

300 AND 500 SERIES

Permitting Process

Rule 303, 305, 306

Overview of the Permitting Process

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- Rule 303: Application Requirements
- Rule 305: Notice, Comment, and Approval
- Rule 306: Consultation
- Rule 501: Applicability of Rules of Practice and Procedure
- Rule 503: All Other Proceeding Commenced by Filing an Application

Significant Changes

- Greater Differentiation Between Downhole and Surface Issues
- Additional Information on Surface Disturbance Based on Local Conditions
- Additional Notice and Opportunity for Comment
- Consultation with CDPHE and CDOW in Defined Circumstances

Resources

On the COGCC Website (www.colorado.gov/cogcc):

- The Amended Rules
- The Statement of Basis, Specific Statutory Authority, and Purpose
- Frequently Asked Questions (FAQs)
- Permit Handbook
- Training Schedule

Rule 303

Form 2 and 2A Requirements

303 – Application Requirements

General

- Requires operators to submit an Application for Permit to Drill Form 2 and an Oil and Gas Location Assessment Form 2A prior to commencing operations (Rule 303.a (1))
- Subsequent Form 2s for additional wells at that location may reference the previously-submitted Form 2A

303 – Application Requirements

General (Cont'd)

- All Form 2s are subject to Director approval (Rule 303.a(1))
- Form 2As require Director approval in the following circumstances (Rule 303.d (4)):
 - the location will disturb more than one acre and is sited in Garfield, Mesa, Gunnison, or Rio Blanco counties;
 - the location requires consultation with CDPHE or CDOW;
 - the LGD requests consultation;
 - the location involves a production facility that serves multiple wells and requires no other COGCC permit or facility registration.

303 – Application Requirements: Form 2

- Required to drill, recomplete, deepen, or side-track a well (Rule 303.a. & b.)
- Application requirements are essentially unchanged (Rule 303.c)
- Description of visible improvements and surface use as well as USGS topographic map moved to Form 2A (Rule 303.c)

303 – Application Requirements: Form 2A

- Required for new oil and gas locations (Rule 303.d (1)):
 - New oil and gas locations defined as surface disturbance at a previously undisturbed site or that expands or modifies a previous location
 - Exceptions (Rule 303.d (2)):
 - Surface disturbance at an existing oil and gas facility within the originally disturbed area, except for drilling a new well or constructing a drilling or production pit;
 - When an approved CDP involved information and procedures substantially equivalent to Form 2A;
 - Gathering lines, seismic operations, oil, gas, and water pipelines, and roads.

303 – Application Requirements: Form

2A (Cont'd)

Additional Information Requirements (Rule 303.d(3)):

- 2 additional color photos for a total of four;
- List of major drilling and operating equipment and description of oil, gas, and water pipelines (On the Form 2A);
- Drawing of improvements and description of surface uses (Previously required for Form 2);
- Topographic map depicting surface waters and riparian areas.

303 – Application Requirements: Form

2A (Cont'd)

Additional Information Requirements (Rule 303.d(3)):

- Topographic map depicting roads (Previously with Form 2);
- Designation of final land use (on Form 2A);
- Any applicant-proposed BMPs;
- Contact information for the surface owner and whether a surface use agreement exists;
- Whether the location is within sensitive wildlife habitat or a restricted surface occupancy area;

303 – Application Requirements: Form

2A (Cont'd)

Circumstances Requiring Other Information (Rule 303.d(3)):

- The final land use is rangeland, forestry, recreation, or wildlife habitat – a reference area for reclamation;
- The location is on a slope of 10% or greater – construction drawings and cross sections;
- The location includes multiple wells – a drawing with well bore trajectory and bottom-hole locations.

303 – Application Requirements: Approval Process

- If CDP, then completed applications reviewed for completeness within 3 days, otherwise within 10 days (Rule 303.h)
- If CDP, Form 2/2A approved or denied within 30 days (Rule 303.e.(1))
- If no CDP and no decision within 75 days, then operator may request expedited hearing from Commission (Rule 303.e (2))

303 – Application Requirements: Form

2A (Cont'd)

Circumstances Requiring Other Information (Rule 303.d(3)):

- A variance is sought – any proposed measures to meet the variance standards;
- The location is covered by a CDP – any conditions of approval from the CDP;
- The location is within a public water system protection area - documentation that the public water systems were notified;
- Consultation with CDPHE or CDOW occurred, information reasonably required as a result.

303 – Application Requirements: Permit Term

- Form 2 – 1 Year (Rule 303.j. (1))
- Form 2A – 3 Years (Rule 303.j. (2))

Rule 305

Notice, Comment, Approval

305 – Notice, Comment, Approval

- Form 2A is posted to website upon completeness determination (Rule 305.b)
 - Date of posting
 - Date for receipt of public comments
 - Instruction on how to comment
 - If covered by CDP, directions for review
- Form 2 posting noted, inc. prior Form 2A
- Concurrent electronic notice to LGD, CDPHE, CDOW

305.c – Comment Period

- Applicable to Form 2A and Form 2
- 20 days for public, LGD and agency comment – posted on website
- 30 days upon written request by LGD, CDPHE, CDOW, surface owner, or “proximate” surface owner
- Consultation with CDPHE/CDOW may extend review period up to 40 days

305.d – Conditions of Approval

“Technically feasible and economically practicable”
COA’s as necessary to implement the Act or COGCC
Rules:

- Pursuant to COGCC staff analysis
- Response to legitimate concern expressed pursuant to comment/consultation
- Applicant bringing APD appeal bears burden of proof to challenge COA

Notice/Suspension/Appeal

- Notice of APD decision, inc. COAs, provided to operator, parties with standing to appeal (Rule 503.b)
- 10 day “holding period” to allow for hearing request (Rule 501)
- Expedited adjudicatory hearing
 - Upon 20 day notice to parties, unless waived
 - Upon 10 day publication notice
- Issuance of APD is final agency action

Notice to Surface Owner

- “Advance Notice” required by Act: 30 days prior to commencement of operations with heavy equipment (for drilling a well)
 - Also provided to LGD
 - Tip: use this notice to initiate discussion with surface owner for SUA, including compliance with “good faith consultation” requirement under Rule 306.a

305.e – Landowner Notice

- New requirement: applies to surface owners and “proximate” surface owners within 500’ of proposed *location (318 A&B exempted)*
 - Form 2A with selected attachments:
 - List of equipment on the Form 2A and description of pipelines
 - Scaled drawing (400’ radius) of visible improvements, water wells, springs, channels
 - Vicinity/USGS map showing access from public road
 - Surface owner brochure, post card (provide with “advance notice”)
 - Onsite Inspection Policy, if no SUA

Other Notice Provisions

Current rules unchanged with respect to:

- Appointment of agent by surface owner
- Responsibility for tenant notice
- Subsequent well operations (7 days)
- Supplemental irrigation season notice (14 days)
- Final reclamation notice (30 days)
- Posting a sign @ public road/lease road (concurrent with advance notice)

Rule 306

Consultation

306.a – Consultation with Surface Owner

- Rule 306.a – good faith consultation with surface owner (requested by returning post card)
 - Proposed drilling location and dimensions
 - Topsoil management
 - Roads, pipelines, production facilities
 - Timing of operations
- Trigger for possible onsite inspection
- Basis for Form 2A

306.b – Consultation with LGD

- Rule 306.b – consultation with LGD
 - Regarding Form 2A or Form 2
 - Location of roads, production facilities and well sites
 - Prior to commencement of operations with heavy equipment
- Within 14 days of Rule 305 notice (of Form 2A posting), LGD may request COGCC/CDPHE consultation regarding PHSW&E concerns

306.c – Consultation with the CDOW

When Required (Rule 306.c (1))

- Required by 1200 Series:
 - Sensitive wildlife habitat;
 - Restricted surface occupancy area that cannot be avoided;
- The operator seeks variance from the 1200 Series;
- The CDOW requests consultation for T&E habitat shown on CDOW's SAM system;
- The operator seeks to increase well density to more than 1 well/40 acres or COGCC develops a basin-wide order involving wildlife.

306.c – Consultation with CDOW (Cont'd)

Procedures (Rule 306.c. (2))

- Consultation involves the operator, COGCC, CDOW, and the surface owner
- The operator provides information on the operation, the wildlife resource, and proposed mitigation
- Consultation must be completed within 40 days
- Consultation occurs concurrent with public comment and COGCC staff review

306.c – Consultation with CDOW (Cont'd)

Results (Rule 306.c. (3))

- CDOW may make written recommendations regarding conditions of approval to minimize adverse impacts to wildlife resources.
- Where the operator, Director, CDOW, and surface owner agree, the conditions will be adopted.
- If the parties do not agree, the Director decides whether to adopt conditions, using criteria in Rule 1202.
- Permit-specific conditions can be adopted only with the surface owner's consent.

306.d – Consultation with CDPHE

When Required (Rule 306.d (1))

- The LGD requests CDPHE participation within 14 days of notice based on public health, safety, welfare, or environmental concerns.
- The operator seeks a variance from the requirements of:
 - Rule 317B, public water system protection
 - Rule 325, underground disposal of water
 - Rule 603, drilling and well servicing operations
 - Rule 608, coalbed methane wells
 - Rule 805, odors and dust
 - 900 Series, E&P waste management
 - 1002.f, stormwater management
- The operator seeks to increase well density to more than 1 well/40 acres or COGCC develops a basin-wide order involving public health, welfare, safety, or the environment.

306.d – Consultation with CDPHE (Cont'd)

Procedures (Rule 306.d. (2))

- Consultation involves the operator, COGCC, and CDPHE, and may involve the LGD and surface owner.
- Consultation must be completed within 40 days.
- Consultation occurs concurrent with public comment and COGCC staff review.

306.d – Consultation with CDPHE (Cont'd)

Results (Rule 306.d. (3))

- CDPHE may make written recommendations regarding conditions of approval to protect public health, safety, welfare, or the environment.
- Where the operator, Director, CDPHE, and surface owner agree, the conditions will be adopted.
- If the parties do not agree, the Director decides whether to adopt conditions. In doing so, the Director seeks to minimize significant adverse impacts to public health, safety, and welfare, including the environment, consistent with other statutory obligations.
- Permit-specific conditions can be adopted without the surface owner's consent.

APD Appeal Process

- Operator may appeal:
 - If Director does not issue decision (after completeness determination):
 - Within 30 days if covered by CDP
 - Otherwise, within 75 days
 - If Director withholds permit due to material violation of COGCC rule or order; or imminent threat to PHSW&E, or material threat to Wildlife
 - Under Rule 503.b(6)

APD Appeal Process (Cont'd)

- Decision to approve APD (inc. COAs) may be appealed by (Rule 503.b(7):
 - Operator
 - Surface owner alleging noncompliance with statute or rules; or “potential adverse impacts” to PHSW&E/W (new)
 - Local government, pursuant to Rule 508.j parameters: potential adverse impacts to PHSW&E/W not adequately addressed by APD or COGCC rules (current)

APD Appeal Process (Cont'd)

- CDPHE regarding PHSW&E concerns (new)
- CDOW regarding Wildlife concerns (new)
- APD appeals by other concerned parties precluded under Rule 503.b(10): for relief on any other matter *not described*
- Possible Rule 509 protest/intervention
- Possible Rule 510 statement at hearing