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Notice Concerning Operating Requirements for Wildlife Protection

In December 2008 the COGCC adopted several new and amended rules intended to minimize adverse impacts to wildlife resources in Colorado from oil and gas activities. Beginning July 1, 2009 on federal land and April 1, 2009 on all other land, these rules will apply to all oil and gas exploration and development operations in the state.

This notice is intended to inform operators of these wildlife protection rules and to provide a reminder so company staff and contractors may become familiar with certain new and existing operating requirements. While some of these practices were required under conditions of approval attached to permits submitted between January 5, 2009 and June 2009, operators should be aware that they will apply automatically to all permits and operations going forward.

If you have any questions about the following rules, please contact the COGCC at 303-894-2100 or dnr.ogcc@state.co.us.

PITS AND WASTE MANAGEMENT

The COGCC Rules have long had waste management requirements to protect wildlife, and the rules in this regard have not changed significantly.

Pits pose a hazard to people and animals because they are difficult to exit if one falls in. Accordingly, COGCC Rule 604.c.(3) continues to require pits to be fenced in order to prevent accidental entry when the site is easily accessible and poses a hazard. The most common and significant problem with pits and wildlife arises when waterfowl land in a pit, get oil on their wings, and are unable to fly or otherwise get out of the pit. This is likely a violation of COGCC Rule 902.c and may also violate the federal Migratory Bird Treaty Act (MBTA). While the U.S. Fish and Wildlife Service (USF&WS) may enforce for the loss of life by migratory birds under the MBTA, operators should be aware that the COGCC will enforce where pits are not maintained to be free of oil and condensate, unless the pit is permitted as a skim pit and is properly lined, fenced, and netted. Additionally, COGCC Rule 902.d. continues to require operators to install appropriate netting or fencing where necessary to prevent significant adverse environmental impacts resulting from access to a pit by wildlife, including migratory birds. Failure to comply with COGCC Rules could result in penalties or revocation of the pit permit, Form 15.

The text of these provisions regarding waste management for wildlife protection follows:

COGCC Rule 902. PITS - GENERAL AND SPECIAL RULES (Excerpt)

- c. *Any accumulation of oil or condensate in a pit shall be removed within twenty-four (24) hours of discovery. Operators shall use skimming, steam cleaning of exposed liners, or other safe and legal methods as necessary to maintain pits in clean condition and to control hydrocarbon odors. Only de minimis amounts of hydrocarbons may be present unless the pit is specifically permitted for oil or condensate recovery or disposal use. A Form 15 pit permit may be revoked by*

the Director and the Director may require that the pit be closed if an operator repeatedly allows more than de minimis amounts of oil or condensate to accumulate in a pit. This requirement is not applicable to properly permitted and properly fenced, lined, and netted skim pits that are designed, constructed, and operated to prevent impacts to wildlife, including migratory birds.

- d. *Where necessary to protect public health, safety and welfare or to prevent significant adverse environmental impacts resulting from access to a pit by wildlife, migratory birds, domestic animals, or members of the general public, operators shall install appropriate netting or fencing.*

Fired Vessel, Heater Treater

Other oil field hazards for migratory birds are fired vessels, including heater treaters. On March 1, 2007 the COGCC adopted a policy that required all oil and gas operators to install screening or other devices on the stacks and on other openings of heater treaters or fired vessels to prevent entry by migratory birds. This policy was adopted after inspection by USFWS personnel found that many heater treaters contained the remains of dead birds. As a result of these inspections, the USFWS determined that heater treaters on oil and gas properties create a widespread hazard for migratory birds and that parties responsible for bird deaths from these devices may be subject to prosecution and fines. The COGCC's March 2007 policy regarding fired vessels for wildlife protection was codified as a rule in the December 2008 rulemaking. The text of the rule follows:

COGCC Rule 604. OIL AND GAS FACILITIES (Excerpt)

b. Fired Vessel, Heater-Treater

- (7) All stacks, vents, or other openings shall be equipped with screens or other appropriate equipment to prevent entry by wildlife, including migratory birds.*

GENERAL OPERATING REQUIREMENTS

In response to direction from the General Assembly, the COGCC Rules now include operating requirements to minimize adverse impacts to wildlife resources -- many of which are already being implemented by operators in Colorado.

COGCC Rule 1204 contains five operating standards that will apply statewide where certain circumstances exist, such as utilizing bear-proof containers for food related trash at operations in black bear habitat, disinfecting certain equipment before using it in designated cutthroat trout habitat, planning transportation networks to minimize the number and length of oil and gas roads, and establishing refueling and chemical storage areas outside of riparian zones and floodplains.

The sixteen operating standards in Rule 1203, on the other hand, will only apply in areas designated in the rules as sensitive wildlife habitat, such as constructing escape ramps for certain pipeline trenches during installation, consolidating new facilities, minimizing rig mobilization where practicable, using boring instead of trenching across critical fish streams, and treating certain wastewater pits to prevent the spread of West Nile Virus.

Certain of these Rule 1203 operating standards will apply only with the consent of the surface owner, such as using wildlife-appropriate fencing or seed mixes during reclamation, limiting access to oil and gas roads, and using topographic features and vegetative screening to create seclusion areas.

Operators are advised to review the requirements of the new 1200-Series Rules closely to ensure that their operations and procedures are in compliance. The text of rules containing operating requirements for wildlife protection follows:

COGCC Rule 1204. OTHER GENERAL OPERATING REQUIREMENTS

a. *The operating requirements identified below shall apply in all areas.*

(1) *In black bear habitat west of Interstate 25 and on Raton Mesa east of Interstate 25, operators shall install and utilize bear-proof dumpsters and trash receptacles for food-related trash at all facilities that generate such trash.*

(2) *In designated Cutthroat Trout habitat, as identified on the Colorado Division of Wildlife Species Activity Mapping (SAM) system, operators shall disinfect water suction hoses and water transportation tanks withdrawing from or discharging into surface waters (other than contained pits) used previously in another river, lake, pond, or wetland and discard rinse water in an approved disposal facility. Disinfection practices shall be repeated after completing work or before moving to the next water body. Disinfection may be performed by removing mud and debris and then implementing one of the following practices:*

A. *Spray/soak equipment with a disinfectant solution capable of killing whirling disease spores; or*

B. *Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes.*

(3) *To minimize adverse impacts to wildlife resources, plan new transportation networks and new oil and gas facilities to minimize surface disturbance and the number and length of oil and gas roads and utilize common roads, rights of way, and access points to the extent practicable, consistent with these rules, an operator's operational requirements, and any requirements imposed by federal and state land management agencies, local government regulations, and surface use agreements and other surface owner requirements, and taking into account cost effectiveness and technical feasibility.*

(4) *Establish new staging, refueling, and chemical storage areas outside of riparian zones and floodplains.*

(5) *Use minimum practical construction widths for new rights-of-way where pipelines cross riparian areas, streams, and critical habitats.*

b. **Exceptions.** *If the operator believes that any of the foregoing operating requirements should be waived for any proposed oil and gas location, it shall so specify in a Form 2A for Director consideration.*

COGCC Rule 1203. GENERAL OPERATING REQUIREMENTS IN SENSITIVE WILDLIFE HABITAT AND RESTRICTED SURFACE OCCUPANCY AREAS

a. **General Operating Requirements.** *Within sensitive wildlife habitat and restricted surface occupancy areas, operators shall comply with the operating requirements listed below.*

(1) *During pipeline construction for trenches that are left open for more than five (5) days and are greater than five (5) feet in width, install wildlife crossovers and escape ramps where the trench crosses well-defined*

game trails and at a minimum of one quarter (1/4) mile intervals where the trench parallels well-defined game trails.

- (2) Inform and educate employees and contractors on wildlife conservation practices, including no harassment or feeding of wildlife.*
- (3) Consolidate new facilities to minimize impact to wildlife.*
- (4) Minimize rig mobilization and demobilization where practicable by completing or re-completing all wells from a given well pad before moving rigs to a new location.*
- (5) To the extent practicable, share and consolidate new corridors for pipeline rights-of-way and roads to minimize surface disturbance.*
- (6) Engineer new pipelines to reduce field fitting and reduce excessive right-of-way widths and reclamation.*
- (7) Use boring instead of trenching across perennial streams considered critical fish habitat.*
- (8) Treat waste water pits and any associated pit containing water that provides a medium for breeding mosquitoes with Bti (*Bacillus thuringiensis v. israelensis*) or take other effective action to control mosquito larvae that may spread West Nile Virus to wildlife, especially grouse.*
- (9) Use wildlife appropriate seed mixes wherever allowed by surface owners and regulatory agencies.*
- (10) Mow or brushhog vegetation where appropriate, leaving root structure intact, instead of scraping the surface, where allowed by the surface owner.*
- (11) Limit access to oil and gas access roads where approved by surface owners, surface managing agencies, or local government, as appropriate.*
- (12) Post speed limits and caution signs to the extent allowed by surface owners, Federal and state regulations, local government, and land use policies, as appropriate.*
- (13) Use wildlife-appropriate fencing where acceptable to the surface owner.*
- (14) Use topographic features and vegetative screening to create seclusion areas, where acceptable to the surface owner.*
- (15) Use remote monitoring of well production to the extent practicable.*

- (16) Reduce traffic associated with transporting drilling water and produced liquids through the use of pipelines, large tanks, or other measures where technically feasible and economically practicable.*

b. Exceptions. *If the operator believes that any of the foregoing operating requirements should be waived for any proposed oil and gas location, it shall so specify in a Form 2A for Director consideration.*