

**Statement of Basis, Specific Statutory Authority, and Purpose  
New Rules and Amendments to Current Rules of the Colorado  
Oil and Gas**

**Conservation Commission, 2 CCR 404-1**

**Cause No. 1R Docket No. 1312-RM-02  
Reporting of Spills and Releases**

This statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Commission Rules”) promulgated by the Commission on December 17, 2013, concerning an operator’s obligations to report spills or releases of Exploration and Production Waste (“E & P Waste”) or produced fluids (“Spill Reporting Rules”).

The Commission is promulgating the Spill Reporting Rules to protect public health, safety, and welfare, including the environment and wildlife resources, from possible adverse impacts resulting from spills or releases of E & P Waste or produced fluids. The Spill Reporting Rules are intended to foster the responsible and balanced development of oil and gas resources in Colorado.

In adopting the Spill Reporting Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on June 17, 2013, when the Commission directed COGCC Staff to proceed with rulemaking for purposes of considering new or amended rules requiring the reporting of spills or releases of E & P Waste or produced fluids.

**Stakeholder Participation**

The Commission held stakeholder meetings regarding the proposed Spill Reporting Rules on October 21, 2013 and November 22, 2013. The Commission invited and accepted written and verbal comments from stakeholders regarding the proposed Spill Reporting Rules during these stakeholder meetings.

The Commission issued a Notice of Rulemaking Hearing concerning the Spill Reporting Rules on October 24, 2013. Pursuant to the Notice of Rulemaking, any person or organization was invited to become a Party to the rulemaking and submit prehearing statements and comments, including proposed alternative rules or amendments, and to respond to the prehearing statements and comments submitted by other Parties. The Commission Notice of Rulemaking also invited public participation through the Rule 510 comment process.

## **Statutory Authority**

The Commission's authority to promulgate the Spill Reporting Rules is derived from: § 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules); § 34-60-106(2)(d), C.R.S. (Commission has authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility."); § 34-60-106(11)(a)(II), C.R.S.; and newly enacted § 34-60-130(3), C.R.S. (Commission has authority to promulgate rules to implement the reporting of spills).

## **Identification of New and Amended Rules**

The Commission adopted amendments to Commission Rule 337 and Commission Rule 906.

## **Overview of Purpose and Intent**

One purpose of the Spill Reporting Rules is to implement HB 13-1278, codified at § 34-60-130, C.R.S. (2013). Section 34-60-130, which took effect on August 7, 2013, provides, in pertinent part:

### **34-60-130. Reporting of spills - rules.**

(1) IF ONE BARREL OR MORE OF OIL OR EXPLORATION AND PRODUCTION WASTE IS SPILLED OUTSIDE OF BERMS OR OTHER SECONDARY CONTAINMENT, THE SPILL SHALL BE REPORTED WITHIN TWENTY-FOUR HOURS AFTER THE DISCOVERY OF THE SPILL, TO:

(a) THE COMMISSION; AND

(b) 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.

(2) THE SPILL REPORT MUST INCLUDE ANY AVAILABLE INFORMATION CONCERNING THE TYPE OF WASTE INVOLVED IN THE SPILL.

(3) THE COMMISSION MAY PROMULGATE RULES TO IMPLEMENT THIS SECTION.

The Commission's existing Rules for reporting spills or releases of E & P Waste do not meet certain reporting requirements under § 34-60-130, C.R.S. Under existing Commission Rules:

- Spills or releases of any amount of E & P Waste or produced fluids must be controlled and contained immediately upon discovery to protect the environment, public health, safety, and welfare, and wildlife resources. Rule 906.a.
- Spills of E & P Waste or produced fluids exceeding five barrels, whether outside of or within lined or unlined berms, must be reported to the Commission on a Spill/Release Report, Form 19. Rule 906.b.(1).
- Spills of E & P Waste or produced fluids exceeding twenty barrels must be reported verbally to the Director within 24 hours after discovery, and on Form 19. Rule 906.b.(2).
- Spills of E & P Waste or produced fluids of any size which impact or threaten to impact any waters of the state, residences or occupied structure, livestock, or public byway must be reported to the Director within 24 hours after discovery, and on Form 19. Rule 906.b.(3).

To implement § 34-60-130 C.R.S., the new Spill Reporting Rules require an operator to report to the Director, verbally or in writing, a spill or release in which one (1) barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment within 24 hours after discovery. Spills or releases of this nature must also be reported verbally within 24 hours after discovery to: (1) the entity with jurisdiction over emergency response within the local municipality if the spill/release occurred within a municipality or the local county if the spill/release did not occur within a municipality; and (2) the affected Surface Owner or the Surface Owner's appointed tenant.

These initial reports must include, at a minimum, the location of the spill or release and any information available to the operator about the type and volume of waste involved. If the initial report to the Director was not made by submitting a Form 19, the operator must submit a Form 19 to the Director as soon as possible, but not later than 72 48 hours after discovery unless an exception is granted by the Director.

A second purpose of the Spill Reporting Rules is to ensure the Director is notified of spills or releases of E & P Waste or produced fluids of five barrels or more within 24 hours, even when such a spill or release occurs within secondary containment. Under current Commission Rules, an operator is required to report a spill or release of five barrels or more within secondary containment on a Form 19 within ten days after discovery. The current threshold for reporting spills or releases of E & P Waste or produced fluids to the Director within 24 hours is 20 barrels.

The Commission has determined it is necessary and appropriate for the Director to be notified within 24 hours of spills or releases of E & P Waste or produced fluids

that exceed five barrels, even when the spill or release is contained within secondary containment.

In reaching this determination, the Commission finds:

- An operator is currently required to report a spill or release of more than five barrels to the Director on a Form 19. The new Spill Reporting Rules do not create a new reporting obligation, but only alter the timing of the existing obligation.
- Operators may incur costs to modify existing policies and procedures for reporting spills and releases of E & P Waste or produced fluids to meet the new reporting threshold, and to implement the new policies and procedures. However, these costs are not anticipated to be substantial, and are largely expected to be one-time, up-front costs that will not recur once reporting policies and procedures have been modified and implemented.
- A spill or release of approximately five barrels (210 gallons) has the potential, if not controlled and contained immediately and properly, to cause significant adverse impacts to public health, safety, welfare, the environment, or wildlife. Requiring the reporting of spills or releases of this nature to the Director within 24 hours provides an opportunity for both the Director and operator to ensure timely and appropriate response measures are undertaken to protect public health, safety, welfare, the environment, or wildlife.
- A spill or release of five barrels has the potential to attract public attention and concern and, in turn, trigger public inquiries to the Director about the spill or release. The initial report will notify the Director of an incident and provide sufficient information to allow the Director to respond appropriately to public inquiries and concerns.
- Lowering the threshold for reporting spills and releases of E & P Waste or produced fluids to the Director within 24 hours from 20 barrels (840 gallons) to five barrels (210 gallons) will improve the public's confidence that the Commission Rules protect public health, safety, welfare, the environment, or wildlife.

## **Amendments and Additions to Rules**

### **300 Series Rules**

The Spill Reporting Rules amend Rule 337 by requiring an operator to report a spill or release of E & P Waste *or produced fluids* to the Director on a Form 19 pursuant to the reporting requirements in Rule 906.

By inserting the phrase, “*or produced fluids*,” the Commission means to clarify that spills of oil, condensate, or natural gas liquids must be reported along with other E & P Waste. This new language is intended to avoid any ambiguity regarding whether spills or releases of oil, condensate, or natural gas liquids, which might be considered “products,” must be reported. If such materials are spilled or released an operator is obligated to report the event consistent with the requirements in Rule 906.

As amended, Rule 337 eliminates the reference to a five barrel reporting threshold, which is inconsistent with the new reporting requirements under HB 13-1278 and amended Rule 906.

### **900 Series Rules**

The primary purpose of Rule 906 is to set forth requirements for reporting a spill or release of E&P Waste or produced fluids to the Director and, in some cases, an affected Surface Owner or local government. These reporting requirements are one means by which the Commission balances development and production of Colorado’s oil and gas resources with protection of the environment, public health, safety, and welfare, and wildlife resources.

Consistent with the amendments to Rule 337, Rule 906.a. and Rule 906.b. have been amended to require operators to report spills of E & P Waste *or produced fluids*. The rationale for these amendments is the same as was stated above with respect to Rule 337.

**Rule 906.a.** has been amended to require operators to not only investigate and clean up a spill or release of E & P Waste or produced fluids as soon as practicable, but to *document* the actions taken to investigate, control and contain a spill or release of any size.

**Rule 906.b.** has been reorganized to clarify the varying obligations an operator has to report a spill or release of E & P Waste or produced fluids to the Director, the local government, and an affected Surface Owner. These obligations are spelled out in subsections (1), (2), and (3), respectively of amended Rule 906.b.

Initial Report. Under amended Rule 906.b., an operator may make an initial report to the Director verbally or in writing, which includes via electronic means such as email, as well as by using Commission Form 19. If an operator does not make the initial report using a Form 19, the operator must submit a Form 19 within 48 hours after discovery of a spill or release. An operator should request an extension of time from the Director immediately and in advance if extenuating circumstances exist that would prevent filing a Form 19 within 48 hours.

Notice to Surface Owner. An operator is required to report certain spills or releases of E & P Waste or produced fluids to an affected Surface Owner within 24 hours. However, amended Rule 906.b.(3) recognizes that a Surface Owner may not always

be available or reachable within 24 hours. The amended Rule requires an operator to continue making good faith efforts to notify a Surface Owner until notice has been provided. An operator should document its efforts to notify a Surface Owner if notification is not made within 24 hours.

Threatened Impacts. The substance of former Rule 906.b.3 has not been changed, but this Rule has been re-numbered as **906.b.(1)A**. This Rule does not expressly require an operator to report a spill or release of E & P Waste or produced fluids, regardless of size, that impacts or threatens to impact a person. The Commission believes that requirements to report a spill or release of any size that threatens waters of the state or a residence or occupied structure, coupled with the requirement to report a spill or release of one barrel that escapes containment, will protect public health, safety, and welfare.

Secondary Containment. The Commission is not changing the existing requirement under Rule 906 that secondary containment structures “shall be sufficiently impervious to contain discharged material,” as requested by some stakeholders. See Commission Rule 906.3.(1); Rule 604.c.(1)G. (“Berms or other secondary containment devices shall be sufficiently impervious to contain any spilled or released material.”); Rule 605.a.(4) (“Berms and secondary containment devices and all containment areas shall be sufficiently impervious to contain any spilled or released material.”). Secondary containment that meets these requirements, *i.e.*, is sufficiently impervious to contain discharged materials, should prevent both horizontal and vertical migration of released fluids and protect the surrounding environment.

Installing a synthetic liner to achieve the required degree of impermeability is not required unless specifically called for, as in Rule 604.c.(3)B. or 605.a.(4) (“A synthetic or engineered liner shall be placed directly beneath each above ground tank.”).

If the area in which a spill or release of E & P Waste or produced fluids occurs is not sufficiently impervious to contain the discharged materials, regardless of whether the area is bermed, an operator should not consider the spill or release to be within secondary containment. In this circumstance, the reporting threshold would be one barrel, pursuant to amended Rule 906.b.(1)B.

Reporting Chemical Spills. Rule 906.b.(6) (renumbered with these amendments to be **906.b.(5)**) states that operators must report spills of chemicals pursuant to the requirements of applicable laws. In this rulemaking, the Commission is not requiring operators to report spills of fluids or chemicals other than E & P Waste or produced fluids to the Director, as requested by some stakeholders. The Commission’s jurisdiction over spills and releases is limited to E & P Waste or produced fluids; spills or releases of chemicals or fluids that are not E & P Waste are governed by other laws and regulatory bodies. The U.S. Environmental

Protection Agency's publication, *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations* describes what constitutes an E & P Waste. This EPA documents can be accessed at <http://www.epa.gov/osw/nonhaz/industrial/special/oil/oil-gas.pdf>

Purpose of Rule 906.b. Rule 906.b. is a reporting requirement rule; it does not establish criteria for determining whether an adverse impact to public health, safety, welfare, the environment, or wildlife has occurred or will occur in the future. That determination must be made by the Director or Commission independently of the Rule 906 reporting thresholds, based upon an appropriate investigation by the Commission's environmental and technical staff, and consistent with other Commission Rules.

Notice to Surface Owner prior to commencing remediation. Rule 906.d (renumbered with these amendments to **906.c.**) states that an operator should make a good faith effort to notify and consult with a Surface Owner before commencing operations to remediate E & P Waste. The Commission is amending this Rule to add, "Such efforts should not unreasonably delay commencement of remediation approved by the Director." The Commission recognizes a Surface Owner may wish to be informed about and contribute to remediation planning on their surface lands; however, delaying commencement of remediation frequently compounds the effect of adverse impacts. Consequently, this amendment makes clear the Surface Owner notice and consultation process must not unduly delay or preclude a remediation project approved by the Director from going forward, even if the Surface Owner does not agree with the remediation approach.

### **Effective Date**

The amendments to Rule 337 and Rule 906 of the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 adopted by the Commission on December 17, 2013 in Cause No. 1R Docket No. 1312-RM-02 are effective February 1, 2013.