

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES) CAUSE NO. 1R
OF PRACTICE AND PROCEDURE OF THE OIL)
& GAS CONSERVATION COMMISSION OF THE) DOCKET NO. **1312-RM-02**
STATE OF COLORADO)

NOTICE OF RULEMAKING HEARING ON REPORTING OF E & P WASTE SPILLS
AND RELEASES

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission of the State of Colorado (“Commission”), on its own motion, will consider additions and amendments to the Rule 300 Series (Drilling, Development, Production and Abandonment) and the Rule 900 Series (E&P Waste Management) of the Commission’s Rules of Practice and Procedure 2 C.C.R. 404-1 (“Rules”), to establish new and amended rules for the reporting of spills. Draft proposed new and amended rules are attached hereto as **Appendix A**.

The Colorado General Assembly recently passed H.B. 13-1278 and Governor Hickenlooper signed it into law on May 11, 2013, creating C.R.S. § 34-60-130, Reporting of Spills-Rules. In response to this legislative amendment to the Oil & Gas Conservation Act, the enabling statute of the Commission, this rulemaking hearing proposes amending the current Rules regarding reportable spills and reporting requirements. The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105, 34-60-106(2)(a), 34-60-106(2)(d), and 34-60-130 C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the above entitled matter for a rulemaking hearing commencing on:

Date: Monday, December 16, 2013
Tuesday, December 17, 2013

Time: 9:00 a.m.

Place: Ralph L. Carr Colorado Judicial Center
1300 Broadway, 1st Floor, Room 1E
Denver, Colorado 80203

Party Status. To participate in this rulemaking as a party, a person or organization must submit a request for party status with the Commission that shall include the following information: (1) name of the applicant and their representative (if different); (2) the street address, electronic mail address, and telephone and facsimile numbers of the applicant or their representative; and (3) a brief summary of any policy, factual, or legal issues the applicant has with the proposed regulations as of the time of filing the application for party status. Applications for party status must be submitted to DNR_COGCC.Rulemaking@state.co.us by 5:00 pm on **October 30, 2013**. The

Commission staff will compile a list of all parties, their street addresses and electronic mail addresses and post it on the Commission website.

Public Participation. The Commission encourages the public to participate in the rulemaking hearing by commenting on the proposed regulations. Persons who do not desire party status, but would like to participate in the rulemaking process, will be able to make their views known to the Commission either by submitting comments in writing in advance of or at the rulemaking hearing, or by speaking during the public comment period allotted during the hearing. Depending on the number of people seeking to make oral comments at the hearing, the Commission may need to limit such comments. Organized groups of individuals are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others. If members of the public desire to have the Commission review written material, such documents should be emailed to DNR_COGCC.Rulemaking@state.co.us by **Friday, November 8, 2013**. Comments by non-parties need not be submitted in paper format.

Prehearing Statements and Comments. Each party, person or organization who wants to participate in this rulemaking and submit a prehearing statement or comment must file and serve in the manner set forth below. Deadline for prehearing statements or comments is **November 8, 2013**. Response documents to the prehearing statements or comments will be due **November 15, 2013**.

Prehearing statements, comments, and response documents: shall be limited to 5 pages single spaced, excluding exhibits; shall succinctly summarize the factual and legal issues that arise from the rulemaking proposal, and what position is being taken on each such issue and the basis for that position; shall attach copies of all exhibits to be introduced, and shall list the name and occupation of all witnesses that may be called.

Filing and service. Filings by parties must be served via first class mail on the Commission in hard copy and electronic copy as follows: 1) hard copies for the Commission - the original and 2 copies delivered to Robert J. Frick, Hearings Manager, Docket No. 1312-RM-02, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and 2) an electronic copy emailed, preferably in portable document format (*pdf*), to DNR_COGCC.Rulemaking@state.co.us for posting to the Commission website.

The Commission may take actions, including without limitation, modifying or amending the existing rules described or proposed herein and making conforming modifications to other rules, which it determines are reasonably necessary.

In accordance with the Americans with Disabilities Act, if any person requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the current and proposed Rules are available on the Commission internet homepage at <http://cogcc.state.co.us> or available upon request at the Commission.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 

Robert J. Frick, Secretary

Dated: October 24th, 2013

APPENDIX A

337. COGCC Form 19. SPILL/RELEASE REPORT

Spills and releases of E&P Waste shall be reported to the Director on a Spill/Release Report, Form 19, pursuant to the reporting requirements in Rule 906.

906. SPILLS AND RELEASES

a. **General.** All spills/releases of E&P Waste shall be controlled and contained immediately upon discovery to protect the environment, public health, safety, and welfare, and wildlife resources. Impacts resulting from spills/releases shall be investigated and cleaned up as soon as practicable. The Director may require additional activities to prevent or mitigate threatened or actual significant adverse environmental impacts on any air, water, soil or biological resource, or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

b. Reporting E&P Waste spills/releases.

(1) Operators shall report E&P Waste spills/releases that meet any of the following criteria to the Director in writing using COGCC Spill/Release Report, Form 19, and verbally to both the entity with jurisdiction over emergency response within the local municipality if the spill occurred within a municipality or the local county if the spill did not occur within a municipality, and the affected surface owner or the surface owner's appointed tenant as soon as practicable, but not more than twenty-four (24) hours after discovery:

A. A spill/release of any size that impacts or threatens to impact any Waters of the State, a residence or occupied structure, livestock, or a public byway;

B. A spill/release in which one (1) barrel or more of E&P Waste is spilled or released outside of berms or other secondary containment;

C. A spill/release of greater than five (5) barrels regardless of whether the spill/release is completely contained within berms or secondary containment.

The initial written report to the Director shall include, at a minimum, the location of the spill/release and any information available to the Operator about the type and volume of waste involved.

In addition to the initial report to the Director, the Operator shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered that includes an 8 1/2 x 11 inch topographic map showing the governmental section and location of the spill; all pertinent information about the spill/release known to the Operator that has not been reported previously; and information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator. The Director may require further supplemental reports or additional information.

(2) In addition to the reports required under subsection (1) above, a spill/release of any size that impacts or threatens to impact any Surface Water Supply area shall also be reported to the Environmental Release/Incident Report Hotline (1-877-518-5608) and spills/releases that impact or threaten to impact a Surface Water Intake shall be verbally reported to the emergency contact for that facility immediately after discovery.

(3) Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act, as applicable.

c. Surface owner consultation. The operator shall make good faith efforts to notify and consult with the affected surface owner, or the surface owner's appointed tenant, prior to commencing operations to remediate E&P waste from a spill/release in an area not being utilized for oil and gas operations.

d. Remediation of spills/releases. When threatened or actual significant adverse environmental impacts on any air, water, soil or other environmental resource from a spill/release exists or when necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications, the Director may require operators to submit a Site Investigation and Remediation Workplan, Form 27. Such spills/releases shall be remediated in accordance with Rules 909. and 910.

e. Spill/release prevention.

(1) Secondary containment. Secondary containment that was constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with the rules in effect at the time of construction. Secondary containment constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land shall be constructed or installed around all tanks containing oil, condensate, or produced water with greater than 3,500 milligrams per liter (mg/l) total dissolved solids (TDS) and shall be sufficient to contain the contents of the largest single tank and sufficient freeboard to contain precipitation. Secondary containment structures shall

be sufficiently impervious to contain discharged material. Operators are also subject to tank and containment requirements under Rules 603. and 604. This requirement shall not apply to water tanks with a capacity of fifty (50) barrels or less.

- (2) Spill/release evaluation. Operators shall determine the cause of a spill/release and, to the extent practicable, implement measures to prevent spills/releases due to similar causes in the future.