

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. 1211-RM-03
STATE OF COLORADO)

FIRST PREHEARING ORDER

On October 1, 2012, at the regularly scheduled hearing of the Colorado Oil and Gas Conservation Commission held in Steamboat Springs, Colorado, the Commission authorized and instructed the Commission Staff to initiate a rulemaking for purposes of considering new or amended rules requiring baseline monitoring and subsequent sampling of groundwater near new Oil and Gas Locations. The Commission, through numerous orders, rules, and conditions of approval, has required water well sampling and monitoring for many years throughout various parts of the State. The proposed rule would supersede existing water sampling rules and orders, with the exception of Rule 608. Data obtained from the baseline monitoring and subsequent sampling will be used to verify that water wells, ground and surface waters in producing basins are adequately protected and that impacts related to oil and gas operations, should they occur, are quickly identified and mitigated.

The Commission has authority to conduct this rulemaking pursuant to §§ 34-60-105, 106(1)(b), 106(2)(c), and 106(2)(d), C.R.S.

The Commission appointed Deputy Attorney General Casey Shpall as hearing officer to address prehearing matters for this rule making.

Hearing Officer Casey Shpall convened a prehearing conference in this matter on October 26, 2012, to outline procedures governing the prehearing process and identify deadlines for submissions. Ms. Shpall proposes the following pre-hearing procedures and schedule:

ORDER

1. **Publication of Proposed Rules.** The Notice of Rulemaking and proposed rules are posted on the Commission's website <http://cogcc.state.co.us>, and were filed with the Colorado Secretary of State on October 15, 2012 for publication in the *Colorado Register* on October 25, 2012.

2. **Party Status.** The requirements for participating in the rulemaking as a party are set forth in the Notice of Rulemaking Hearing dated October 15, 2012, a copy of which is available on the Commission's website.

3. **Public Participation.** Persons who do not desire party status, but would like to participate in the rulemaking process, are encouraged 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. Any person planning to make oral comments at the hearing must notify the Commission by **November 9**,

2012. 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, documents must be emailed by **November 9, 2012** to DNR_COGCC.Rulemaking@state.co.us. Comments by non-parties need not be submitted in paper format.

4. **Second Prehearing Conference.** A second prehearing conference will be held on **November 6, 2012** at 9:00 a.m. The conference will take place at COGCC Offices, 1120 Lincoln Street, Suite 801, Denver, CO 80203. Attendance at the second prehearing conference is strongly encouraged for all parties to the rulemaking. The second prehearing conference will address any outstanding matters not addressed at the first prehearing conference and narrow the issues for the rulemaking hearing. Parties should notify the Hearing Officer at this prehearing conference if they plan to submit an alternate rule proposal. A second prehearing order will be issued based upon this prehearing conference and will include the order of presentations and the time allotted for such presentations, including a time limit for public comment. The order will also specify any procedural rulings made by the hearing officer. The hearing officer may also make procedural decisions, outside the prehearing conference, reflected in an order.

5. **Preliminary Prehearing Statements.** Parties must file a preliminary prehearing statement of not more than **five** pages on or before **November 9, 2012**, pursuant to the filing and service requirements set forth below. Preliminary prehearing statements should include any concerns with or suggested modifications to Commission Staff's most-current rule proposal. This provision for preliminary prehearing statements supersedes the prehearing statements referred to in the Notice of Rulemaking Hearing. Parties are encouraged to coordinate with other parties who have similar interests and concerns with a view toward consolidating their testimony and presentations at the hearing.

6. **Alternate Proposals.** Any party may also file an alternate rule proposal. Alternate proposals must be filed and served on or before **November 9, 2012**. An alternate proposal must be within the scope of the notice of rulemaking filed by the Commission with the Secretary of State. An alternate proposal must include the text of the proposed rule and a proposed statement of basis and purpose.

7. **Final Prehearing Statements.** Each party must file and serve a **final prehearing statement** by **November 30, 2012**. Parties' final prehearing statements are limited to 15 pages, excluding exhibits. Final prehearing statements must succinctly summarize the factual and legal issues that arise from the rulemaking proposal or alternative proposals, and identify what position is being taken on each such issue and the basis for that position. Copies of all exhibits to be introduced and a list of all witnesses to be called must be attached. All direct testimony to be offered into evidence at the hearing must be provided in writing and included as an attachment to a party's final prehearing statement. At the rulemaking hearing, witnesses will be asked to affirm and summarize their written testimony, and respond to questions.

8. **Rebuttal Statements.** Any party and Commission staff may file and serve a rebuttal statement on or before **December 21, 2012**. Rebuttal statements are constrained to address topics raised in the prehearing statements of the parties or the staff, and are not to raise new issues or arguments. Rebuttal statements should include an executive summary document.

9. **Role of the Commission Staff.** The Commission staff act as staff to the Commission in any rulemaking hearing, and is not a formal party. In fulfilling its role as staff, the

Commission staff may, among other things, present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, and make recommendations to the Commission.

10. **Filing and service.** Any written filing allowed under this Order 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 13 copies delivered to Robert J. Frick, Hearings Manager, Docket No. 1211-RM-04, 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.

11. This order supersedes Rule 529 and the Notice of Rulemaking Hearing, dated October 15, 2012, to the extent any provisions are inconsistent with the rule or the notice.

12. 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.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 
Casey Shpall, Hearing Officer

Dated: October 26, 2012