



3. OIL AND GAS: Industry slams Colo.'s new draft energy rules (04/03/2008)

Eryn Gable, special to *Land Letter*

A proposed rewrite of Colorado's oil and gas regulations would give more weight to health, wildlife and environmental concerns -- a move that industry officials have warned could hamper energy development in the state.

Although the latest version of the new **rules** has been scaled back from November's preliminary version, industry officials said they remain "extremely concerned" about the draft rules.

"It appears that we have traded one set of concerns for another," Meg Collins, president of the Colorado Oil and Gas Association, said in a statement. "Many of our initially stated concerns remain in the draft rules but in a different form. We still believe that the rules clearly go far beyond the intent of last year's legislation."

She added, "As currently drafted, these rules will negatively impact Colorado's number one economic contributor, at a time when Colorado's entire economy is being buoyed by these important investments."

The push for the new rules stemmed from Colorado's unprecedented natural gas boom, which has resulted in about 34,000 active wells statewide. Colorado issued a record 6,368 drilling permits last year -- six times the number of permits issued in 1999.

Through the first three months of this year, permit applications are up more than a third compared to last year, according to Dave Neslin, acting director of the state Oil and Gas Conservation Commission. If that trend continues, the state could issue close to 8,000 permits this year, he said.

And more development is coming. Tens of thousands of new gas wells are expected on federal land alone in the next 15 to 20 years.

As Colorado's \$23 billion oil and gas industry has boomed, however, so have complaints about damage to Colorado's environment and public health. Those concerns served as the impetus for the new rules.

"I don't think the rules should materially decrease companies' abilities to drill and operate in Colorado," Neslin said. "That is certainly not our objective. ... Our objective is to try to allow industry to continue to flourish, while at the same time protecting our environment, wildlife and quality of life."

Details of the new proposal

Changes from the preliminary rules include the elimination of a new set of a paperwork that would have required information about storage tanks, roads and other infrastructure. Instead, the draft rule calls for gathering a limited amount of that information under an existing form. That form would require state approval in the booming Piceance Basin in western Colorado, but not elsewhere.

Another change is that the latest rules do not allow neighbors of proposed wells to seek a hearing, something industry officials had warned could delay permitting. The new rules would only require that neighbors be notified of a proposal.

The latest draft also calls for consultation with the Colorado Department of Wildlife and the Colorado Department of Public Health and Environment when a company requests a variance from existing rules covering wildlife or public health or when a local government with jurisdiction over the area requests a consultation. The latest rules would require a consultation to occur within 40 days, whereas the initial proposal would have provided a 60-day consultation and a 15-day period for informal dispute resolution.

The draft also puts more limits on timing restrictions -- only allowing the Department of Wildlife to impose timing restrictions for 90 days within any 12-month period. Operators could also avoid these timing restrictions by reducing the density of their well pads, consulting with state officials to develop alternative mitigation that would be equally as effective as the timing restrictions, or developing a comprehensive drilling plan with alternative types of mitigation that addresses a number of well pads in a particular area.

"We've provided options to companies while still getting at protection," Neslin said.

The draft rules also identify some areas where operators should avoid drilling if possible, such as within one-quarter mile of active bald eagle nests.

Under the proposal, state officials said most permit applications will be decided upon within 50 days, which is more than two weeks shorter than under the current rules, provided that the Oil and Gas Conservation Commission staffing is increased as proposed. Where consultation occurs, a decision will typically be made within 60 days.

In both cases, if the commission's director does not issue a decision on an application within 75 days, the operator can request an expedited hearing before the commission. When a company has a comprehensive drilling plan, the operator can request an expedited hearing if the director does not act on an application within 30 days.

The initial proposal did not address processing time for drilling permit applications, except that permit consideration could be expedited with a comprehensive development plan.

The draft rules would also prohibit oil and gas operations within 500 feet of drinking water supplies for five miles upstream of where water is pulled into a treatment plant and call for using "best management practices" within half a mile of drinking water supplies. This issue was not addressed in the original proposal.

Some regulations remain unchanged from the draft, such as requiring operators to maintain a list of all chemicals used in drilling and operating the well and to provide that list "promptly" to state regulators upon request. The inventory would be kept as confidential as possible, according to the new rules.

'Protections of things that make Colorado special'

"We think that by addressing the environmental, wildlife and health concerns in responsible manner, we will greatly further the industry's long-term future in Colorado, while alleviating some of the concerns about drilling that have been voiced publicly the last few years," Neslin said.

The latest rules are the culmination of five public meetings that were held in January around the state and were attended by more than 1,500 people. In addition, the state convened five technical work groups that held weekly meetings in January and February with representatives from industry, agriculture, environmental groups and state agencies.

Environmental groups applauded the state's latest proposal but said there were some areas where state officials should have included greater protections. For example, they said recent spills from overflowing waste pits near the Roan Plateau demonstrate that pit-less drilling operations should be mandatory in watersheds that supply public drinking water.

The groups also said they will carefully review proposed wildlife protections to ensure they protect species such as mule deer, elk, sage grouse and cutthroat trout. And they said they want to ensure that comprehensive development plans are performed consistently to lessen the cumulative damage caused by the drilling boom.

Elise Jones, head of the Colorado Environmental Coalition, said her group is also concerned that the new rules only require a 150-foot setback. "They can still put a drill rig as close as 150 feet from somebody's home, which essentially is far enough away that if the thing fell over, it wouldn't crush the house," she said. "While that may be some consolation to the homeowner, we think having all that noise and lights and industrial activity so close to somebody's dwelling deserves a closer look."

Jones said her group also wants to ensure that the wildlife provisions are consistent with current scientific understanding of species. For example, she said, it might be that some species require a longer timing restriction on drilling activities than what is currently allowed under the proposal.

Rick Kahn of the state Division of Wildlife said the limits on timing restrictions are one example of "significant concessions" the state made to industry. "We did not by any means get everything we wanted," he said.

Still, he said the latest rules represent a "balanced package" from DOW's standpoint.

Duke Cox of Western Colorado Congress said he has been pleased so far with the rulemaking process. "We are well on our way to creating a profoundly useful set of rules," Cox said. "The real obstacle that we face is the continued rhetoric of groups like Americans for American Energy and the Colorado Oil and Gas Association, which continue to put forward unsubstantiated claims about the negative effects these rules will have on the oil and gas industry."

While Cox acknowledged that industry will have to make some adjustments to comply with the new rules, he said the effects would be greatest on energy companies that are not currently using best management practices or following the current rules.

"We're not by any means opposed to energy development," Cox said. "That's not the issue. The issue is how energy development is done and what impact it has on our air, water, wildlife and what you might call our surface capital value, the things intrinsically and emotionally that western Colorado offers, and we're unwilling to allow that to be sacrificed."

"We are looking for common-sense protections of the things that make Colorado special, and we believe the energy industry should understand that and work with us on this desire, instead of making false claims about how these rules will run energy companies out of the state and lead to higher gas prices. That isn't helpful, and it isn't going to get us a better set of rules."

The final rules are expected to be released in July following more public comments. The rules are currently set to go into effect Nov. 1.

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