



COLORADO

Oil & Gas Conservation
Commission

Department of Natural Resources

1120 Lincoln Street, Suite 801
Denver, CO 80203

January 22, 2016

Commissioner Steve O'Doriso
Adams County
4430 S. Adams County Parkway
Brighton, CO 80601

Commissioner O'Doriso,

The Colorado Oil and Gas Conservation Commission (“COGCC” or “Commission”) evaluated each of the “Provisions” in Adams County’s Memorandum of Understanding (“MOU”) to determine which of them would be appropriate to include as enforceable Conditions of Approval (“COA”) in a COGCC permit. COGCC generally uses the following criteria to evaluate whether a proposed BMP is appropriate as a COA on a Form 2A or Form 2 (“Permit”):

1. A COA must address a matter that is within the Commission’s jurisdiction to remedy. The Commission’s jurisdiction and, hence, its enforcement authority is defined by statute. We cannot regulate or enforce matters outside our statutory authority.
2. A COA that purports to require an operator to comply with our rules is redundant and, therefore, unnecessary.
3. A COA that is conditional - e.g. an “if - then” situation - can only be incorporated into a Permit if the contingency in fact exists. Thus, a COA that says “if X is true, then Y is required” will not be included in a Permit; a COA that says, “*because* X is true, Y is required” is appropriate.
4. A COA must not conflict with or weaken a COGCC Rule.
5. A COA must pertain to operational matters that occur after a Permit is issued. Issues such as the siting of a proposed oil and gas operation are addressed as a condition of issuing the Permit. Once a site is approved, a COA is unnecessary.
6. A COA requiring compliance with local codes or regulations cannot be enforced by COGCC (due to lack of jurisdiction) and, therefore, will not be included in a Permit.
7. A COA cannot compel an operator to perform an obligation that pertains solely to interactions between the local government and the Operator (e.g., to meet with or provide notice or records to the local government).



8. A COA is not appropriate for a matter that is solely within the operator's discretion.

A summary of COGCC's analysis of the Adams County MOU BMPs follows. Please feel free to call or email if you would like to discuss further or have questions.

Provision #2a - No Open Pits / Preferred Option

The Commission has jurisdiction over storage, handling, and transportation of exploration and production wastes, which includes drilling fluids, produced water, and flowback fluids. Existing Commission Rules require the use of closed loop systems on all Designated Setback Locations. In addition, operators can indicate on their permit application whether a closed loop system will be used. Provided that an operator who signed the Adams County MOU checks the "closed loop" box, a COA would not be required.

The COGCC could add a BMP specifying that open pits will not be used during completion operations if the operator agrees to this specific provision.

Provision #2b - Water Storage Pits to Contain Fresh Water or Brine Water

A good portion of this provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

The part of this provision requiring operators to test the water in the pit every six months goes beyond COGCC regulations and could be added as a BMP. COGCC staff will review the BMP to ensure it does not weaken COGCC Rules.

Provision #2c - Pit Setback

The setback provision is not enforceable as written as it appears the decision is entirely in the operator's discretion. However, a more specific BMP agreed to by the operator and LGD addressing distances between a pit and a water well may be added if requested.

The remainder of the provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

Provision #2d - Multi-Well Pits

A good portion of this provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

There are elements of this provision such as "...the pit will be double-lined with leak detection", "Fluids stored in multi-well pits will be circulated through a four-phase separator..." and the timing between 2 years in the MOU versus 3 years in COGCC regulations that appear to go beyond COGCC regulations. In these cases, a specific BMP can be added.

COGCC staff will review the BMP to ensure it does not weaken COGCC Rules related to pit lining.

Provision #2e - Technological Advances

This provision as written is too vague to include on the Permits. However, a more specific BMP agreed to by the operator and LGD may be added if requested.

Provision #3 - Berms

Secondary containment for liquids stored on a location is within the Commission's jurisdiction and Commission Rule 605.a.(4) requires berms to be inspected periodically. The COGCC could add a BMP specifying timeframes for operator inspections. COGCC requirements to report results of these inspections will be limited to providing documentation as requested. COGCC staff will review the BMP to ensure it does not weaken COGCC Rule 605.a.(4).

Provision #4 - Regular Meetings to Monitor and Discuss MOU Items

The provision is not within the jurisdiction of COGCC.

Provision #5 - Water Supply and Quality

COGCC does not have jurisdiction over water supplies. Furthermore, the Colorado Department of Public Health and Environment ("CDPHE") and Tri-County Health Department, not the COGCC, have jurisdiction over water quality.

Provision #6a - Baseline and Subsequent Water Quality Testing -- Criteria and Protocol

This provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

Provisions #6b and 6c - Baseline and Subsequent Water Quality Testing - No Available Water and Private Water Well Owner Request

Baseline and subsequent water testing is within the Commission's jurisdiction. The part of these provisions that add requirements to (1) test the nearest downgradient available water source that is within a one-mile radius if no sources within ½ mile exist and (2) test an owner's water well if requested and within a ½ mile radius go beyond COGCC regulations and could be added as BMPs.

Provision #7 - Spill and Release Management

A good portion of this provision is a restatement of various 900-Series regulations and, therefore, does not require a BMP.

COGCC cannot compel an operator to send spill notices to the parties listed in the provision because it pertains solely to interactions between the local government and the Operator.

Provision #8 - Weed Control and Management

Control of noxious weeds is within the jurisdiction of the COGCC. Control of non-noxious weeds is within the jurisdiction of the COGCC when they pose a public safety concern. This provision is a restatement of various 1000-Series regulations and, therefore, does not require a BMP. A BMP may be added to control non-noxious weeds that pose a public welfare concern if agreed to by the operator.

Provision #9 - Noise

Noise from oil and gas operations is within the Commission's jurisdiction. A good portion of this provision is a restatement of COGCC regulations and, therefore, does not require a BMP. A BMP to install additional noise mitigations and establish and post 24-hour, 7 days a week contact information can be added.

Provision #10 - Landscaping

The provision is not within the jurisdiction of COGCC.

Provision #11 - Emergency Response Plan

COGCC cannot compel an operator to provide an emergency response plan to the County. The operator can choose to submit a copy of an emergency response plan with the COGCC Permit.

Provision #12 - Private Roads

Lease or access roads are within the Commission's jurisdiction. The Commission confers with the surface owner regarding construction and maintenance of lease or access roads. A BMP can be added to further enhance a lease or access road.

Provision #13a-b - Public Roads

The part of these provisions regarding the use of existing access roads is a restatement of COGCC Rule 1002.e.(4), and, therefore, does not require a BMP.

The rest of the provision is not within the jurisdiction of COGCC.

Provision #14 - Dust Mitigation

Dust mitigation and management of E&P waste is within the Commission's jurisdiction. This provision goes beyond current COGCC Rule 907.c.(2) related to road spreading for dust mitigation. A BMP can be added to further restrict road spreading of E&P waste. COGCC staff will review the BMP to ensure it does not weaken COGCC 900-Series Rules related to road spreading.

Provision #15 - Fencing

COGCC has jurisdiction over oil and gas location fencing. See Rules 605.c.(3) and 604.c.(2)M. COGCC will not add this as a BMP in part because it essentially restates an existing COGCC Rule, and in part because it is outside of the Commission's jurisdiction.

Provision #16 - Floodplain

COGCC has jurisdiction over pits in a floodplain. This provision goes beyond current Rule 603.h.(2)D by not allowing pits in a floodplain. A BMP can be added to further restrict pits in a floodplain.

The other parts of this provision relating to Adams County's permit process are not within the jurisdiction of COGCC.

Provision #17 - Painting of Oil and Gas Facilities

This provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

Provision #18 - Lighting

This provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

Provision #19 - Air Emissions

This provision is a restatement of CDPHE regulations and is not within the jurisdiction of COGCC.

Provision #20 - Wildlife and Wildlife Habitat

This provision is a restatement of COGCC regulations and, therefore, does not require a BMP.

Provision #21 - Cultural and Historical Resources

The provision is not within the jurisdiction of COGCC.

Provision #22 - County Inspections

The provision is not within the jurisdiction of COGCC.

Provision #23 - Notification to Land Owners/Municipalities

COGCC has jurisdiction over operational notices to local governments. This provision extends COGCC notice requirements for drilling and completion operations to beyond the LGD. This provision may be included as a BMP but will be difficult for COGCC to enforce and will most likely require the LGD to notify COGCC that an operator did not comply. COGCC would prefer that this remain between the operator and Adams County as an Adams County process has already been established and appears to be working.

Provisions #24 and #25 - Records and Mapping Information

COGCC cannot compel an operator to provide records or mapping information to the County.

Sincerely,



Matthew J. Lepore
Director