

**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 November 14, 2012 concerning location requirements for Oil and Gas Facilities, drilling, and well servicing operations and related matters.

These Rules are promulgated to protect public health, safety, and welfare, including the environment and wildlife resources, from the impacts resulting from oil and gas development in Colorado. They are intended to foster the responsible and balanced development of oil and gas resources in Colorado.

In adopting the new and amended Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on October 1, 2012 and informally began in the February 2012. This record includes the proposed rules 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, ranchers and agricultural groups, local governments, the regulated industry and the Colorado Department of Public Health and Environment.

Statutory Authority

Section 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.”); and § 34-60-106(10), C.R.S. (“The

commission shall promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well.”).

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. The new and amended Rules resulting from this rule making are referred to collectively herein as the “Setback Rules.”

Overview of Purpose and Intent

The intent and purpose of the Setback Rules is to establish new, or modify existing, Rules regarding the location of wells and production facilities in relation to occupied buildings. In addition, the proposed new and amended Rules are intended to promote clearer and more extensive communication between operators and residents and other Building Unit owners when Oil and Gas Facilities are proposed to be located within 1,000 feet of occupied buildings. 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 mitigating concerns about what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential effects of the operations, including odors, noise, dust, and lights.

The proposed Setback Rules also are intended to require operators to effectively eliminate, minimize, or mitigate the potential adverse impacts of oil and gas operations on persons within the Exception Zone, Buffer Zone, High Occupancy Building Zone, and Designated Outside Activity Area. Requiring oil and gas operations to be located a greater distance away from occupied buildings is one way to minimize or mitigate some potential adverse impacts. However, mineral owners’ property rights, existing and planned surface uses, contractual rights and obligations, and technical and economic considerations are implicated when setbacks are increased. Other measures can be employed to eliminate, minimize or mitigate potential adverse impacts, such as noise, odor, dust, and light, directly. The proposed Setback Rules reflect Commission Staff’s view, following an extensive series of stakeholder meetings, that requiring operators to address potential adverse impacts directly by employing mitigation measures is the most appropriate means of balancing the competing interests of mineral owners or lessees and surface owner/occupants.

Based on data analyzed by Commission Staff, since April 2009 less than 5% of well sites or production facilities are proposed to be located within the 350 foot Exception Zone proposed by new Rule 604.a.(1). Approximately 23% of proposed well sites or production facilities fall

within the proposed 1,000 foot Buffer Zone. Thus, if recent trends continue, the new proposed Rules will have virtually no effect on 72% (4370 out of 6055) of well sites or production facilities.

Amendments and Additions to Rules by Series

The amendments include those that correct any typographical and grammatical errors. The general authority for adoption of these 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 proposed 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, that have been moved to, or included in, this Series to improve the usefulness and readability of the Series.

Designated Outside Activity Area: The definition has been revised to conform with other changes arising out of this Setback Rulemaking. The Commission has also revised this Rule to reject the interpretation of the existing rule as ascribed by the Colorado Court of Appeals in the decision captioned *Chase Sutak 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, and rejects the notion that such an area may exist by virtue of the intermittent presence of small numbers of people in the vicinity of an Oil and Gas Operation.

High Density Area: The purpose of this definition had been to delineate areas with high population areas, which triggered heightened standards and practices under specific Commission Rules. The definition is deleted so that the Rules apply uniformly, irrespective of population densities.

High Occupancy Building Unit: The purpose of this definition is to identify those buildings which are designed for use or occupancy by large numbers of people and, on that basis, warrant heightened standards and practices under specific Commission Rules.

300-Series Definitions

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): 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 a requirement that operators provide the location and a descriptive name for all buildings within a 350 foot radius of the proposed well on their well location drawing (Rule 303.a.(5)(R)). Rule 303.b.(3)D. 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): Substantial additions and revisions have been made to Rule 305. Under the existing Rules, Local Government Designees and the public have 20 days to comment on pending applications. Depending on the proposed location, the Colorado Department of Health and Environment and Colorado Division of Parks and Wildlife may also comment on a pending application. Under the proposed rules, this comment period has been extended to 40 days for proposed facilities located within an Exception Zone as defined in Rule 604.a.(1), i.e., a facility proposed to be located 350 feet or less from a Building Unit. The comment period would remain the same for all proposed facilities located outside an Exception Zone.

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.

Rule 306 (Consultation): New Rule 306.e requires operators to hold meetings with Building Unit owners within the Exception Zone (350 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 hold general informational meetings 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.

Rule 602 (General): A clarifying revision is proposed 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): Substantial additions and revisions were made to Rule 603. Under the proposed 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 Buffer Zones,” and requires heightened mitigation measures be applied to Oil and Gas Facilities within the Designated Buffer 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 Buffer Zones): The primary substantive changes arising out of this rulemaking are reflected in Rule 604.a., which defines specific Designated Buffer Zones, and Rule 604.c., which defines various rights and obligations associated with each designation. The Designated Buffer 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 Building Unit owners or occupants, as well as the general public, from potential impacts associated with oil and gas operations occurring near occupied buildings. The Commission determined heightened mitigation measures are necessary to protect the public welfare when new Oil and Gas Facilities are located within the Designated Buffer Zones.

Mitigation measures include limiting post-casing operations to daylight hours within the Exception Zone, requiring noise abatement, limiting pits to fresh water only, requiring emission control systems, and requiring use of multi-well pads. 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 Buffer Zones.

Rule 604 was re-numbered to Rule 605.

Rule 802 (Noise Abatement): Minor modifications to Rule 802 were made to denote that the Director, and not the Commission, in consultation with the applicable Local Governmental Designee, 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. The proposed

revisions also take into consideration Rule 604.c.(2)B, which reduces the allowable noise level inside the Buffer Zone by 50%.

Rule 803 (Lighting): 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): Minor editing is proposed to modify Rule 804 deleting an obsolete regulatory deadline arising out of the Commission's comprehensive 2008 rulemaking.

Rule 805 (Odors and Dust): 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 Buffer 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.