

**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. 1211-RM-04  
Setbacks**

This statement sets forth the basis, specific statutory authority, and purpose for new Rules and amendments to the Rules and Regulations and Rules of Practice and Procedure of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 (“Rules,” or “Commission Rules”) promulgated by the Colorado Oil and Gas Conservation Commission (“Commission”) on February 11, 2013 concerning location requirements for Oil and Gas Facilities, mitigation and notice requirements, and related matters. The new and amended Rules resulting from this rule making are referred to collectively herein as the “Setback Rules.”

**Overview of Purpose and Intent**

These Setback Rules are promulgated to protect the safety and welfare of the general public from environmental and nuisance impacts resulting from oil and gas development in Colorado, including spills, odors, noise, dust, and lighting.

The Commission considered a diverse array of stakeholder comments, positions, and alternative proposed rules regarding setback distances, mitigation measures, and notice and communication requirements through the stakeholder process and during the formal rule making hearing. Local governments, the regulated community, environmental and citizen interest groups, homebuilders, and agricultural and farming interests were among the stakeholder groups that participated in both the stakeholder process and as Parties to the rule making. The Setback Rules ultimately adopted by the Commission strike an appropriate balance between the stakeholders’ competing positions, and between mineral estate and surface estate owners’ rights. The Setback Rules provide strong protective measures, including notice and communication requirements, without imposing undue costs or restrictions on oil and gas exploration and production activities in the state.

The Setback Rules are intended to require Operators to eliminate, minimize, or mitigate the impacts of oil and gas operations conducted in Designated Setback Locations by utilizing technically feasible and economically practicable protective measures. Requiring oil and gas operations to be located a greater distance away from occupied buildings is one type of protective measure. However, increasing the minimum setback distance has implications for, and can adversely affect, mineral owners’ property rights, existing and planned surface uses, contractual rights and obligations, and technical and economic considerations. Mindful of these potential implications, the Commission opted to increase the existing setback distances of

350 feet in High Density Areas and 150 feet elsewhere to a uniform 500 feet statewide, and to impose technically advanced best management practices and protective measures to eliminate, minimize or mitigate potential nuisances and other adverse impacts for all Oil and Gas Locations within 1,000 feet of occupied buildings. In addition, Oil and Gas Locations may not be located within 1,000 feet of specified “High Occupancy Buildings,” including schools, day care centers, hospitals, nursing homes, and correctional facilities, without Commission approval following a public hearing, and such approval will be contingent on extensive mitigation measures.

The Commission also has adopted Rules that will enhance notice to and communication with Building Unit owners within 1,000 feet of oil and gas operations, and will increase opportunities for local government representatives, including Local Governmental Designees (“LGDs”), to review and comment on new Oil and Gas Locations proposed within their jurisdictions. As development expands into more urbanized areas, engaging nearby residents is increasingly important. It has been Commission Staff’s experience that communicating with persons who live or work near drilling operations before those operations begin is an effective means of addressing concerns about what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential nuisances and adverse impacts. The Commission believes these Rules establish a regulatory framework that protects communities and the environment surrounding oil and gas activities while preserving reasonable access to the mineral estate throughout the state.

These Setback Rules are not intended to alter, impair, or negate local governmental authority to regulate matters of local concern, including land use, related to oil and gas operations, or to regulate matters of mixed local and state concern provided such local regulations are not in operational conflict with these Rules.

These Setback Rules do not govern surface development that occurs subsequent to the initiation of oil and gas operations at a location. These Rules do not preclude occupied building units from being constructed within 500 feet of an Oil and Gas Location pursuant to a Surface Use Agreement or Site Specific Development Plan.

These Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development. The Commission, after consulting with the Colorado Department of Health and Environment (“CDPHE”), believes that there are numerous data gaps related to oil and gas development’s potential effect on human health and that such data gaps warrant further study.

In adopting the new and amended Rules, the Commission relied upon the entire administrative record for this rule making proceeding, which formally began on October 1, 2012 and informally

began in February 2012. This record includes the Commission Staff's proposed Rules, revisions thereto and numerous recommended modifications and alternatives; public comment, written testimony, and exhibits; and hours of public and party hearings. In formulating its proposed Rules, Commission Staff benefitted greatly from significant data and information gathered during a setback stakeholder process that occurred approximately monthly from February 2012 through October 2012. During this stakeholder process, the Commission Staff received significant information from diverse stakeholders, including concerned citizens, environmental and conservation groups, home builders, agricultural groups, local governments, the regulated industry and the CDHPE.

### **Statutory Authority**

The Commission has the general authority to make and enforce these Setback Rules under § 34-60-105(1), C.R.S., which provides: "The commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article." The Commission's specific authority to promulgate each of the new and amended Rules at issue in this rule making is set forth below.

### **Effective Date**

The new and amended Setback Rules adopted by the Commission on February 11, 2013 shall become effective on August 1, 2013.

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

New or amended Rules were adopted in the 100 Series (Definitions), 300 Series (Drilling, Development, Production, and Abandonment), 600 Series (Safety Regulations), and 800 Series (Aesthetic and Noise Control Regulations) of the Commission's Rules.

### **Amendments and Additions to Rules by Series**

The Setback Rules include those that correct any typographical and grammatical errors. The general authority for adoption of these Setback Rules is set out in the Statutory Authority section above and is generally applicable to all amendments and new Rules. The amendments also include revisions to reconcile the renumbering of various Rules and to make uniform the use of new or amended terms of art. Such clarifying, or non-substantive revisions, have been made with respect to Rules 216, 317, 317B, 503, 906, 1102, 1202, 1204, and 1205.

### **100-Series Definitions**

The revised 100-Series Rules contain many definitions that occur throughout the Rules and throughout the Oil and Gas Conservation Act, § 34-60-101, C.R.S., that have been moved to, or included in, this Series to improve the usefulness and readability of the Series. The following Rules have been added or substantively amended:

### **BUFFER ZONE SETBACK**

**Basis:** The statutory basis for this amendment is § 34-60-106(11)(a)(II), C.R.S., which provides: The Commission shall “[p]romulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations.”

**Purpose:** The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Production Facility is proposed to be located within 1,000’ of a Building Unit.

### **DESIGNATED SETBACK LOCATION**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this amendment is to create a term of art for all proposed Oil and Gas Locations located within, or proposed to be located in, any Buffer Zone Setback, an Exception Zone, within 1,000’ of a High Occupancy Building Unit, or within 350’ of a Designated Outside Activity Area.

### **DESIGNATED OUTSIDE ACTIVITY AREA**

**Basis:** § 34-60-106(11)(a)(II), C.R.S. and § 34-60-106(10), C.R.S., which provides: The commission shall “promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well.”

**Purpose:** This definition has been revised to conform to other changes arising out of this Setback Rulemaking. The Commission has also revised this Rule to reject the Colorado Court of Appeals’ interpretation of the existing Rule articulated in its decision captioned *Chase Satak v. Colo. Oil and Gas Conservation Comm’n and Magpie Operating Inc.*, No. 11CA1249 (June 7, 2012). By revising this Rule, the Commission intends to confer substantial discretion in the Commission to determine whether a Designated Outside Activity Area exists under the totality of the circumstances and consistent with statutory purposes. The amended Rule also provides local governments express authority to file applications designating outdoor venues or recreation areas within their jurisdictions as Designated Outside Activity Areas.

## **EXCEPTION ZONE LOCATION**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this amendment is to prohibit any Well or Oil and Gas Location proposed to be located within 500' of a Building Unit unless, among other requirements, protective measures are put in place that are sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

## **HIGH OCCUPANCY BUILDING UNIT**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this definition is to identify those buildings which are designed for and occupied by large numbers of people and, on that basis, warrant heightened standards and practices under specific Commission Rules.

## **BUILDING UNIT**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this definition is to identify those buildings which are designed for human occupancy and, on that basis, warrant heightened standards and practices under specific Commission Rules.

## **SURFACE OWNER**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The Setback Rules contemplate that Operators and Surface Owners may enter into a Surface Use Agreement, require Operators to consult with Surface Owners, and, among other things, provide for notice of operations to Surface Owners. This definition incorporates the definition of Surface Owner by reference provided by § 34-60-103(10.5), C.R.S.

## **SURFACE USE AGREEMENT**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this amendment is to define Surface Use Agreement as a term of art as used throughout the Rules.

## **URBAN MITIGATION ZONE**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Oil and Gas Location is proposed to be located within an area containing at least 22 Building Units in a 1,000' radius of the well, or in an area containing at least 11 Building Units in a 1,000' semi-circle of the Well, or within an area containing one High Occupancy Building within 1,000' feet of the Well.

### **300-SERIES**

**The following Rules were amended:**

#### **RULE 303 (REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** Substantial additions and revisions have been made to Rule 303, some of a technical nature and some merely to clarify the application of the Rule or delete extraneous language. Director approval is now required for all Form 2A, Oil and Gas Location Assessment, applications. This change conforms the Rule to Commission Staff's long-standing practice, as all Form 2As are reviewed and processed in the same manner.

Other revisions to Rule 303 include Rule 303.b.(3)D., which requires that all improvements be identified and included on a scaled drawing. Additionally, if a proposed Oil and Gas Location is within 1,000 feet of a Building Unit, operators must submit additional information with their application materials (Rule 303.b.(3)(J)). Such heightened informational requirements will enable the Commission to quickly determine whether a pending application triggers additional analysis and safeguards under the new and amended Rules.

#### **RULE 305 (NOTICE, COMMENT, APPROVAL)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** Substantial additions and revisions have been made to Rule 305. Under the existing Rules, LGDs and the public have 20 days to comment on pending applications. Depending on the proposed location, the CDPHE and Colorado Division of Parks and Wildlife may also comment on a pending application. Under the Setback Rules this comment period, upon the written request of the LGD, shall be extended to 40 days for proposed facilities located within an Exception Zone, i.e., a facility proposed to be located 500 feet or less from a Building Unit.

Rule 305 was substantially revised to include notice to Building Unit owners as well as surface owners. Once Commission Staff have determined a Form 2A Oil and Gas Location Assessment (“OGLA”) is complete, the applicant must provide certain information, via an “OGLA Notice,” to the surface owners within 500 feet, as previously required, and to all owners of Building Units within the Exception Zone. Lastly, operators must provide a Buffer Zone Notice to owners of Building Units within the Buffer Zone, i.e., 1,000 feet of the proposed location.

The OGLA Notice and Buffer Zone Notice will alert surface and Building Unit owners that they will have an opportunity to meet with the operator to discuss their concerns about proposed oil and gas operations, including what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential impacts of the operations, including odors, noise, dust, and lights.

The Commission believes these changes enhance the transparency of the permitting process by extending individualized notice to adjacent landowners in the Buffer Zone and will result in permitting decisions that are better informed and more protective of public health, safety, and welfare.

#### **RULE 306 (CONSULTATION)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** New Rule 306.e requires operators to meet upon request with Building Unit owners within the Exception Zone (500 feet) and to specifically confer regarding the details of the proposed operation, such as duration of the operation and reclamation standards, as well as any related mitigation measures. New Rule 306.e. also requires operators to meet upon request with Building Unit owners within the Buffer Zone (1,000 feet). The Commission Staff believes providing more information to potentially affected individuals about the nature and extent of proposed operations will reduce anxiety and lead to a better understanding of potential impacts and measures that will be implemented to minimize those impacts. Numerous, non-substantive revisions were made to Rule 306.

#### **600-SERIES**

The following Rules were amended or renumbered:

#### **RULE 602 (GENERAL)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** A clarifying revision has been made to Rule 602.d. to indicate that previously plugged and abandoned wells are not considered “existing wells”.

## **RULE 603 (STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, AND DRILLING, AND WELL SERVICING OPERATIONS)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** Substantial additions and revisions were made to Rule 603. Under the Setback Rules, the statewide minimum setback to buildings, roads and major above ground utilities is changed from the greater of 150 feet or 1.5 times the height of the derrick, to 200 feet. This change eliminates confusing language in favor of a single, defined distance. Setbacks from Building Units, i.e., structures intended for human occupancy, and Designated Outside Activity Areas are subject to Rule 604, which defines certain “Designated Zones,” and requires heightened mitigation measures be applied to Oil and Gas Facilities within the Designated Zones. Conforming changes were made to existing Rules 603.b. through 603.e.(1)-(17).

## **RULE 604 (LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING AND WELL SERVICING OPERATIONS IN DESIGNATED ZONES)**

**Basis:** § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

**Purpose:** The primary substantive changes arising out of this rule making are reflected in Rule 604.a., which defines specific Designated Zones, and Rule 604.c., which defines various rights and obligations associated with each designation. The Designated Zones include an “Exception Zone,” a “Buffer Zone,” a “High Occupancy Building Unit Zone,” and a “Designated Outside Activity Area Zone.” Oil and Gas Facilities proposed to be located within one of these Zones are subject to heightened mitigation measures intended to eliminate, minimize, or mitigate impacts resulting from oil and gas development in Colorado, including odors, noise, dust, and lighting impacts, affecting Building Unit owners or occupants, as well as the general public. The Commission determined heightened mitigation measures are necessary to protect the public welfare when new Oil and Gas Facilities are located within the Designated Zones.

Mitigation measures include requiring noise, dust and light abatement, limiting pits to fresh water only, closed loop drilling, and berm and liner requirements. Additionally, safety measures previously required for high density areas under existing Rule 603.e.(1)-(17) have been relocated to Rule 604 and may now be required in all Designated Zones.

The Commission may approve new Oil and Gas Locations within the Exception Zone pursuant to a Comprehensive Drilling Plan (CDP) under Rule 216. The Commission determined CDPs offer substantial potential benefits related to planning for infrastructure and surface uses associated with multi-well horizontal drilling programs, and for coordinating planning between local governments, and COGCC.

## **RULE 605 (OIL AND GAS FACILITIES)**



**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** Amended Rule 605 was previously numbered Rule 604 and has been reorganized for easier readability

## **800-SERIES**

The following Rules were amended:

### **RULE 802 (NOISE ABATEMENT)**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** Minor modifications to Rule 802 were made to denote that the Director, and not the Commission, in consultation with the applicable LGD, if any, shall assess the type of land use surrounding the oil and gas location and shall assign the appropriate designation to reflect the applicable noise limitations.

### **RULE 803 (LIGHTING)**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** Lighting abatement requirements under Rule 803 were extended from 700 feet to 1,000 feet in order to further reduce nuisance lighting affecting nearby public roads and Building Units.

### **RULE 804 (VISUAL IMPACT MITIGATION)**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** Minor editing has been made to modify Rule 804 deleting an obsolete regulatory deadline arising out of the Commission's comprehensive 2008 rule making.

### **RULE 805 (ODORS AND DUST)**

**Basis:** § 34-60-106(11)(a)(II), C.R.S.

**Purpose:** Rule 805.b.(2) was changed to require statewide controls on fugitive emissions from production equipment and operations. This requirement previously applied only to three Western Slope counties. Additionally, the setback requirement was modified to meet the Designated Zone setbacks provided in Rule 604.a. Minor modifications were made to Rule 805 to add clarity to the requirements.

Rule 805.c., Fugitive Dust, was modified to include the control of silica dust during hydraulic fracturing operations.