

DEPARTMENT OF NATURAL RESOURCES

OIL AND GAS CONSERVATION COMMISSION

AMENDMENTS TO 100 SERIES DEFINITIONS, 200 SERIES GENERAL RULES, 300 SERIES DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT RULES and 500 SERIES PRACTICE AND PROCEDURE RULES

2 CCR 404-1

Statement of Basis, Specific Statutory Authority, and Purpose

New Rules and Amendments to the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1, Amending 100 Series Definitions, 200 Series General Rules, 300 Series Drilling, Development, Production and Abandonment Rules and 500 Series Practice and Procedure Rules.

This statement sets forth the basis, specific statutory authority, and purpose for the new rules and amendments to Rules 100, 205, 305, 316 and 523 of the Rules of the Colorado Oil and Gas Conservation Commission promulgated by the Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”).

In adopting the new rules and amendments, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began in the fall of 2011 and informally began in the summer of 2011. The new rules and amendments were initially discussed with representatives of the oil and gas industry and conservation community during informal meetings in August 2011. These discussions continued during September 2011, and the Commission staff held work sessions with these groups during October 2011 to help develop the proposed rules. The administrative record includes the proposed rules and recommended modifications and alternatives; public comments, testimony, and exhibits; and one day of public and party hearings.

Statutory Authority

The new rules and amendments are based on: 1) general Commission jurisdiction and rulemaking authority granted in section 34-60-105 (1) C.R.S; and 2) specific statutory authority of sections 34-60-106(2), 34-60-106(4) and 34-60-106(10) C.R.S. The Commission adopted the following statement of basis and purpose consistent with section 24-4-103(4), C.R.S., of the Administrative Procedure Act. This statement is incorporated by reference in the rules adopted. The rulemaking hearing for these new rules and amendments was held by the Commission on December 5, 2011. These amendments become effective twenty days after publication in the *Colorado Register*.

Basis and Purpose

INTRODUCTION

A major reason for adopting the new rules and amendments was to address concerns regarding hydraulic fracturing. Members of the public have expressed interest in learning the identity of chemicals in hydraulic fracturing fluids. Many oil and gas operators are currently providing such information through the FracFocus.org website, and several other states have adopted or are adopting similar regulations.

Hydraulic fracturing, commonly referred to as *fracing*, is the process of creating small cracks, or fractures, in underground geological formations providing pathways to allow oil and natural gas to flow into the wellbore and thereby increase production. Prior to initiating hydraulic fracturing, engineers and geoscientists study and model the physical characteristics of the hydrocarbon bearing rock formation, including its permeability, porosity and thickness. Using this information, they design the process to keep the resulting fractures within the target formation. In Colorado, the target formation is often more than 7,000 feet below the ground surface and more than 5,000 feet below drinking water aquifers.

To fracture the formation, fracturing fluids are injected down the well bore and into the formation. These fluids typically consist of water, sand, and chemical additives. The pressure created by injecting the fluid opens the fractures. Sand is carried into the fractures by the fluid and keeps the fractures open to increase the flow of oil or natural gas to the well bore. The chemicals serve a variety of purposes, including

increasing viscosity, reducing friction, controlling bacteria, and decreasing corrosion. Following the treatment, much of the fracturing fluid flows back up the well bore and is collected at the surface in tanks or lined pits.

Fracture treatment of oil and gas wells in Colorado began in the 1970s and has evolved since then. Most of the hydrocarbon bearing formations in Colorado would not produce economic quantities of hydrocarbons without hydraulic fracturing.

The Commission Staff believes the new rules and amendments will significantly increase the transparency of hydraulic fracturing operations. The proposed rules require service companies and vendors to disclose all known chemicals in hydraulic fracturing fluids to operators and require operators to disclose such chemicals to the public via the website FracFocus.org or, with respect to an operator's trade secrets, directly to the Commission or health professionals. FracFocus.org is a hydraulic fracturing chemical registry website created by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

The new rules and amendments reflect staff discussions with those intergovernmental organizations, as well as other states, industry associations, individual operators, and conservation groups. Although states have taken different approaches to disclosure, and the industry and conservation groups disagree on several issues, the Commission believes the proposed new rules and amendments strike a responsible balance.

The following discussion summarizes the new rules and amendments and explains their purpose.

IDENTIFICATION AND EXPLANATION OF AMENDMENTS

The new rules and amendments make substantive amendments and additions to the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 ("Commission Rules"). The general authority for adoption of these rules is set out in the Statutory Authority section set forth above and is generally applicable to all the new rules and amendments. The most specific authority and a summary of the purpose for each rule change are set forth below. References to particular factors or testimony are intended to be illustrative and not comprehensive.

100 Series Definitions

The Commission's 100 Series Rules contain many definitions that occur throughout the Commission Rules and throughout the Oil and Gas Conservation Act, § 34-60-100 C.R.S. *et seq.*

Amendments

The following definition was substantively amended:

Chemical(s)

Basis: The statutory basis for this amendment is § 34-60-106 (2)(d) C.R.S.

Purpose: The purpose of this amendment is to clarify the scope of disclosure obligations under the new and amended rules. Under the proposed Colorado rule, all chemicals used in hydraulic fracturing treatments must be disclosed irrespective of whether the chemical is listed on a Material Safety Data Sheet pursuant to the federal Occupational Safety and Health Act.

The following definitions were added:

Base Fluid; Chemical Abstracts Service; Chemical Abstracts Service Number or CAS Number; Chemical Disclosure Registry; Chemical Family; Health Professional; Hydraulic Fracturing Additive; Hydraulic Fracturing Fluid; Hydraulic Fracturing Treatment; Proppant; and Total Water Volume.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: These definitions are necessary as terms of art to give meaning to Colorado's disclosure regime.

200 Series Rules

Amendments to 200 Series Rules: Rule 205., Access to Records

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: Rule 205 requires operators, among other things, to maintain chemical inventories for chemical substances brought to a well site for use downhole. Under amended Rule 205, chemicals used for hydraulic fracturing treatments are exempted from this requirement and are instead addressed in new Rule 205A, which requires the public disclosure of chemicals used in hydraulic fracturing. Public disclosure under Rule 205A would be limited to hydraulic fracturing fluids, while other chemical products used downhole would continue to be inventoried and disclosed upon request to the Commission and health professionals under Rule 205. Operators will still need to maintain inventories of fuel regardless of whether such fuel is used in connection with hydraulic fracturing treatments or other activities.

Additions to 200 Series Rules: Rule 205A., Hydraulic Fracturing Chemical Disclosure

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: New Rule 205A would require public disclosure of hydraulic fracturing chemicals using the FracFocus.org website, which has been voluntarily used by numerous Colorado operators to report information on about 50% of the wells hydraulically fractured in Colorado this year. It is similar to regulations recently proposed in Texas. Other states have similarly adopted or are considering adopting regulations mandating the public disclosure of hydraulic fracturing chemicals through the FracFocus.org website.

Rule 205A, Subpart a: Applicability. Rule 205A provides that the new fracturing chemical disclosure requirements will apply to all hydraulic fracturing treatments performed on or after February 1, 2012. As previously noted, many Colorado operators are already submitting information to the FracFocus.org website. Therefore, the COGCC staff believes that it is feasible and fair for Rule 205A to apply to all treatments performed on or after February 1, 2012. If an operator finds that, despite diligent efforts, it is unable to satisfy the requirements of Rule 205A beginning February 1, 2012, then it may seek a temporary variance under Rule 502.b(1).

Rule 205A, Subpart b: Required Disclosures. Rule 205A imposes disclosure obligations on suppliers, service companies, and operators. The supplier or service company must, as soon as possible within 30 days following the conclusion of a hydraulic fracturing treatment, furnish the operator of the well with the information necessary for the operator to meet its disclosure obligations. The operator must, within 60 days following the conclusion of a hydraulic fracturing treatment, complete and post the chemical registry disclosure form with FracFocus. The FracFocus form includes information about the well, the volume of water used, and the chemicals and their concentrations. If a chemical is entitled to trade secret protection, then the operator must still provide information on its chemical family and purpose. The supplier, service company, or operator, as applicable, must also provide the identity of a trade secret chemical to a health professional that satisfies certain conditions (immediate disclosure is required in medical emergencies).

Prior to or at the time of claiming that a chemical or concentration is a trade secret, the vendor, service provider or operator must file with the Commission a Registration for Oil and Gas Operations, Form 1, containing the claimant's name, authorized representative, mailing address, and phone number. This is intended to assist the Commission and health professionals in promptly obtaining trade secret information where appropriate.

FracFocus currently allows the public to search and sort information by well, geographic area and operator, but not by ingredient, chemical abstract service number or time period. In the event FracFocus does not permit searching and sorting by ingredient, chemical abstract service number and time period by January 1, 2013, and there is no reasonable assurance that FracFocus will allow for such searches by a date certain acceptable to the Commission,

then the proposed rules require operators to also file their disclosure reports with the Commission by February 1, 2013. As soon thereafter as practicable, the Commission will make the forms available on the Commission's website in a manner that enables the public to search and sort them by geographic area, ingredient, chemical abstract service number, time period, and operator, as practicable.

The requirement that information claimed to be a trade secret be disclosed to health professionals under certain circumstances is patterned after existing Rule 205. In addition, most other states have required or are proposing to require similar disclosure, and several of them have patterned their requirements after Rule 205 as well. The Commission staff believes that this type of disclosure is generally well accepted and just as appropriate for hydraulic fracturing chemicals as for other downhole chemicals.

Rule 205A, Subpart c: Disclosures Not Required. Rule 205A will not require suppliers, service companies or operators to disclose chemicals which are not disclosed to them, were not intentionally added to the hydraulic fracturing fluid, or occur incidentally or are otherwise unintentionally present. This part of Rule 205A is similar to the proposed Texas disclosure rule and is intended to ensure that requiring disclosure of all chemicals will not impose unfair or unreasonable burdens on companies.

Rule 205A, Subpart d: Trade Secret Protection. As previously noted, Rule 205A will protect information claimed to be a trade secret from disclosure. Under the Commission Rules, a trade secret is defined as "any confidential formula, pattern, process, device, information, or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it." Unless the information is entitled to protection as a trade secret, information submitted to the Commission or posted through FracFocus is public information.

The Colorado Open Records Act, the Colorado Uniform Trade Secrets Act, all other states that require hydraulic fracturing chemical disclosure and the FracFocus website protect trade secrets. The trade secret provisions of the proposed rule are patterned after existing Rule 205, which was the subject of extensive comment, review, and deliberation by the Commission in 2008. It allows suppliers, service companies, and operators to withhold trade secret information. But they must still provide such information to the Commission if it is necessary to respond to a spill, release, or complaint. The Commission, in turn, may disclose this information to its Commissioners, certain county officials, and the Colorado Department of Health and Environment. The Commission believes that these trade secret provisions remain effective and equitable and should be incorporated into the new hydraulic fracturing chemical disclosure rule.

Rule 205A, Subpart e: Incorporated Material. This is boilerplate language that Colorado law requires where a regulation incorporates by reference material published elsewhere, e.g., the OSHA regulations.

300 Series Rules

Additions to 300 Series Rules:

Rule 305.e.(1).A, Landowner Notice.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: An operator making application for approval of an Oil and Gas Location Assessment, Form 2A, must provide the surface owner and owners of surface property within five hundred (500) feet of the proposed oil and gas location with various information. These information requirements are broadened under the amendment to include a new COGCC information sheet on hydraulic fracturing. This information sheet will, among other things, advise surface owners that most wells in Colorado are hydraulically fractured, provide general information on hydraulic fracturing treatments, and offer instruction in the

collection of baseline water samples if the surface owner is concerned about potential impacts from hydraulic fracturing.

Rule 316C., Notice of Intent to Conduct Hydraulic Fracturing Treatment.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: New Rule 316C will require operators to provide the Commission with 48 hours advance written notice of their intention to hydraulically fracture a well. The COGCC staff would develop a new form for this purpose, which would be designated Form 41, Notice of Hydraulic Fracturing Treatment. This notification would assist the COGCC in arranging inspections to observe hydraulic fracturing where appropriate.

500 Series Rules

Addition to 500 Series Rules: Rule 523C., Base Fine Schedule.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: Amended Rule 523C was proposed in order to establish a base line fine for violations of the new and amended rules. A fine of \$1000 per day, subject to adjustment by the Commission, is consistent with the fines imposed by the Commission for violations of the majority of the Commission's Rules.

CONCLUSION

The new rules and amendments are expected to increase the transparency of hydraulic fracturing operations in the State of Colorado and, at the same time, afford appropriate protections for vendor, service provider and operator trade secrets. The new rules and amendments are also expected to increase the Commission Staff's ability to inspect and oversee hydraulic fracturing operations.