements, staff recognizes that more can be done to address emissions in the pre-production phase to



protect public health, safety, welfare, and the environment. Staff is considering whether to require the capture of natural gas that reaches the surface during drilling, completion, recompletion, flowback, hydraulic fracturing, and initial production to the extent reasonable and necessary to avoid adverse impacts to public health, safety, welfare, and the environment. Staff recognizes that variability in the amount of gas released must be given consideration when considering the ability to capture gas. Staff also recognizes that during upset conditions capture may not be feasible or safe.

Staff is also cognizant of SB 19-181's directive to the Colorado Department of Public Health and Environment ("CDPHE") to promulgate rules that address emission control regulations from oil and gas exploration and production facilities. § 25-7-109(10)(a), C.R.S. Staff wants to ensure that any Commission rule that may address emission reductions compliments CDPHE's regulatory program and does not conflict with or impede on that program.

### Flaring

Flaring of gas has significant consequences for the climate, ozone, and waste. Although flaring natural gas converts methane into carbon dioxide, a less powerful climate pollutant, flaring is a source of air pollution, including particulate matter and nitrogen oxides. Flaring also reduces emissions of volatile organic compounds that contribute to ozone formation. However, nitrogen oxides generated by flaring can also contribute to ozone formation. Natural gas that is flared rather than captured is arguably wasted because it is not used beneficially to generate electricity, provide heat, or manufacture plastics. Additionally,

there is an economic loss to mineral owners who will not receive royalty payments and to the State on lost severance tax revenues.

Commission Rule 912.a. prohibits unnecessary or excessive venting or flaring. However, neither “unnecessary” nor “excessive” are defined. Rule 912.b also provides exceptions for flaring during upsets, well maintenance, well stimulation flowback, purging operations, and productivity tests. Staff proposes moving the flaring rule to the 600 Series and revising it to prohibit an operator from flaring or venting gas produced from a well for more than 60 days from the date of first production. Exceptions to this prohibition would include emergencies or to protect public health and safety.

### **700 Series-Financial Assurance and Environmental Response**

SB 19-181 specifically calls upon the Commission to conduct a rulemaking that addresses how to assure that oil and gas operators have the necessary financial backing to conduct operations in compliance with the Commission’s rules. The language of SB 19-181 provides that the Commission will conduct a rulemaking that:

must consider: increasing financial assurance for inactive wells and for wells transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation.

§ 34-60-106(13), C.R.S.

The Commission expects to conduct the financial assurance rulemaking after July 1, 2020, when the Professional Commission is seated.

## **800 Series-Aesthetic and Noise Control**

The 800 Series Rules address noise, odor, dust, and other aesthetic impacts. These aesthetic impacts can be a significant source of concern for people and wildlife near oil and gas development. Staff proposes refining its Rules to better account for these aesthetic impacts. Staff is also considering the role its 800 Series Rules play in local jurisdictions that elect to regulate for aesthetic and noise concerns. It is important to note that these Rules will influence and be an integral component of the rules that result from the Cumulative Impacts and Alternative Location Analysis rulemakings.

### **Rule 802 - Noise Abatement**

Staff is considering changes that would improve and strengthen the required best management practices for addressing noise impacts to people and wildlife. Staff is considering changes that would apply a-scale noise thresholds to sensitive wildlife habitats. Staff is also considering specifying when and how ambient noise background surveys are to be completed and how they will be integrated into location assessment.

### **Rule 805 - Odors**

Staff is considering revisions to the odor rules that could better address how odors are measured, and facilitate coordination with CDPHE Air Pollution Control Division odor regulations.

### **Rule 805.c. – Fugitive Dust**

Staff proposes amending Rule 805.c. to require operators to develop a dust control plan. The plan would address each phase of oil and gas operation, and propose site-specific best management practices to minimize and suppress dust.

## **900 Series-Exploration and Production Waste Management**

The 900 Series Rules address the environmental regulation of oil and gas operations in the State. These Rules regulate how exploration and production (“E&P”) waste is to be managed; the cleanup of spills and releases; and establishes standards for the closure of pit and buried vessels. Staff proposes several significant changes to the 900 Series to fulfill the mandate of SB 19-181.

### **Rules 902, 904 and 911 - Pits**

Staff proposes revisions that will strengthen the construction and lining requirements for pits. Because unlined pits represent an ongoing release of E&P waste into the environment, staff proposes no longer allowing such pits to be permitted and restricting the operations of such existing pits.

### **Rule 905 - Closure of Oil and Gas Facilities**

The current Rule 905 requires that production and special purpose pits and buried and partially buried water vessels be closed in accordance with an approved Form 27, Site Investigation and Remediation Workplan. Before an operator can proceed to close a pit or buried vessel, it must submit to Commission staff a plan to investigate and verify that there are no impacts from the storage of E&P waste in the pit or buried vessel. If an impact is discovered the operator must propose a plan to remediate the impacted media and environmental resources. This plan is submitted on a Form 27, which is reviewed by staff. Notably, Rule 905 applies only to pits and buried vessels; it does not currently apply to an entire oil and gas facility. The Commission defines oil and gas facilities to be “all equipment or improvements used or installed at an oil and gas location for the exploration, production,

withdrawal, treatment, or processing of crude oil, condensate, E&P waste, or gas.” Staff is considering requiring a Form 27 for the closure of all oil and gas facilities. Expanding Rule 905 to require a Form 27 for closure of all oil and gas facilities allows requires oil and gas locations to be remediated upon closure. This change is supported by the findings of the “Risk-Based Inspections: Strategies to Address Environmental Risk Associated with Oil and Gas Operations” report published on the COGCC website, dated February 1, 2014.

*Rule 906 - Spills and Releases*

As required by the Act, Rule 906 currently requires the reporting of an uncontained spill or release of E&P waste or produced fluids that is greater than 1 barrel; a spill or release greater than 5 barrels even if it is contained; and any amount of E&P waste if it threatens waters of the state, a residence, livestock, or a public byway. Rule 905.(1). Staff recognizes that any spill of E&P waste may have adverse impacts on environmental resources, land, people, and wildlife. Accordingly, staff is considering other reporting thresholds, including:

1. When any volume of E&P waste “daylights” to the surface;
2. The discovery of 1 cubic yard or more of material impacted by a current or historic spill or release;
3. The discovery of impacted groundwater or surface water;
4. Any suspected spill or release if the volume of the E&P Waste cannot be determined; and
5. A spill or release of any volume that leaves an oil and gas location

With the report of a spill or release, operators must submit a Form 19 that identifies how it plans to address cleanup of the spill or release, but does not require any additional process. Staff is evaluating establishing a process to create certainty for all stakeholders. The proposed changes in the reporting of known or suspected E&P Waste releases will be integral to improving the protection of public health, safety, welfare, the environment, and wildlife resources.

*Drill Cuttings Rule 907.g. - E&P Waste Management*

Rule 907 establishes the acceptable practices to treat, dispose, and in some cases reuse different types of E&P waste. Specific rules include requirements for produced water, drilling fluids, oily waste, other E&P waste and non-E&P waste. Staff proposes revising Rule 907 to outline acceptable treatment/disposal of drill cuttings.

*Rule 910 - Soil and Ground Water Sampling*

Rule 910 establishes the concentrations for contaminants of concern in soil and ground water and provides the standards to be followed when testing for these containments. The contaminants covered in Rule 910 are set forth in Table 910-1 and in the Colorado Water Quality Control Commission's ("WQCC") ground water standards and classifications. Staff is considering clarifying the Director's existing authority as an implementing agency of Regulation No. 41, The Basic Standards for Ground Water, to require testing for oil and gas exploration related compounds or parameters in addition to those identified in Table 910-1. Under staff's proposal, the Director may seek testing:

1. For any element, compound, or parameter listed in Table A and Tables 1, 2, 3, and 4 of Regulation Number 41 – The Basic Standards for Ground Water adopted by the WQCC (5 CCR 1002-41);
2. In accordance with the Narrative Standards of Regulation Number 41, and 41.5A, any element, compound, or parameter not listed in Table A or Tables 1, 2, 3, and 4 of Regulation 41, which alone or in combination with other substances, are in concentrations shown to be:
  - a. carcinogenic, mutagenic, teratogenic, or toxic to human beings, or
  - b. a danger to the public health, safety, or welfare.

### **1000 Series-Reclamation**

The 1000 Series Rules establish the requirements operators must meet when reclaiming lands used in oil and gas development. More often than not, the owner of the surface where oil and gas development occurred is not the same as the oil and gas operator. Staff understands that amendments to the 1000 Series need to consider a surface owner's wishes while ensuring that lands are reclaimed in a manner that protects public welfare, the environment, and wildlife. Additionally, staff will consider how permitting process improvements can translate more simply into establishing reclamation expectations.

#### **Rule 1001.c. – Surface Owner Waiver of 1000-Series Rules**

Rule 1001.c. currently provides that an operator is relieved from complying with Rule 1002 (except Rule 1002.e.(1), 1002.e.(4), and 1002.f), Rule 1003, and Rule 1004 (except Rule 1004.c.(4) and 1004.c.(5)), if it demonstrates that compliance is not necessary to protect the public health, safety, welfare, and the environment. Rules 1002, 1003 and 1004 address

critical reclamation issues such as topsoil removal, segregation and protection, interim reclamation of oil and gas locations, restoration and revegetation of lands, weed control, and final reclamation of oil and gas locations. Staff is considering revisions to this Rule to alleviate conflict in the process and better define what can be considered. As part of this, staff is considering a surface owner variance request process for surface disturbance minimization, stormwater, and interim reclamation, including whether to accept variance requests for stormwater.

*Rule 1002.f. – Stormwater management*

Staff proposes removing the requirement for a post-construction stormwater program. In its place, staff is considering requiring operators to implement and maintain stormwater best management practices on all oil and gas locations during and after construction.

**1100 Series-Flowline Regulations**

SB 19-181 specifically calls upon the Commission to conduct a rulemaking to amend its “flowline and inactive, temporarily abandoned, and shut-in well rules” to meet the Mission Change mandate. § 34-60-106(19), C.R.S. SB 19-181 also directs that the Commission’s flowline rules must be amended to allow for public disclosure of flowline information, and to evaluate and determine “when inactive, temporarily abandoned, and shut-in wells must be inspected” before being put back into production. § 34-60-106(19)(a)-(b), C.R.S.

On October 8, 2019, the Commission noticed the flowline rulemaking for hearing. The flowline rulemaking prehearing process is underway, and the rulemaking hearing



scheduled for November 19-22, 2019 in Greeley, Colorado. The Commission's flowline rulemaking page can be found [here](#).

### **1200 Series-Protection of Wildlife Resources**

The Commission expects to conduct a rulemaking specific to the 1200 Series after July 1, 2020, when the Professional Commission is seated. However, it is important to note that throughout the Mission Change rulemaking, specific revisions are under consideration to address wildlife concerns, especially those that relate to process.