

Colorado Revised Statutes 2019

TITLE 34

MINERAL RESOURCES

ARTICLE 60

Oil and Gas Conservation

34-60-101. Short title. This article shall be known and may be cited as the "Oil and Gas Conservation Act".

Source: L. 51: p. 662, § 16. **CSA:** C. 118, § 68(15). **CRS 53:** § 100-6-19. **C.R.S. 1963:** § 100-6-19.

34-60-102. Legislative declaration. (1) (a) It is declared to be in the public interest and the commission is directed to:

(I) Regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources;

(II) Protect the public and private interests against waste in the production and utilization of oil and gas;

(III) Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and

(IV) Plan and manage oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources and the hunting, fishing, and recreation traditions they support, which are an important part of Colorado's economy and culture. Pursuant to section 33-1-101, C.R.S., it is the policy of the state of Colorado that wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.

(b) It is neither the intent nor the purpose of this article 60 to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article 60 to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the protection of public health, safety, and welfare, the environment, and wildlife resources and the prevention of waste as set forth in section 34-60-106 (2.5) and (3)(a), and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers

of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production from the common source.

(2) It is further declared to be in the public interest to assure that producers and consumers of natural gas are afforded the protection and benefits of those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301, and particularly that the oil and gas conservation commission, established by section 34-60-104, be empowered to exercise such powers and authorities as may be delegated to it by the laws or regulations of the United States, including said "Natural Gas Policy Act of 1978", and, in the exercise of such powers and authorities, to make such rules and regulations and to execute such agreements and waivers as are reasonably required to implement such power and authority.

Source: **L. 55:** p. 656, § 10. **CRS 53:** § 100-6-22. **C.R.S. 1963:** § 100-6-22. **L. 79:** Entire section amended, p. 1319, § 1, effective February 16. **L. 94:** (1) amended, p. 1978, § 2, effective June 2. **L. 2007:** (1) amended, p. 1357, § 2, effective May 29; (1) amended, p. 1328, § 1, effective July 1. **L. 2019:** IP(1)(a), (1)(a)(I), and (1)(b) amended, (SB 19-181), ch. 120, p. 506, § 6, effective April 16.

Editor's note: (1) Amendments to subsection (1) by House Bill 07-1341 and House Bill 07-1298 were harmonized.

(2) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 320, Session Laws of Colorado 2007.

34-60-103. Definitions. As used in this article 60, unless the context otherwise requires:

(1) "And" includes the word "or" and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

(2) "Commission" means the oil and gas conservation commission.

(3) "Common source of supply" is synonymous with "pool" as defined in this section.

(4) "Correlative rights" means that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply.

(4.3) "Division of parks and wildlife" means the division of parks and wildlife identified in article 9 of title 33, C.R.S.

(4.5) "Exploration and production waste" means those wastes that are generated during the drilling of and production from oil and gas wells or during primary field operations and that are exempt from regulation as hazardous wastes under subtitle c of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 to 6934, as amended.

(5) "Gas" means all natural gases and all hydrocarbons not defined in this section as oil.

(5.3) "Local government" means, except with regard to section 34-60-104 (2)(a)(I), a:

(a) Municipality or city and county within whose boundaries an oil and gas location is sited or proposed to be sited; or

(b) County, if an oil and gas location is sited or proposed to be sited within the boundaries of the county but is not located within a municipality or city and county.

(5.5) "Minimize adverse impacts" means, to the extent necessary and reasonable to protect public health, safety, and welfare, the environment, and wildlife resources, to:

(a) Avoid adverse impacts from oil and gas operations; and

(b) Minimize and mitigate the extent and severity of those impacts that cannot be avoided.

(6) "Oil" means crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(6.2) "Oil and gas facility" means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, treatment, or processing of crude oil, condensate, exploration and production waste, or gas.

(6.4) "Oil and gas location" means a definable area where an oil and gas operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

(6.5) "Oil and gas operations" means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

(6.8) "Operator" means any person who exercises the right to control the conduct of oil and gas operations.

(7) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, including the owner of a well capable of producing oil or gas, or both.

(7.1) "Parks and wildlife commission" means the parks and wildlife commission created in section 33-9-101, C.R.S.

(7.5) "Permit" means any permit, sundry notice, notice of intention, or other approval, including any conditions of approval, which is granted, issued, or approved by the commission.

(8) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or any governmental subdivision thereof.

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used in this article.

(10) "Producer" means the owner of a well capable of producing oil or gas, or both.

(10.5) "Surface owner" means any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

(10.7) "Underground natural gas storage cavern" means a facility that stored natural gas in an underground cavern or abandoned mine on or before January 1, 2000. An underground natural gas storage cavern includes all surface or subsurface rights and appurtenances associated with the underground injection, storage, and withdrawal of natural gas, but does not include any compressor stations or pipeline facilities subject to regulation by the public utilities commission or the United States department of transportation.

(11) "Waste", as applied to gas:

(a) Includes the escape, blowing, or releasing, directly or indirectly into the open air, of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as unreasonably reduces reservoir pressure or, subject to subsection (11)(b) of this section, unreasonably diminishes the quantity of oil or gas that ultimately may be produced; excepting gas that is reasonably necessary in the drilling, completing, testing, and in furnishing power for the production of wells; and

(b) Does not include the nonproduction of gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the commission.

(12) "Waste", as applied to oil:

(a) Includes underground waste; inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste; open-pit storage; and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open-pit storage, reasonably necessary for building up or maintaining crude stocks and products of crude stocks for consumption, use, and sale; and

(b) Does not include the nonproduction of oil from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the commission.

(13) "Waste", in addition to the meanings as set forth in subsections (11) and (12) of this section:

(a) Means, subject to subsection (13)(b) of this section:

(I) Physical waste, as that term is generally understood in the oil and gas industry;

(II) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes or tends to cause reduction in quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(III) Abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas from the pool, causing reasonably avoidable drainage between tracts of land or resulting in one or more producers or owners in the pool producing more than an equitable share of the oil or gas from the pool; and

(b) Does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the commission.

(14) Repealed.

(15) "Wildlife resources" means fish, wildlife, and their aquatic and terrestrial habitats.

Source: L. 51: pp. 652, 653, §§ 3, 4, 5. CSA: C. 118, §§ 68(3), 68(4), 68(5). L. 52: p. 132, § 1. CRS 53: § 100-6-3. L. 55: p. 649, § 2. C.R.S. 1963: § 100-6-3. L. 94: (4.5), (6.5), (6.8), (7.5), and (10.5) added, p. 1979, § 3, effective June 2. L. 2001: (10.7) added, p. 1303, § 1, effective June 5. L. 2007: (4.3), (5.5), (14), and (15) added, p. 1329, § 2, effective July 1. L. 2011: (4.3) and (14) amended and (7.1) added, (SB 11-208), ch. 293, p. 1394, § 27, effective July 1. L. 2012: (7.1) amended and (14) repealed, (HB 12-1317), ch. 248, p. 1235, § 89, effective June 4. L. 2019: IP, (5.5), (11), (12), and (13) amended and (5.3), (6.2), and (6.4) added, (SB 19-181), ch. 120, p. 506, § 7, effective April 16.

Editor's note: (1) Subsection (7.1) was numbered as (1.5) in Senate Bill 11-208 but has been renumbered on revision for ease of location.

(2) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: For the legislative declaration contained in the 1994 act enacting subsections (4.5), (6.5), (6.8), (7.5), and (10.5), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-104. Oil and gas conservation commission - report - publication - repeal. (1)

(a) There is hereby created, in the department of natural resources, the oil and gas conservation commission.

(b) This section is repealed on the earlier of July 1, 2020, or the date on which all rules required to be adopted by section 34-60-106 (2.5)(a), (11)(c), and (19) have become effective. The director shall notify the revisor of statutes in writing of the date on which the condition specified in this subsection (1)(b) has occurred by e-mailing the notice to revisorofstatutes.ga@state.co.us.

(2) (a) (I) Effective April 16, 2019, the commission consists of nine members, seven of whom shall be appointed by the governor with the consent of the senate. The executive director of the department of natural resources and the executive director of the department of public health and environment, or the executive directors' designees, are ex officio voting members. At least two members shall be appointed from west of the continental divide, and, to the extent possible, consistent with this subsection (2)(a), the other members shall be appointed taking into account the need for geographical representation of areas of the state with high levels of current or anticipated oil and gas activity or employment. One member must be an individual with substantial experience in the oil and gas industry; one member must be a local government official; one member must have formal training or substantial experience in environmental protection; one member must have formal training or substantial experience in wildlife protection; one member must have technical expertise relevant to the issues considered by the commission or formal training or substantial experience in soil conservation or reclamation; one member must be actively engaged in agricultural production or be a royalty owner; and one member must have formal training or substantial experience in public health. Excluding the executive directors from consideration, no more than four members of the commission may be members of the same political party.

(II) Subject to subsection (2)(b) of this section, nothing in this subsection (2)(a) requires a holdover member of the commission holding office on July 1, 2019, to comply with this subsection (2)(a), as amended, unless the person is reappointed to the commission for another term of office. Nothing in this subsection (2)(a) alters, impairs, or negates the authority of the governor to remove or appoint members of the commission pursuant to subsection (2)(b) of this section.

(III) Repealed.

(b) Members of the commission shall be appointed for terms of four years each. The governor may at any time remove any member of the commission, and by appointment the governor shall fill any vacancy on the commission. In case one or more vacancies occur on the same day, the governor shall designate the order of filling vacancies. The members of the commission shall receive a per diem allowance of fifty dollars for each day spent in attendance at commission meetings or hearings and shall be reimbursed for their actual expenses.

(3) The commission shall report to the executive director of the department of natural resources at such times and on such matters as the executive director may require.

(4) Publications of the commission circulated in quantity outside the executive branch are subject to the approval and control of the executive director of the department of natural resources.

Source: **L. 51:** p. 651, § 2. **CSA:** C. 118, §68(2). **L. 52:** p. 130, § 1. **CRS 53:** § 100-6-2. **L. 55:** p. 648, § 1. **C.R.S. 1963:** § 100-6-2. **L. 64:** p. 158, § 109. **L. 68:** p. 130, § 146. **L. 72:** p. 550, § 15. **L. 82:** (2)(a) and (2)(b) amended, p. 358, § 20, effective April 30. **L. 85:** (2)(a) amended, p. 1128, § 1, effective July 1. **L. 87:** (2)(b) amended, p. 912, § 26, effective June 15. **L. 90:** (2)(a) amended, p. 1545, § 1, effective May 8. **L. 91:** (2)(a) amended, p. 1415, § 2, effective April 19. **L. 94:** (2)(a) amended, p. 1979, § 4, effective June 2. **L. 2000:** (2) amended, p. 754, § 1, effective July 1. **L. 2007:** (2)(a) amended, p. 1358, § 3, effective May 29. **L. 2012:** (2)(b) amended, (HB 12-1317), ch. 248, p. 1235, § 90, effective June 4. **L. 2019:** (1), (2)(a)(I), and (2)(a)(II) amended, (SB 19-181), ch. 120, p. 508, § 8, effective April 16.

Editor's note: (1) Subsection (2)(a)(III)(B) provided for the repeal of subsection (2)(a)(III), effective July 1, 2010. (See L. 2007, p. 1358.)

(2) As of publication date, the revisor of statutes has not received the notice referred to in subsection (1)(b).

(3) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: (1) For additional requirements to which publications circulated outside the executive branch are subject, see § 24-1-136.

(2) For the legislative declaration contained in the 1994 act amending subsection (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (2)(a), see section 1 of chapter 320, Session Laws of Colorado 2007.

34-60-104.3. Oil and gas conservation commission - report - publication. [*Editor's note: For the effective date of this section, see subsection (5).*](1) There is hereby created, in the department of natural resources, the oil and gas conservation commission.

(2) (a) The commission consists of seven members, five of whom shall be appointed by the governor with the consent of the senate. The executive director of the department of natural resources and the executive director of the department of public health and environment, or the executive directors' designees, are ex officio nonvoting members. A majority of the voting commissioners constitutes a quorum for the transaction of its business.

(b) Each appointed commissioner must be a qualified elector of this state. Each appointed commissioner, before entering upon the duties of office, shall take the constitutional oath of office. Excluding the executive directors from consideration, no more than three members of the commission may be members of the same political party. To the extent possible, consistent with this subsection (2), the members shall be appointed taking into account the need for geographical representation of areas of the state with high levels of current or anticipated oil and gas activity or employment. The appointed members of the commission shall devote their entire time to the duties of their offices to the exclusion of any other employment and are entitled to receive compensation as designated by law.

(c) One appointed member must be an individual with substantial experience in the oil and gas industry; one appointed member must have substantial expertise in planning or land use; one appointed member must have formal training or substantial experience in environmental protection, wildlife protection, or reclamation; one appointed member must have professional experience demonstrating an ability to contribute to the commission's body of expertise that will aid the commission in making sound, balanced decisions; and one appointed member must have formal training or substantial experience in public health.

(d) No person may be appointed to serve on the commission or hold the office of commissioner if the person has a conflict of interest with oil and gas development in Colorado. Examples of conflicts of interest include being registered as a lobbyist at the local or state levels, serving in the general assembly within the prior three years, or serving in an official capacity with an entity that educates or advocates for or against oil and gas activity. This subsection (2)(d) shall be construed reasonably with the objective of disqualifying from the commission any person who might have an immediate conflict of interest or who may not be able to make balanced decisions about oil and gas regulation in Colorado. A person who has worked with or for an energy or environmental entity need not be disqualified if the person's experience shows subject matter knowledge coupled with an ability to render informed, thorough, and balanced decision-making.

(e) Members of the commission shall be appointed for terms of four years each; except that the initial terms of two members are two years. The governor shall designate one member of the commission as chair of the commission. The chair shall delegate roles and responsibilities to commissioners and the director. The governor may at any time remove any appointed member of the commission, and by appointment the governor shall fill any vacancy on the commission. In case one or more vacancies occur on the same day, the governor shall designate the order of filling vacancies.

(3) The commission shall report to the executive director of the department of natural resources at such times and on such matters as the executive director may require.

(4) Publications of the commission circulated in quantity outside the executive branch are subject to the approval and control of the executive director of the department of natural resources.

(5) This section takes effect on the earlier of July 1, 2020, or the date on which all rules required to be adopted by section 34-60-106 (2.5)(a), (11)(c), and (19) have become effective. The director shall notify the revisor of statutes in writing of the date on which the condition specified in this subsection (5) has occurred by e-mailing the notice to revisorofstatutes.ga@state.co.us.

Source: L. 2019: Entire section added, (SB 19-181), ch. 120, p. 509, § 9, effective (see subsection (5)).

Editor's note: (1) As of publication date, the revisor of statutes has not received the notice referred to in subsection (5).

(2) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act adding this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

34-60-104.5. Director of commission - duties. (1) Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint a director of the commission who shall possess such qualifications as may be established by the executive director, the commission, and the state personnel board.

(2) The director of the commission shall:

(a) Administer the provisions of this article;

(b) Enforce the rules and regulations adopted by the commission;

(c) Implement and administer orders issued by the commission;

(d) (I) Appoint, pursuant to section 13 of article XII of the state constitution, such clerical and professional staff and consultants as may be necessary for the efficient and effective operation of the commission, including at least one and up to two deputy directors; and

(II) Exercise general supervisory control over the staff; and

(e) Perform such other functions as may be assigned to him by the commission, including that of appointment as a hearing officer in accordance with section 34-60-106.

(3) (a) Upon receipt of request for technical review filed pursuant to section 29-20-104 (3)(a), the director of the commission shall appoint technical review board members. The membership of the technical review board must include subject matter experts in local land use planning and oil and gas exploration and production and may include subject matter experts in environmental sciences, public health sciences, or other disciplines relevant to the disputed issues, as determined by the director. The technical review board shall conduct a technical review of the preliminary or final siting determination pursuant to the criteria specified in subsection (3)(b) of this section and, at its discretion, may meet to confer informally with the parties. The technical review must be completed by issuance of a report within sixty days after the director appoints the experts.

(b) A technical review:

(I) Must address the issues in dispute as identified by the operator and the local government, which may include impacts to the recovery of the resource by the preliminary or final siting determination of the local government; whether the local government's determination would require technologies that are not available or are impracticable given the context of the permit application; and whether the operator is proposing to use best management practices; and

(II) Must not address the economic effects of the preliminary or final determination and must result in the issuance of a report.

Source: **L. 84:** Entire section added, p. 934, § 1, effective March 26. **L. 94:** (2)(d) amended, p. 1980, § 5, effective June 2. **L. 2019:** (2)(d) amended and (3) added, (SB 19-181), ch. 120, p. 510, § 10, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(d), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-105. Powers of commission. (1) (a) The commission has jurisdiction over all persons and property, public and private, necessary to enforce this article 60, the power to make and enforce rules and orders pursuant to this article 60, and to do whatever may reasonably be necessary to carry out this article 60.

(b) Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn, and that authority is unqualifiedly conferred upon the commission, as provided in this section; except that, as further specified in section 34-60-131, nothing in this article 60 alters, impairs, or negates the authority of:

(I) The air quality control commission to regulate, pursuant to article 7 of title 25, the emission of air pollutants from oil and gas operations;

(II) The water quality control commission to regulate, pursuant to article 8 of title 25, the discharge of water pollutants from oil and gas operations;

(III) The state board of health to regulate, pursuant to section 25-11-104, the disposal of naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials from oil and gas operations;

(IV) The solid and hazardous waste commission to:

(A) Regulate, pursuant to article 15 of title 25, the disposal of hazardous waste from oil and gas operations; or

(B) Regulate, pursuant to section 30-20-109 (1.5), the disposal of exploration and production waste from oil and gas operations; and

(V) A local government to regulate oil and gas operations pursuant to section 29-20-104.

(c) Any person, or the attorney general on behalf of the state, may apply for a hearing before the commission, or the commission may initiate proceedings, upon any question relating to the administration of this article 60, and jurisdiction is conferred upon the commission to hear and determine the question and enter its rule or order with respect to the question.

(2) Repealed.

(3) The attorney general is the legal advisor of the commission, and it is his or her duty to represent the commission in all court proceedings and in all proceedings before it and in any proceedings to which the commission may be a party before any department of the federal government.

(4) (a) Except as specified in subsection (4)(b) of this section, nothing in this article 60 authorizes the state or its local governments, including the commission, boards of county commissioners, and municipalities, to regulate the activities of:

(I) Federally recognized Indian tribes, their political subdivisions, or tribally controlled affiliates, undertaken or to be undertaken with respect to mineral evaluation, exploration, or development on lands within the exterior boundaries of an Indian reservation located within the state; or

(II) Third parties, undertaken or to be undertaken with respect to mineral evaluation, exploration, or development on Indian trust lands within the exterior boundaries of an Indian reservation located within the state.

(b) Regulation by the state or its local governments, including the commission, boards of county commissioners, and municipalities, applicable to non-Indians conducting oil and gas operations on lands within the exterior boundaries of the Southern Ute Indian reservation may apply to lands where both the surface and the oil and gas estates are owned in fee by a person other than the Southern Ute Indian tribe, regardless of whether the lands are communitized or pooled with Indian mineral lands.

(c) Nothing in this article 60 alters the authority for the regulation of air pollution on the Southern Ute Indian reservation as set forth in article 62 of title 24 and part 13 of article 7 of title 25.

Source: L. 51: p. 655, § 7. CSA: C. 118, § 68(7). CRS 53: § 100-6-5. C.R.S. 1963: § 100-6-5. L. 81: (2) repealed, p. 1690, § 3, effective May 21. L. 2016: (3) amended, (HB 16-1094), ch. 94, p. 268, § 18, effective August 10. L. 2019: (1) amended and (4) added, (SB 19-181), ch. 120, p. 511, § 11, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

34-60-106. Additional powers of commission - rules - definition - repeal. (1) The commission also shall require:

(a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, and structures;

(b) The making and filing with the commission of copies of well logs, directional surveys, and reports on well location, drilling, and production; except that logs of exploratory or wildcat wells marked "confidential" shall be kept confidential for six months after the filing thereof, unless the operator gives written permission to release such logs at an earlier date;

(c) The drilling, casing, operation, and plugging of seismic holes or exploratory wells in such manner as to prevent the escape of oil or gas from one stratum into another, the intrusion of

water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, salt water, or brackish water; and measures to prevent blowouts, explosions, cave-ins, seepage, and fires;

(d) (Deleted by amendment, L. 94, p. 1980, § 6, effective June 2, 1994.)

(e) That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state, for a period of five years, complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission, or its agents, at all reasonable times within said period and that every such person shall file with the commission such reasonable reports as it may prescribe with respect to such oil or gas or the products thereof;

(f) (I) That no operations for the drilling of a well for oil and gas shall be commenced without first:

(A) Applying for a permit to drill, which must include proof either that: The operator has filed an application with the local government with jurisdiction to approve the siting of the proposed oil and gas location and the local government's disposition of the application; or the local government with jurisdiction does not regulate the siting of oil and gas locations; and

(B) Obtaining a permit from the commission, under rules prescribed by the commission;

(II) Paying to the commission a filing and service fee to be established by the commission for the purpose of paying the expense of administering this article 60 as provided in section 34-60-122, which fee may be transferable or refundable, at the option of the commission, if the permit is not used; and

(III) (A) Notwithstanding any other provision of law, including subsection (11) of this section, until the commission has promulgated any rules required to be adopted by subsections (2.5)(a), (11)(c), and (19) of this section and each rule specified in this subsection (1)(f)(III)(A) has become effective, the director may delay the final determination regarding a permit application if the director determines, pursuant to objective criteria to be published by the director within thirty days after April 16, 2019, and following a public comment period, that the permit requires additional analysis to ensure the protection of public health, safety, and welfare or the environment or requires additional local government or other state agency consultation.

(B) This subsection (1)(f)(III) will be repealed if the rules specified in subsection (1)(f)(III)(A) of this section have become effective. The director shall notify the revisor of statutes in writing of the date on which all rules specified in subsection (1)(f)(III)(A) of this section have become effective by e-mailing the notice to revisorofstatutes.ga@state.co.us. This subsection (1)(f)(III) is repealed, effective upon the date identified in the notice that the rules specified in subsection (1)(f)(III)(A) of this section have become effective or, if the notice does not specify that date, upon the date of the notice to the revisor of statutes.

(g) That the production from wells be separated into gaseous and liquid hydrocarbons and that each be accurately measured by such means and standards as prescribed by the commission;

(h) The operation of wells with efficient gas-oil and water-oil ratios, the establishment of these ratios, and the limitation of the production from wells with inefficient ratios;

(i) Certificates of clearance in connection with the transportation and delivery of oil and gas or any product; and

(j) Metering or other measuring of oil, gas, or product in pipelines, gathering systems, loading racks, refineries, or other places.

(2) The commission may regulate:

- (a) The drilling, producing, and plugging of wells and all other operations for the production of oil or gas;
- (b) The stimulating and chemical treatment of wells; and
- (c) The spacing and number of wells allowed in a drilling unit.
- (d) Repealed.

(2.5) (a) In exercising the authority granted by this article 60, the commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.

(b) The nonproduction of oil and gas resulting from a conditional approval or denial authorized by this subsection (2.5) does not constitute waste.

(3) The commission also has the authority to:

(a) Limit the production of oil or gas, or both, from any pool or field for the prevention of waste, and to limit and to allocate the production from such pool or field among or between tracts of land having separate ownerships therein, on a fair and equitable basis so that each such tract will be permitted to produce no more than its just and equitable share from the pool and so as to prevent, insofar as is practicable, reasonably avoidable drainage from each such tract which is not equalized by counter-drainage; and

(b) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this article.

(3.5) The commission shall require the furnishing of reasonable security with the commission by lessees of land for the drilling of oil and gas wells, in instances in which the owner of the surface of lands so leased was not a party to such lease, to protect such owner from unreasonable crop losses or land damage from the use of the premises by said lessee. The commission shall require the furnishing of reasonable security with the commission, to restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with the owner of the surface of lands so leased.

(4) The grant of any specific power or authority to the commission shall not be construed in this article to be in derogation of any of the general powers and authority granted under this article.

(5) The commission shall also have power to make determinations, execute waivers and agreements, grant consent to delegations, and take other actions required or authorized for state agencies by those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., including the power to give written notice of administratively final determinations.

(6) The commission has the authority, as it deems necessary and convenient, to conduct any hearings or to make any determinations it is otherwise empowered to conduct or make by means of an appointed administrative law judge or hearing officer, but recommended findings, determinations, or orders of any administrative law judge or hearing officer become final in accordance with section 34-60-108 (9). Upon appointment by the commission, a member of the commission may act as a hearing officer.

(7) (a) The commission may establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. All fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and are subject to appropriations by the general assembly for the purposes of this article 60.

(b) The commission shall by rule establish the fees for the filing of applications in amounts sufficient to recover the commission's reasonably foreseeable direct and indirect costs in conducting the analysis, including the annual review of financial assurance pursuant to subsection (13) of this section, necessary to assure that permitted operations will be conducted in compliance with all applicable requirements of this article 60.

(8) The commission shall prescribe special rules and regulations governing the exercise of functions delegated to or specified for it under the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., or such other laws or regulations of the United States which affect the price and allocation of natural gas and crude oil in accordance with the provisions of this article.

(9) Notwithstanding the provisions of section 34-60-120 or any other provision of law, the commission, as to class II injection wells defined in 40 CFR 144.6b, shall also have the power to perform all acts for the purpose of protecting underground sources of drinking water in accordance with state programs authorized by 42 U.S.C. sec. 300f et seq. and regulations thereunder in effect or as may be amended.

(10) The commission shall promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well; except that the commission shall not adopt such rules and regulations with regard to parties or requirements regulated under the federal "Occupational Safety and Health Act of 1970".

(11) (a) By July 16, 2008, the commission shall:

(I) (A) Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.

(B) Repealed.

(II) Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission's decision-making process. This rule-making shall be coordinated with the rule-making required in section 34-60-128 (3)(d) so that the timely and efficient procedure established pursuant to this subsection (11) is applicable to the department and to the division of parks and wildlife.

(b) (I) The general assembly shall review the rules promulgated pursuant to paragraph (a) of this subsection (11) acting by bill pursuant to section 24-4-103, C.R.S., and reserves the right to alter or repeal such rules.

(II) By January 1, 2008, the commission shall promulgate rules to ensure the accuracy of oil and gas production reporting by establishing standards for wellhead oil and gas measurement and reporting. At a minimum, the rules shall address engineering standards, heating value, specific gravity, pressure, temperature, meter certification and calibration, and methodology for sales reconciliation to wellhead meters. The rules shall be consistent with standards established by the American society for testing and materials, the American petroleum institute, the gas

processors association, or other applicable standards-setting organizations, and shall not affect contractual rights or obligations.

(c) The commission shall adopt rules that:

(I) Adopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process; and

(II) In consultation with the department of public health and environment, evaluate and address the potential cumulative impacts of oil and gas development.

(12) The commission, in consultation with the state agricultural commission and the commissioner of agriculture, shall promulgate rules to ensure proper reclamation of the land and soil affected by oil and gas operations and to ensure the protection of the topsoil of said land during such operations.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019. The rule-making must consider: Increasing financial assurance for inactive wells and for wells transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation. For purposes of this subsection (13), references to "operator" include an operator of an underground natural gas storage cavern and an applicant for a certificate of closure under subsection (17) of this section. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net worth to guarantee performance of every obligation imposed by this article 60. The commission shall annually review the guarantee and demonstration of net worth.

(b) A certificate of general liability insurance in a form acceptable to the commission that names the state as an additional insured and covers occurrences during the policy period of a nature relevant to an obligation imposed by this article 60;

(c) A bond or other surety instrument;

(d) A letter of credit, certificate of deposit, or other financial instrument;

(e) An escrow account or sinking fund dedicated to the performance of every obligation imposed by this article 60;

(f) A lien or other security interest in real or personal property of the operator. The lien or security interest must be in a form and priority acceptable to the commission in its sole discretion. The commission shall annually review the lien or security.

(14) Before an operator commences operations for the drilling of any oil or gas well, such operator shall evidence its intention to conduct such operations by giving the surface owner written notice describing the expected date of commencement, the location of the well, and any associated roads and production facilities. Unless excepted by the commission due to exigent circumstances or waived by the surface owner, such notice of drilling shall be mailed or delivered to the surface owner not less than thirty days prior to the date of estimated

commencement of operations with heavy equipment. The notice of drilling shall also be provided to the local government in whose jurisdiction the well is located if such local government has registered with the commission for receipt thereof.

(15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract; except that an assignment must not allow for the imposition of any new tax or fee by the assignee in order to conduct the assigned inspection and monitoring and must not provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee.

(15.5) The commission shall use a risk-based strategy for inspecting oil and gas locations that targets the operational phases that are most likely to experience spills, excess emissions, and other types of violations and that prioritizes more in-depth inspections. The commission shall:

(a) Repealed.

(b) Implement the systematic risk-based strategy by July 1, 2014. The commission may use a pilot project to test the risk-based strategy.

(16) The commission has the authority to establish, charge, and collect fees for services it provides, including but not limited to the sale of computer disks and tapes.

(17) (a) The commission has exclusive authority to regulate the public health, safety, and welfare aspects, including protection of the environment, of the termination of operations and permanent closure, referred to in this subsection (17) collectively as "closure", of an underground natural gas storage cavern.

(b) No underground natural gas storage cavern may be closed unless the operator has secured a certificate of closure from the commission. The commission shall issue a certificate of closure if the applicant demonstrates that its closure plan protects public health, safety, and welfare, including protection of the environment.

(c) Before submitting its application, an applicant for a certificate of closure must, to the extent such owners are reasonably identifiable from public records, notify all owners of property, both surface and subsurface, occupied by and immediately adjacent to the underground natural gas storage cavern of the applicant's intent to submit a closure plan. "Immediately adjacent to" means contiguous to the boundaries of the underground natural gas storage cavern. The notice shall advise the owners of a location where a full copy of the closure plan may be inspected, that written comments may be submitted to the commission, and that they may participate in the public hearing required by this subsection (17). The applicant shall notify the owners of the date, time, and place of the public hearing. Contemporaneously with notifying the owners, the applicant shall send a copy of the notice to registered homeowners' associations that have submitted a written request for such notice prior to the filing of the application with the commission and the board of county commissioners in the county where the underground natural gas storage cavern is located.

(d) The commission shall provide the public with notice and an opportunity to comment on an application filed under this subsection (17) for a certificate of closure pursuant to the procedures set forth in section 34-60-108 (7). The applicant shall attend the public hearing and shall be available at other reasonable times as the director may request to respond to comments and questions.

(e) The director may consult with other state agencies possessing expertise in matters related to closure of underground natural gas storage caverns in the areas of the jurisdiction of such agencies, including, but not limited to, safety, environmental protection, public health, water resources, and geology. Agencies consulted under this subsection (17) may include, but are not limited to, the public utilities commission, the division of reclamation, mining, and safety, the Colorado geological survey, the division of water resources, and the department of public health and environment. Any agency consulted shall provide advice and assistance with respect to matters within its expertise.

(f) The commission may attach conditions to its certificate of closure, including requiring reasonable recovery of residual natural gas, if the commission determines that such conditions are technically feasible and necessary to ensure compliance with the requirements of this subsection (17), taking into consideration cost-effectiveness. If the closure application requires the abandonment of wells and reclamation of well sites associated with the underground natural gas storage cavern, the commission shall attach conditions to its certificate of closure requiring that such well abandonment and reclamation occur in a manner consistent with applicable commission rules.

(g) The commission may, subject to the limitations contained in paragraph (f) of this subsection (17), attach conditions to its certificate of closure requiring:

(I) Reasonable post-closure monitoring and site security at a closed underground natural gas storage cavern; and

(II) That the applicant for the certificate of closure will perform post-closure corrective actions consistent with this subsection (17), including, but not limited to, the limitations contained in paragraph (f) of this subsection (17) if any such post-closure monitoring establishes that the closure does not protect public health, safety, or welfare, including protection of the environment.

(h) The commission shall require that the applicant for a certificate of closure provide reasonable assurance that it is financially capable of fulfilling any obligation imposed under this subsection (17) including, but not limited to, post-closure corrective action required by paragraph (g) of this subsection (17), in accordance with subsection (13) of this section.

(i) The applicant for a certificate of closure under this subsection (17) shall reimburse the commission's reasonable and necessary costs of reviewing and acting on the application. Such reimbursement shall include:

(I) Reimbursement to the commission, its staff, and any agencies consulted under this subsection (17) for the reasonable cost of the time required to review the application, at a rate commensurate with the hourly compensation of the staff employee performing the actual work, but not to exceed the hourly compensation of the highest paid commission staff employee, based on the employee's annual salary divided by two thousand eighty hours; and

(II) Reimbursement of the reasonable cost to the commission of hiring one or more private consultants to review the application and provide advice to the commission as a result of such review, if the applicant consents in writing to the scope and expected range of costs of the activities to be undertaken by each such private consultant. If the commission and applicant cannot agree on the scope or expected range of costs and if the commission determines a private consultant is necessary in the review of the application, then the commission may hire a private consultant at its own expense.

(18) The commission shall promulgate rules to ensure proper wellbore integrity of all oil and gas production wells. In promulgating the rules, the commission shall consider incorporating recommendations from the State Oil and Gas Regulatory Exchange and shall include provisions to:

- (a) Address the permitting, construction, operation, and closure of production wells;
- (b) Require that wells are constructed using current practices and standards that protect water zones and prevent blowouts;
- (c) Enhance safety and environmental protections during operations such as drilling and hydraulic fracturing;
- (d) Require regular integrity assessments for all oil and gas production wells, such as surface pressure monitoring during production; and
- (e) Address the use of nondestructive testing of weld joints.

(19) The commission shall review and amend its flowline and inactive, temporarily abandoned, and shut-in well rules to the extent necessary to ensure that the rules protect and minimize adverse impacts to public health, safety, and welfare and the environment, including by:

- (a) Allowing public disclosure of flowline information and evaluating and determining when a deactivated flowline must be inspected before being reactivated; and
- (b) Evaluating and determining when inactive, temporarily abandoned, and shut-in wells must be inspected before being put into production or used for injection.

(20) The commission shall adopt rules to require certification for workers in the following fields:

- (a) Compliance officers with regard to the federal "Occupational Safety and Health Act of 1970", 29 U.S.C. sec. 651 et seq., including specifically working in confined spaces;
- (b) Compliance officers with regard to codes published by the American Petroleum Institute and American Society of Mechanical Engineers or their successor organizations;
- (c) The handling of hazardous materials;
- (d) Welders working on oil and gas process lines, including:
 - (I) Knowledge of the flowline rules promulgated pursuant to subsection (19) of this section;
 - (II) A minimum of seven thousand hours of documented on-the-job training, which requirement can be met by an employee working under the supervision of a person with the requisite seven thousand hours of training; and
 - (III) Passage of the International Code Council Exam F31, national standard journeyman mechanical, or an analogous successor exam, for any person working on pressurized process lines in upstream and midstream operations.

Source: L. 51: p. 660, § 11. CSA: C. 118, § 68(11). CRS 53: § 100-6-15. L. 55: p. 654, § 8. C.R.S. 1963: § 100-6-15. L. 64: p. 509, § 1. L. 73: p. 1071, § 1. L. 77: (3.5) added, p. 1565, § 1, effective July 1. L. 79: (5) to (8) added, p. 1320, § 2, February 16. L. 81: (9) added, p. 1339, § 4, effective July 1; (9) amended, p. 2034, § 53, effective July 14. L. 85: (10) and (11) added, p. 1129, § 1, effective July 1. L. 86: (12) added, p. 1073, § 1, effective April 3. L. 91: (1)(f) and (9) amended, p. 1415, § 3, effective April 19. L. 94: (1)(d), (2)(d), (11), and (12) amended and (13), (14), (15), and (16) added, p. 1980, § 6, effective June 2. L. 96: (15) amended, p. 346, § 1, effective April 17. L. 2001: IP(13), (13)(a), (13)(b), and (13)(e) amended and (17) added, pp.

1303, 1304, §§ 2, 3, effective June 5; (14) amended, p. 491, § 6, effective July 1. **L. 2005:** (7) amended, p. 733, § 3, effective July 1. **L. 2006:** (17)(e) amended, p. 218, § 16, effective August 7. **L. 2007:** (2)(d) and (11) amended, pp. 1358, 1359, §§ 4, 6, effective May 29; (11) amended, p. 1344, § 1, effective May 29. **L. 2008:** IP(11)(a), (11)(a)(II), and (11)(b)(I) amended, p. 1033, § 1, effective May 21; (11)(a)(II) amended, p. 1912, § 122, effective August 5. **L. 2013:** (15.5) added, (SB 13-202), ch. 274, p. 1437, § 2, effective May 24. **L. 2019:** IP(1), (1)(f), IP(2), (2)(b), (2)(c), (6), (7), (13), and (15) amended, (2)(d) repealed, and (2.5), (11)(c), (18), (19), and (20) added, (SB 19-181), ch. 120, p. 513, § 12, effective April 16.

Editor's note: (1) Amendments to subsection (11)(a)(II) by House Bill 08-1379 and House Bill 08-1412 were harmonized.

(2) Subsection (11)(a)(I)(B) provided for the repeal of subsection (11)(a)(I)(B), effective July 1, 2010. (See L. 2007, p. 1359.)

(3) Subsection (15.5)(a)(II) provided for the repeal of subsection (15.5)(a), effective September 1, 2014. (See L. 2013, p. 1437.)

(4) As of publication date, the revisor of statutes has not received the notice referred to in subsection (1)(f)(III)(B).

(5) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsections (1)(d), (2)(d), (11), and (12) and enacting subsections (13), (14), (15), and (16), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsections (2)(d) and (11), see section 1 of chapter 320, Session Laws of Colorado 2007. For the legislative declaration in the 2013 act adding subsection (15.5), see section 1 of chapter 274, Session Laws of Colorado 2013.

(2) For the federal "Occupational Safety and Health Act of 1970", see 29 U.S.C. § 651 et seq.

34-60-107. Waste of oil or gas prohibited. The waste of oil and gas in the state of Colorado is prohibited by this article.

Source: **L. 51:** p. 651, § 1. **CSA:** C. 118, § 68(1). **CRS 53:** § 100-6-1. **C.R.S. 1963:** § 100-6-1.

34-60-108. Rules - hearings - process. (1) The commission shall prescribe rules and regulations governing the practice and procedure before it.

(2) No rule, regulation, or order, or amendment thereof, shall be made by the commission without a hearing upon at least twenty days' notice, except as provided in this section. The hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found by the commission to exist, it is authorized to issue an emergency order without notice of hearing, which shall be effective upon promulgation, but no such order shall remain effective for more than fifteen days.

(4) Any notice required by this article, except as provided in this section, shall be given by the commission either by mailing a copy thereof, postage prepaid, to the last known mailing address of the person to be given notice, or by personal service. In addition, the commission shall cause one publication of such notice, at least ten days prior to the hearing, in a newspaper of general circulation in the city and county of Denver and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall issue in the name of the state, shall be signed by the commission or the secretary of the commission, shall specify the style and number of the proceeding and the time and place at which the hearing will be held, shall state the time within which protests to the granting of a petition shall be filed if a petition has been filed, and shall briefly state the purpose of the proceeding. Should the commission elect or be required to give notice by personal service, such service may be made by any officer authorized to serve summons or by any agent of the commission in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of service by such agent shall be by his affidavit, and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where there is an application for the entry of a pooling order or unitization order, or an application for an exception from an established well spacing pattern, or a complaint is made by the commission or any party that any provision of this article, or any rule, regulation, or order of the commission, is being violated, notice of the hearing to be held on such application or complaint shall be served on the interested parties either by mail as provided in this subsection (4) or in the same manner as is provided in the Colorado rules of civil procedure for the service of process in civil actions in the district courts of this state.

(5) Any person who believes that he may be an interested party in any proceeding before the commission may file with the commission a request for notices, and thereafter for a period as determined by the commission, not to exceed three years, such person shall be entitled to receive notice by mail of the filing of all petitions upon which a hearing may be held. The filing of a request for notices by a person shall be deemed to be a consent by that person to service of notice by mail at the address shown on the request filed by him in those proceedings in which notice by mail may be given. A request for notices filed under provisions of this subsection (5) may be withdrawn or a new request filed at any time by the person filing the same.

(6) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full in books kept by the commission for that purpose, shall be indexed, shall show the date on which such entry was made in the books, which date shall be the date of entry for the purpose of section 34-60-111, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the commission shall include or be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner provided by this section. A copy of any rule, regulation, finding of fact, or order, certified by the commission or by its secretary, shall be received in evidence in all courts of this state with the same effect as the original.

(7) The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the filing of the petition and of the date for the hearing thereon to be given. Any interested party desiring to protest the granting of the petition shall, at least three days prior to the date of the hearing, file

a written protest with the commission, which shall briefly state the basis of the protest. Upon a showing that all interested parties have consented in writing to the granting of the petition without a hearing, the commission may enter an order granting the petition forthwith and without a hearing. In all other cases, the hearing shall be held at the time and place specified in the notice, and all persons who have filed a timely protest shall be given full opportunity to be heard. If no protest to the granting of the petition has been made, the commission may enter an order based upon the facts stated in the verified petition, without the necessity of taking testimony or the making of a record. The commission shall enter its order within thirty days after the hearing. Any person affected by any order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same.

(8) Any person who files a protest with the commission pursuant to the provisions of subsection (7) of this section shall at the same time serve a copy thereof on the person filing the petition. Such service shall be made by mailing a copy of the protest, postage prepaid, to the petitioner.

(9) Whenever any hearing or other proceeding is assigned to an administrative law judge, hearing officer, or individual commissioner for hearing, the administrative law judge, hearing officer, or commissioner, after the conclusion of the hearing, shall promptly transmit to the commission and the parties the record and exhibits of the proceeding and a written recommended decision that contains the findings of fact, conclusions, and recommended order. A party may file an exception to the recommended order; but if no exceptions are filed within twenty days after service upon the parties, or unless the commission stays the recommended order within that time upon its own motion, the recommended order becomes the decision of the commission and subject to section 34-60-111. The commission upon its own motion may, and where exceptions are filed shall, conduct a de novo review of the matter upon the same record, and the recommended order is stayed pending the commission's final determination of the matter. The commission may adopt, reject, or modify the recommended order.

Source: L. 51: p. 655, § 8. CSA: C. 118, § 68(8). CRS 53: § 100-6-7. L. 55: p. 653, § 5. C.R.S. 1963: § 100-6-7. L. 65: p. 898, § 2. L. 69: p. 874, § 1. L. 77: (4) amended, p. 1566, § 1, effective May 24. L. 94: (2) amended, p. 1982, § 7, effective June 2. L. 2019: (9) added, (SB 19-181), ch. 120, p. 517, § 13, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: (1) For rule-making procedures, see article 4 of title 24; for rules concerning service of summons and proof thereof, see C.R.C.P. 4.

(2) For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-109. Commission may bring suit. If it appears that any person fails to comply with an order issued pursuant to section 34-60-121, the commission, through the attorney general, shall bring suit in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant if

there is more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. Proceedings for appellate review or any other proceedings for review may be taken from any judgment, decree, or order in any action under this article as provided by law and the Colorado appellate rules, and all proceedings in the trial and appellate court shall have precedence over any other proceedings then pending in such courts. No bonds shall be required of the commission in any such proceeding or review.

Source: L. 51: p. 657, § 9(c). CSA: C. 118, § 68(9)(c). CRS 53: § 100-6-9. L. 55: p. 654, § 6. C.R.S. 1963: § 100-6-9. L. 94: Entire section amended, p. 1982, § 8, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-110. Witnesses - suits for violations. (1) The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. Nothing in this section shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No natural person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to a subpoena; but no person testifying shall be exempted from prosecution and punishment for perjury in the first degree committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may issue an order for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

Source: L. 51: p. 657, § 9. CSA: C. 118, § 68(9). CRS 53: § 100-6-8. C.R.S. 1963: § 100-6-8. L. 72: p. 564, § 37.

34-60-111. Judicial review. Any rule, regulation, or final order of the commission shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S. The commission shall not be required to post bond in any proceeding for judicial review.

Source: L. 51: p. 659, § 10. **CSA:** C. 118, § 68(10). **CRS 53:** § 100-6-11. **L. 55:** p. 654, § 7. **C.R.S. 1963:** § 100-6-11. **L. 81:** Entire section R&RE, p. 1689, § 1, effective May 21.

34-60-112. Plaintiff post bond. No temporary restraining order or injunction of any kind against the commission or its agents, employees, or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond in such amount and upon such conditions as the court may direct, and such bond is approved by the judge of the court and filed with the clerk of the court. The bond shall be made payable to the state of Colorado, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the restraining order or injunction, if the rule, regulation, or order is upheld. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

Source: L. 51: p. 659, § 10(b). **CSA:** C. 118, § 68(10)(b). **CRS 53:** § 100-6-12. **C.R.S. 1963:** § 100-6-12.

34-60-113. Trial to be advanced. An action, appellate review as provided by law and the Colorado appellate rules, or other proceeding involving a test of the validity of any provision of this article or of a rule, regulation, or order shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted unless deemed imperative by the court.

Source: L. 51: p. 659, § 10(c). **CSA:** C. 118, § 68(10)(c). **CRS 53:** § 100-6-13. **C.R.S. 1963:** § 100-6-13. **L. 81:** Entire section amended, p. 1689, § 2, effective May 21.

34-60-114. Action for damages. Nothing in this article, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this article, or any rule, regulation, or order issued under this article, shall impair, abridge, or delay any cause of action for damages which any person may have or assert against any person violating any provision of this article, or any rule, regulation, or order issued under this article. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission fails to bring suit to enjoin any actual or threatened violation of this article, or of any rule, regulation, or order made under this article, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party.

Source: L. 51: p. 657, § 9(d). **CSA:** C. 118, § 68(9)(d). **CRS 53:** § 100-6-10. **C.R.S. 1963:** § 100-6-10.

34-60-115. Limitation on actions. No action or other proceeding based upon a violation of this article or any rule, regulation, or order of the commission shall be commenced or maintained unless it has been commenced within one year from the date of the alleged violation.

Source: L. 51: p. 660, § 10(d). **CSA:** C. 118, § 68(10)(d). **CRS 53:** § 100-6-14. **C.R.S. 1963:** § 100-6-14.

34-60-116. Drilling units - pooling interests. (1) (a) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, may establish one or more drilling units of specified size and shape covering any pool or portion of a pool.

(b) The application must include proof that either:

(I) The applicant has filed an application with the local government having jurisdiction to approve the siting of the proposed oil and gas location and the local government's disposition of the application; or

(II) The local government having jurisdiction does not regulate the siting of oil and gas locations.

(2) In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the commission from the evidence introduced at the hearing; except that, when found to be necessary for any of the purposes mentioned in subsection (1) of this section, the commission is authorized to divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone, so that the pool as a whole will be efficiently and economically developed, but no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well. If the commission is unable to determine, based on the evidence introduced at the hearing, the existence of a pool and the appropriate acreage to be embraced within a drilling unit and the shape thereof, the commission is authorized to establish exploratory drilling units for the purpose of obtaining evidence as to the existence of a pool and the appropriate size and shape of the drilling unit to be applied thereto. In establishing the size and shape of the exploratory drilling unit, the commission may consider, but is not limited to, the size and shape of drilling units previously established by the commission for the same formation in other areas of the same geologic basin. Any spacing regulation made by the commission shall apply to each individual pool separately and not to all units on a statewide basis.

(3) The order establishing a drilling unit:

(a) Is subject to section 34-60-106 (2.5); and

(b) May authorize one or more wells to be drilled and produced from the common source of supply on a drilling unit.

(4) The commission, upon application, notice, and hearing, may decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units in order to prevent or assist in preventing waste or to avoid the drilling of unnecessary wells, or to protect correlative rights, and the commission may enlarge the area covered by the order fixing drilling units, if the commission determines that the common source of supply underlies an area not covered by the order.

(5) After an order fixing drilling units has been entered by the commission, the commencement of drilling of any well into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.

(6) (a) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning the interests may pool their interests for the development and operation of the drilling unit.

(b) (I) In the absence of voluntary pooling, the commission, upon the application of a person who owns, or has secured the consent of the owners of, more than forty-five percent of the mineral interests to be pooled, may enter an order pooling all interests in the drilling unit for the development and operation of the drilling unit. Mineral interests that are owned by a person who cannot be located through reasonable diligence are excluded from the calculation.

(II) The pooling order shall be made after notice and a hearing and must be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, a just and equitable share.

(c) Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of operations upon each separately owned tract in the unit by the several owners of each separately owned tract. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on it.

(7) (a) Each pooling order must:

(I) Make provision for the drilling of one or more wells on the drilling unit, if not already drilled, for the operation of the wells, and for the payment of the reasonable actual cost of the wells, including a reasonable charge for supervision and storage. Except as provided in subsection (7)(c) of this section, as to each nonconsenting owner who refuses to agree to bear a proportionate share of the costs and risks of drilling and operating the wells, the order must provide for reimbursement to the consenting owners who pay the costs of the nonconsenting owner's proportionate share of the costs and risks out of, and only out of, production from the unit representing the owner's interest, excluding royalty or other interest not obligated to pay any part of the cost thereof, if and to the extent that the royalty is consistent with the lease terms prevailing in the area and is not designed to avoid the recovery of costs provided for in subsection (7)(b) of this section. In the event of any dispute as to the costs, the commission shall determine the proper costs as specified in subsection (7)(b) of this section.

(II) Determine the interest of each owner in the unit and provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production from the wells applicable to the owner's interest in the wells and, unless the owner has agreed otherwise, a proportionate part of the nonconsenting owner's share of the production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to the owner's interest in the unit after the consenting owners have recovered the nonconsenting owner's share of the costs out of production;

(III) Specify that a nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling unit; and

(IV) Prohibit the operator from using the surface owned by a nonconsenting owner without permission from the nonconsenting owner.

(b) Upon the determination of the commission, proper costs recovered by the consenting owners of a drilling unit from the nonconsenting owner's share of production from such a unit shall be as follows:

(I) One hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well or wells commencing with first production and continuing until the consenting owners have recovered such costs. It is the intent that the nonconsenting owner's share of these costs of equipment and operation will be that interest that would have been chargeable to the nonconsenting owner had the owner initially agreed to pay the owner's share of the costs of the well or wells from the beginning of the operation.

(II) Two hundred percent of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.

(c) (I) A nonconsenting owner of a tract in a drilling unit that is not subject to any lease or other contract for oil and gas development shall be deemed to have a landowner's proportionate royalty of:

(A) For a gas well, thirteen percent until the consenting owners recover, only out of the nonconsenting owner's proportionate eighty-seven-percent share of production, the costs specified in subsection (7)(b) of this section; or

(B) For an oil well, sixteen percent until the consenting owners recover, only out of the nonconsenting owner's proportionate eighty-four-percent share of production, the costs specified in subsection (7)(b) of this section.

(II) After recovery of the costs, the nonconsenting owner then owns his or her full proportionate share of the wells, surface facilities, and production and then is liable for further costs as if the nonconsenting owner had originally agreed to drilling of the wells.

(d) (I) The commission shall not enter an order pooling an unleased nonconsenting mineral owner under subsection (6) of this section over protest of the owner unless the commission has received evidence that the unleased mineral owner has been tendered, no less than sixty days before the hearing, a reasonable offer, made in good faith, to lease upon terms no less favorable than those currently prevailing in the area at the time application for the order is made and that the unleased mineral owner has been furnished in writing the owner's share of the estimated drilling and completion cost of the wells, the location and objective depth of the wells, and the estimated spud date for the wells or range of time within which spudding is to occur. The offer must include a copy of or link to a brochure supplied by the commission that clearly and concisely describes the pooling procedures specified in this section and the mineral owner's options pursuant to those procedures.

(II) During the period of cost recovery provided in this subsection (7), the commission retains jurisdiction to determine the reasonableness of costs of operation of the wells attributable to the interest of the nonconsenting owner.

(8) The operator of wells under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of production during the preceding month. If the consenting owners recover the costs specified in subsection (7) of this section, the nonconsenting owner shall own the same interest in the wells and the production therefrom, and be liable for the further costs of the operation, as if the owner had participated in the initial drilling operations.

Source: L. 51: p. 653, § 6. CSA: C. 118, § 68(6). L. 52: p. 130, §§ 2, 3. L. 53: p. 443, §§ 1, 2. CRS 53: § 100-6-4. L. 55: p. 651, § 4. C.R.S. 1963: § 100-6-4. L. 77: (7) and (8) amended, p. 1568, § 1, effective June 1. L. 81: (7)(c) R&RE, p. 1691, § 1, effective July 1. L. 88: (7)(d) added, p. 1216, § 1, effective April 4. L. 91: (2) amended, p. 1414, § 1, effective April 19. L. 2018: (1), (3), (7), and (8) amended, (SB 18-230), ch. 361, p. 2155, § 1, effective July 1. L. 2019: (1), (3), (6), (7)(a)(II), (7)(a)(III), (7)(c), and (7)(d)(I) amended and (7)(a)(IV) added, (SB 19-181), ch. 120, p. 517, § 14, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

34-60-117. Prevention of waste - protection of correlative rights. (1) The commission has authority to prevent waste and protect correlative rights of all owners in every field or pool, and when necessary shall limit the production of oil and gas in any field or pool in the exercise of this authority.

(2) If the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonably avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

(3) The commission shall give due regard to the fact that gas produced from oil pools is to be regulated and restricted in a manner as will protect the reasonable use of its energy for oil production.

(4) Each person purchasing or taking for transportation oil or gas from any owner or producer shall purchase or take ratably, without discrimination in favor of any owner or producer over any other owner or producer in the same common source of supply offering to sell his oil or gas produced therefrom to such person. If two or more persons purchase or take for transportation oil or gas from any common source of supply in quantities such that any tract of land of separate ownership is not producing its just and equitable share from the pool, the person purchasing or taking from the tract producing more than its just and equitable share shall, upon the proper offer to sell being made, reduce the amount purchased or taken from such tract and purchase from each tract not producing its just and equitable share so that each tract of land may produce its just and equitable share of production from the pool. In the event that any such

purchaser or person taking oil or gas for transportation is likewise a producer or owner, he is prohibited from discriminating in favor of his own production or storage, or production or storage in which he may be interested, and his own production and storage shall be treated as that of any other producer or owner; but no owner or producer, who is also a purchaser of oil and gas, or who has a market for his oil and gas or either thereof, has the right to invoke the benefits of this section.

Source: L. 51: p. 655, § 7. CSA: C. 118, § 68(7). L. 52: p. 131, § 4. CRS 53: § 100-6-6. L. 55: p. 650, § 3. C.R.S. 1963: § 100-6-6.

34-60-118. Agreements for development and unit operations. (1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or for carrying on any other methods of unit or cooperative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest for conservation or is reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Any such agreement entered into prior to July 1, 1951, for any such purpose is approved.

(2) The commission upon the application of any interested person shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field.

(3) The commission shall make an order providing for the unit operation of a pool or part thereof if it finds that:

(a) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas; and

(b) The value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operations.

(4) The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(a) A description of the pool, or parts thereof, to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the commission shall determine the relative value, from evidence introduced at the hearing, of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations. The commission shall require the production of or may itself produce such geological, engineering, or other evidence, at the hearing or at any continuance thereof, as may be required to protect the interests of all interested persons. The production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

(d) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(e) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such costs;

(f) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such person's share of the production;

(g) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such person;

(h) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(i) Such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights.

(5) No order of the commission providing for unit operations shall become effective unless the plan for unit operations prescribed by the commission has been approved in writing by those persons who, under the commission's order, will be required to pay at least eighty percent of the costs of the unit operation, and also by the owners of at least eighty percent of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the commission has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the commission shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall be ineffective and shall be revoked by the commission unless for good cause shown the commission extends said time.

(6) An order providing for unit operations may be amended by an order made by the commission in the same manner and subject to the same conditions as an original order providing for unit operations; but if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payment, and other such interests which are free of costs shall not be required. No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in such tract.

(7) The commission, by an order, may provide for the unit operation of a pool, or parts thereof, that embraces a unit area established by a previous order of the commission. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

(8) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

(9) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the commission.

(10) The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

(12) Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations under this article, shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Source: L. 51: p. 660, § 12. **CSA:** C. 118, § 68(12). **CRS 53:** § 100-6-16. **C.R.S. 1963:** § 100-6-16. **L. 65:** p. 894, § 1.

34-60-118.5. Payment of proceeds - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Payee" means any person or persons legally entitled to payment from proceeds derived from the sale of oil, gas, or associated products from a well in Colorado, but shall not include those interests owned by the state of Colorado.

(b) "Payer" means the first purchaser of oil, gas, or associated products from a well in Colorado unless the first purchaser has entered into an agreement under which the operator of a well has accepted responsibility for making payments to payees, in which case such operator shall be the payer.

(2) (a) Unless otherwise agreed pursuant to paragraph (b) of this subsection (2), payments of proceeds derived from the sale of oil, gas, or associated products shall be paid by a payer to a payee commencing not later than six months after the end of the month in which production is first sold. Thereafter, such payments shall be made on a monthly basis not later than sixty days for oil and ninety days for gas and associated products following the end of the calendar month in which subsequent production is sold. Payments may be made annually if the aggregate sum due a payee for twelve consecutive months is one hundred dollars or less.

(b) The payer and payee may provide, in a valid lease or other agreement, for terms or arrangements for payment that differ from those set forth in paragraph (a) of this subsection (2).

(2.3) Notwithstanding any other applicable terms or arrangements, every payment of proceeds derived from the sale of oil, gas, or associated products shall be accompanied by information that includes, at a minimum:

(a) A name, number, or combination of name and number that identifies the lease, property, unit, or well or wells for which payment is being made;

(b) The month and year during which the sale occurred for which payment is being made;

(c) The total quantity of product sold attributable to such payment, including the units of measurement for the sale of such product;

(d) The price received per unit of measurement, which shall be the price per barrel in the case of oil and the price per thousand cubic feet ("MCF") or per million British thermal units ("MMBTU") in the case of gas;

(e) The total amount of severance taxes and any other production taxes or levies applied to the sale;

(f) The payee's interest in the sale, expressed as a decimal and calculated to at least the sixth decimal place;

(g) The payee's share of the sale before any deductions or adjustments made by the payer or identified with the payment;

(h) The payee's share of the sale after any deductions or adjustments made by the payer or identified with the payment;

(i) An address and telephone number from which additional information may be obtained and questions answered.

(2.5) Upon written request by the payee, submitted to the payer by certified mail, the payer shall provide to the payee within sixty days a written explanation of those deductions or adjustments over which the payer has control and for which the payer has information, whether or not identified with the payment, and, if requested by the payee, such meter calibration testing and production reporting records that are required to be maintained by the payer in accordance with section 34-60-106 (1)(e). The requirement to provide a written explanation of deductions or adjustments shall not preclude the payer from answering the inquiry by referring the payee to the royalty clause or payment provision in a lease or other agreement.

(2.7) A payer who fails to provide information required or requested in accordance with subsection (2.3) or (2.5) of this section shall be subject to penalties as provided in section 34-60-121.

(3) (a) Compliance with the payment deadlines set forth in subsection (2) of this section shall be suspended when payments are withheld for a period of time due to any of the following reasons:

(I) A failure or delay by the payee to confirm in writing the payee's fractional interest in the proceeds after a reasonable request in writing by the payer for such confirmation;

(II) A reasonable doubt by the payer as to the payee's identity, whereabouts, or clear title to an interest in proceeds; or

(III) Litigation that would affect the distribution of payments to a payee.

(b) Any delay in determining whether or not a payee is entitled to an interest in proceeds shall not affect payments to all other payees so entitled.

(4) If a payer does not make payment within the time frames specified in subsection (2) of this section and such delay in payment was not caused by any of the reasons specified in subsection (3) of this section, the payer shall pay such payee simple interest on the amount of the proceeds withheld, which interest shall be calculated from the date of each sale at a rate equal to two times the discount rate at the federal reserve bank of Kansas City as such rate existed on the first day of the calendar year or years in which proceeds were withheld.

(5) Absent a bona fide dispute over the interpretation of a contract for payment, the oil and gas conservation commission shall have jurisdiction to determine the following:

(a) The date on which payment of proceeds is due a payee under subsection (2) of this section;

(b) The existence or nonexistence of an occurrence pursuant to subsection (3) of this section which would justifiably cause a delay in payment; and

(c) The amount of the proceeds plus interest, if any, due a payee by a payer.

(5.5) Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the oil and gas conservation commission shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the commission finds that such a dispute exists, the commission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court.

(6) The commission may assign to the parties the costs of any administrative proceeding pursuant to this section in such proportions as it deems appropriate and may award reasonable attorney fees and costs to the prevailing party. The moneys received by the commission to cover the costs of such administrative proceedings shall be transmitted to the state treasurer, who shall credit such moneys to the oil and gas conservation and environmental response fund created in section 34-60-122.

(7) As a prerequisite to seeking relief under this section for the failure of a payer to make timely payment, a payee shall give the payer written notice by certified mail of such failure and the payer shall have twenty days after receipt of the required notice in which to pay the proceeds, plus any interest due thereon, in accordance with the provisions of this section or to respond in writing explaining the reason for nonpayment.

(8) (a) Nothing in this section shall be construed to alter existing substantive rights or obligations nor to impose upon the oil and gas conservation commission any duty to interpret a contract from which the obligation to pay proceeds arises.

(b) Subsections (2.3), (2.5), and (2.7) of this section shall apply to payments of proceeds derived from sales occurring on or after July 1, 1998.

Source: L. 89: Entire section added, p. 1374, § 1, effective July 1, 1990. **L. 98:** (2) and IP(5) amended and (2.3), (2.5), (2.7), (5.5), and (8) added, p. 636, § 1, effective July 1. **L. 2005:**

(6) amended, p. 733, § 4, effective July 1. **L. 2007:** (2.5) amended, p. 1344, § 2, effective May 29.

34-60-119. Production - limitation. This article shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, or judgment that prorates production by requiring restriction of production of any pool or of any well, except a well or wells drilled in violation of section 34-60-116, to an amount less than the well or pool can produce without waste.

Source: **L. 51:** p. 661, § 14. **CSA:** C. 118, § 68(14). **CRS 53:** § 100-6-18. **L. 55:** p. 658, 11. **C.R.S. 1963:** § 100-6-18. **L. 2007:** Entire section amended, p. 1360, § 7, effective May 29.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 320, Session Laws of Colorado 2007.

34-60-120. Application of article. (1) This article shall apply to all lands within the state of Colorado, except as follows:

(a) As to lands of the United States or lands which are subject to its supervision, this article shall apply only to the extent necessary to permit the commission to protect the correlative rights of each owner and producer within a pool and to carry out the provisions of sections 34-60-106, 34-60-117 (4), 34-60-118, and 34-60-122; but the other provisions of this article shall also apply to such lands only if the officer of the United States having jurisdiction approves the order of the commission which purports to affect such lands.

(b) This article shall not in any case apply to any lands committed to any unit or cooperative agreement approved by the department of interior, except as provided in sections 34-60-106, 34-60-117 (4), and 34-60-118, and except as to privately owned or state lands; except that section 34-60-122 shall apply to all lands and to all production from all lands within the state of Colorado.

Source: **L. 51:** p. 661, § 13. **CSA:** C. 118, § 68(13). **L. 52:** p. 132, § 2. **CRS 53:** § 100-6-17. **L. 55:** p. 656, § 9. **C.R.S. 1963:** § 100-6-17. **L. 71:** p. 1050, § 1.

34-60-121. Violations - penalties - rules - legislative declaration. (1) (a) Any operator that violates this article, any rule or order of the commission, or any permit is subject to a penalty of not more than fifteen thousand dollars for each act of violation per day that such violation continues.

(b) The commission may impose a penalty by order only after a hearing in accordance with section 34-60-108 or by an administrative order by consent entered into by the commission and the operator.

(c) The commission shall:

(I) Promulgate rules that establish a penalty schedule appropriate to the nature of the violation and provide for the consideration of any aggravating or mitigating circumstances. The rules must establish the basis for determining the duration of a violation for purposes of imposing the applicable penalty and include presumptions that:

(A) A reporting or other minor operational violation: Begins on the day that the report should have been made or other corrective action should have been taken; and ends when the required report is submitted or other corrective action is commenced;

(B) Any other violation: Begins on the date the violation was discovered or should have been discovered through the exercise of reasonable care; and ends when corrective action is commenced;

(C) The failure to diligently implement corrective action pursuant to a schedule embodied in an administrative order on consent, order finding violation, or other order of the commission constitutes an independent violation for which the operator may be subject to additional penalties or corrective action orders imposed by the commission; and

(D) The number of days of violation does not include any period necessary to allow the operator to engage in good faith negotiation with the commission regarding an alleged violation if the operator demonstrates a prompt, effective, and prudent response to the violation.

(II) Publish a quarterly report on its website that specifies, for each penalty assessed in the previous quarter:

(A) The actual penalty assessed, including the number of days for which the penalty was assessed and the amount of the penalty per day of violation;

(B) The aggravating or mitigating circumstances from the penalty schedule that applied;

(C) Whether the violation was part of a pattern of violations;

(D) Whether an egregious violation resulted from gross negligence or knowing and willful misconduct;

(E) Whether the penalty was assessed after a hearing or by an administrative order by consent; and

(F) Any other rationale used in determining the amount of the per-day penalty, duration of the violation, or amount of the penalty actually assessed; and

(III) Ensure that the reports prepared pursuant to subparagraph (II) of this paragraph (c) are discussed at the annual departmental presentations made pursuant to section 2-7-203, C.R.S.

(d) An operator subject to a penalty order shall pay the amount due within thirty days after its imposition unless the operator files a judicial appeal. The commission may recover penalties owed under this section in a civil action brought by the attorney general at the request of the commission in the second judicial district. Moneys collected through the imposition of penalties shall be credited first to any legal costs and attorney fees incurred by the attorney general in the recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund created in section 34-60-122.

(e) The general assembly hereby declares that the purposes of this subsection (1) are to deter noncompliance and to encourage any out-of-compliance operators to come into compliance as soon as possible and to those ends intends that, in determining the amount of a penalty, the commission should not reduce the number of days of violation for which a penalty is assessed below that number which the evidence supports.

(2) If any person, for the purpose of evading this article or any rule, regulation, or order of the commission, makes or causes to be made any false entry or statement in a report required by this article or by any such rule, regulation, or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this article or by any such rule, regulation, or order, or omits or causes to be omitted from any such record, account, or memorandum full, true, and correct entries as required by this article or by any such rule,

regulation, or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of this article or any rule, regulation, or order of the commission shall be subject to the same penalty as that prescribed by this article for the violation by such other person.

(4) Whenever the commission or the director has reasonable cause to believe a violation of any provision of this article, any rule, regulation, or order of the commission, or any permit has occurred, written notice shall be given to the operator whose act or omission allegedly resulted in such violation. The notice shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, and any corrective action and abatement deadlines the commission or director elects to require of the operator.

(5) (a) If an operator fails to take corrective action required pursuant to subsection (4) of this section, or whenever the commission or the director has evidence that a violation of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit has occurred, under circumstances deemed to constitute an emergency situation, the commission or the director may issue a cease-and-desist order to the operator whose act or omission allegedly resulted in such violation. Such cease-and-desist order shall require such action by the operator as the commission or director deems appropriate. The order shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the commission or the director elects to require of the operator.

(b) The commission or the director may require an operator to appear for a hearing before the commission no sooner than fifteen days after the issuance of a cease-and-desist order; except that the operator may request an earlier hearing. At any hearing concerning a cease-and-desist order, the commission shall permit all interested parties and any complaining parties to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts.

(c) In the event an operator fails to comply with a cease-and-desist order, the commission may request the attorney general to bring suit pursuant to section 34-60-109.

(6) If the commission determines, after a hearing conducted in accordance with section 34-60-108, that an operator has failed to perform any corrective action imposed under subsection (4) of this section or failed to comply with a cease-and-desist order issued under subsection (5) of this section with regard to a violation of a permit provision, the commission may issue an order suspending, modifying, or revoking such permit or may take other appropriate action. An operator subject to an order that suspends, modifies, or revokes a permit shall continue the affected operations only for the purpose of bringing them into compliance with the permit or modified permit and shall do so under the supervision of the commission. Once the affected operations are in compliance to the satisfaction of the commission and any penalty not subject to judicial review or appeal has been paid, the commission shall reinstate the permit.

(7) (a) The commission or the director shall issue an order to an operator to appear for a hearing before the commission in accordance with section 34-60-108 whenever the commission or the director has evidence that an operator is responsible for:

(I) Gross negligence or knowing and willful misconduct that results in an egregious violation; or

(II) A pattern of violation of this article, any rule or order of the commission, or any permit.

(b) If the commission finds, after such hearing, that the operator is responsible under the legal standards specified in paragraph (a) of this subsection (7), it may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both. When the operator demonstrates to the satisfaction of the commission that it has brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, the commission may vacate the order.

Source: **L. 55:** p. 656, § 10. **CRS 53:** § 100-6-21. **C.R.S. 1963:** § 100-6-21. **L. 94:** (1) amended and (4) to (7) added, p. 1982, § 9, effective June 2. **L. 2005:** (1) amended, p. 734, § 5, effective July 1. **L. 2014:** (1) and (7) amended, (HB 14-1356), ch. 372, p. 1767, § 1, effective June 6.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1) and enacting subsections (4) to (7), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-122. Expenses - fund created. (1) (a) In addition to the filing and service fee required to be paid under section 34-60-106 (1)(f) and the fees authorized for other services provided by the commission by section 34-60-106 (16), there is imposed on the market value at the well of all oil and natural gas produced, saved, and sold or transported from the field where produced in this state a charge not to exceed one and seven-tenths mills on the dollar. The commission shall, by order, fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation and environmental response fund specified in subsection (5) of this section may require.

(b) On and after July 1, 2019, the commission shall ensure that the unobligated portion of the fund does not exceed fifty percent of total appropriations from the fund for the upcoming fiscal year and that there is an adequate balance in the fund to support the operations of the commission and to address environmental response needs.

(2) (a) On or before March 1, June 1, September 1, and December 1 of each year, every producer or purchaser, whichever disburses funds directly to each and every person owning a working interest, a royalty interest, an overriding royalty interest, a production payment and other similar interests from the sale of oil or natural gas subject to the charge imposed by subsection (1) of this section, shall file a return with the commission showing the volume of oil, gas, or condensate produced or purchased during the preceding calendar quarter, and the actual sales value of such oil, gas, or condensate, including the total consideration due or received at the point of delivery. Such return shall be accompanied by the total amount of the charges due

on all interests in the oil or gas except those interests exempted under the provisions of subsection (4) of this section.

(b) Each producer shall advise the commission whether he or the purchaser will be responsible for reporting and remitting the levy under the provisions of paragraph (a) of this subsection (2). If the return is filed by the producer, the producer shall maintain at his place of business for three years the invoice or statement issued by each purchaser showing the amount of oil or gas purchased, the producing lease from which such purchase was made, and the total sales price paid. Such purchaser invoice or statement may be requested periodically by the commission with the quarterly report.

(3) Any producer or purchaser who files a return pursuant to subsection (2) of this section shall pay any such charge or any interest other than his own, and such producer or purchaser is authorized to deduct the amount of such payment from any amount owed by him to the person for whom such charge was paid. Any such charge not paid when required by subsection (2) of this section shall bear interest at the rate of three percent per month, from the date of delinquency until paid.

(4) The charge imposed by subsection (1) of this section shall not apply to the interest in any oil or gas or the proceeds therefrom of the following:

- (a) The United States;
- (b) The state of Colorado or any of its political subdivisions;
- (c) Any Indian or Indian tribe on production from land subject to the supervision of the United States.

(5) (a) The commission shall collect all charges and penalties under this article 60 and remit them to the state treasurer for deposit in the oil and gas conservation and environmental response fund, which fund is hereby created in the state treasury.

(b) There is hereby created in the fund the environmental response account, into which shall be deposited penalties pursuant to section 34-60-121 (1). Expenditures authorized pursuant to section 34-60-124 (4) shall be paid in the first instance from the account, and expenditures authorized pursuant to section 34-60-124 (10) shall not be paid from the account. The year-end balance of the account remains in the account.

(c) The general assembly shall annually make appropriations for the purposes authorized by section 34-60-124, and warrants shall be drawn against the appropriations as provided by law.

Source: **L. 51:** p. 662, § 18. **CSA:** C. 118, § 68(16). **L. 53:** p. 444, § 3. **CRS 53:** § 100-6-20. **L. 59:** p. 606, § 1. **C.R.S. 1963:** § 100-6-20. **L. 65:** p. 900, § 1. **L. 71:** p. 1051, § 1. **L. 77:** (1) and (5) amended, p. 1570, § 2, effective June 1; (2) and (3) amended, p. 1769, § 9, effective January 1, 1978. **L. 78:** (5) amended, p. 273, § 96, effective May 23. **L. 84:** (2) R&RE and (3) and (5) amended, pp. 936, 937, §§ 1, 2, effective April 27. **L. 86:** (1) and (5) amended, p. 1073, § 2, effective April 3. **L. 87:** (1) amended, p. 1274, § 1, effective May 8. **L. 88:** (5) amended, p. 1217, § 1, effective April 14. **L. 90:** (1) R&RE, p. 1545, § 2, effective May 8. **L. 91:** (2)(a) and (5) amended, pp. 1415, 1416, §§ 4, 5, effective April 19. **L. 94:** (1)(b) and (2)(a) amended, p. 1984, § 10, effective June 2. **L. 2005:** (1)(a), (1)(b), and (5) amended, p. 731, § 1, effective July 1; (1)(b) amended, p. 542, § 3, effective July 1. **L. 2006:** (1)(b) amended, p. 220, § 1, effective March 31. **L. 2014:** (1)(b) amended, (HB14-1077), ch. 79, p. 319, § 1, effective March 27. **L. 2018:** (5) amended, (HB 18-1098), ch. 107, p. 796, § 1, effective April 9. **L. 2019:** (1)(b) amended, (SB 19-181), ch. 120, p. 519, § 15, effective April 16.

Editor's note: (1) Amendments to subsection (1)(b) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

(2) Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

Cross references: (1) For disposition of moneys collected by state agencies or instrumentalities, see § 24-36-103.

(2) For the legislative declaration contained in the 1994 act amending subsections (1)(b) and (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-123. Interstate compact to conserve oil and gas. The governor may execute agreements with other member states for expiration date extensions or other modifications of the terms of the interstate compact to conserve oil and gas. The governor may further take all steps necessary to effect withdrawal of this state from the compact upon his determination that withdrawal is in the best interests of the state of Colorado.

Source: L. 73: p. 1411, § 73. **C.R.S. 1963:** § 100-6-23.

34-60-124. Oil and gas conservation and environmental response fund. (1) The following moneys shall be credited to the oil and gas conservation and environmental response fund:

(a) The revenues from the surcharge imposed by the commission pursuant to section 34-60-122 (1)(a);

(b) Moneys reimbursed to or recovered by the commission in payment for fund expenditures;

(c) Any moneys appropriated to such fund by the general assembly;

(d) Any moneys granted to the commission from any federal agency for the purposes outlined under subsection (4) of this section;

(e) Prepayments by operators, in situations where a responsible party cannot be identified, as a credit against the surcharge imposed by section 34-60-122 (1)(a), whether in cash or through the provision of services or equipment, in order that the commission may conduct the activities provided for in subsection (4) of this section;

(f) Moneys recovered from the sale of salvaged equipment, as provided for in paragraph (c) of subsection (6) of this section.

(2) The moneys in the oil and gas conservation and environmental response fund shall not revert to the general fund at the end of any fiscal year.

(3) The moneys in the oil and gas conservation and environmental response fund shall be subject to annual appropriation by the general assembly; except that moneys deposited in the fund constituting forfeited security or other financial assurance provided by operators in accordance with section 34-60-106 (3.5) and (13) shall be continuously appropriated to the commission for the purpose of fulfilling obligations under this article upon which an operator has defaulted.

(4) The oil and gas conservation and environmental response fund may be expended:

(a) By the commission, or by the director at the commission's direction, prior to, during, or after the conduct of oil and gas operations to:

(I) Investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, a significant adverse environmental impact on any air, water, soil, or biological resource;

(II) Gather background or baseline data on any air, water, soil, or biological resource that the commission determines may be so impacted by the conduct of oil and gas operations; and

(III) Investigate alleged violations of any provision of this article, any rule or order of the commission, or any permit where the alleged violation threatens to cause or actually causes a significant adverse environmental impact;

(b) For purposes authorized by section 23-41-114 (4), C.R.S.;

(c) Repealed.

(5) The director of the oil and gas conservation commission shall prepare an annual report for the executive director of the department of natural resources and the governor regarding the operations of and disbursements from the fund.

(6) For the purposes provided for in subsection (4) of this section, the commission is authorized to:

(a) Enter onto any lands or waters, public or private; and, except in emergency situations, the commission shall provide reasonable notice prior to such entry in order to allow a surface owner, local government designee, operator, or responsible party to be present and to obtain duplicate samples and copies of analytical reports;

(b) Require responsible parties to conduct investigation or monitoring activities and to provide the commission with the results;

(c) Confiscate and sell for salvage any equipment abandoned by a responsible party at a location where the conduct of oil and gas operations has resulted in a significant adverse environmental impact; except that this authority shall be subject to and secondary to any valid liens, security interests, or other legal interests in such equipment asserted by any taxing authority or by any creditor of the responsible party.

(7) If the commission determines that mitigation of a significant adverse environmental impact on any air, water, soil, or biological resource is necessary as a result of the conduct of oil and gas operations, the commission shall issue an order requiring the responsible party to perform such mitigation. If the responsible party cannot be identified or refuses to comply with such order, the commission shall authorize the necessary expenditures from the fund. The commission shall bring suit in the second judicial district to recover such expenditures from any responsible party who refuses to perform such mitigation or any responsible party who is subsequently identified, such action to be brought within a two-year period from the date that final expenditures were authorized. Moneys recovered as a result of such suit shall first be applied to the commission's legal costs and attorney fees and shall then be credited to the fund.

(8) (a) For purposes of this section, "responsible party" means any person who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision of this article, or of any rule, regulation, or order of the commission, or of any permit that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource. "Responsible party" includes any person who disposes of any other waste by mixing it with exploration and production waste that threatens to cause, or

actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource.

(b) Except as otherwise provided in paragraph (a) of this subsection (8), "responsible party" does not include any landowner, whether of the surface estate, mineral estate, or both, who does not engage in, or assume responsibility for, the conduct of oil and gas operations.

(9) For purposes of this section, any person who is found to be a responsible party shall be deemed to have consented to the jurisdiction of the commission and the courts of the state of Colorado. Each responsible party shall be liable only for a proportionate share of any costs imposed under this section and shall not be held jointly and severally liable for such costs.

(10) The fund shall be expended by the commission or by the director for the purposes of administering the provisions of this article, including staffing, overhead, enforcement, and the payment of environmental responses costs, and for paying expenses in connection with the interstate oil and gas compact commission.

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (4) amended, p. 1416, § 6, effective April 19. **L. 94:** Entire section amended, p. 1985, § 11, effective June 2. **L. 2000:** (3) amended, p. 826, § 1, effective May 24. **L. 2002:** (5) amended, p. 878, § 8, effective August 7. **L. 2005:** IP(1), (1)(a), (1)(e), (2), (3), and (4) amended and (10) added, p. 732, § 2, effective July 1; (4) amended, p. 541, § 2, effective July 1. **L. 2007:** IP(4) amended and (4)(c) added, p. 1587, § 2, effective May 31. **L. 2011:** (4)(c) repealed, (HB 11-1303), ch. 264, p. 1173, § 86, effective August 10.

Editor's note: Amendments to subsection (4) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-125. Mitigation of adverse environmental impacts. (Repealed)

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (1) amended, p. 1416, § 7, effective April 19. **L. 94:** Entire section repealed, p. 1987, § 12, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-126. Credit allowed for prior payment for mitigation of environmental impacts. (Repealed)

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (2) and (3) amended, p. 1417, § 8, effective April 19. **L. 94:** Entire section repealed, p. 1989, § 13, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-127. Reasonable accommodation. (1) (a) An operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land.

(b) As used in this section, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator.

(c) The standard of conduct set forth in this section shall not be construed to prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas.

(d) The standard of conduct set forth in this section shall not be construed to abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface.

(2) An operator's failure to meet the requirements set forth in this section shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages or such equitable relief as is consistent with subsection (1) of this section.

(3) (a) In any litigation or arbitration based upon this section, the surface owner shall present evidence that the operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the operator shall bear the burden of proof of showing that it met the standard set out in subsection (1) of this section. If an operator makes that showing, the surface owner may present rebuttal evidence.

(b) An operator may assert, as an affirmative defense, that it has conducted oil and gas operations in accordance with a regulatory requirement, contractual obligation, or land use plan provision, that is specifically applicable to the alleged intrusion or damage.

(4) Nothing in this section shall:

(a) Preclude or impair any person from obtaining any and all other remedies allowed by law;

(b) Prevent an operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract; or

(c) Establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.

Source: L. 2007: Entire section added, p. 1335, § 2, effective September 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 314, Session Laws of Colorado 2007.

34-60-128. Habitat stewardship - rules. (1) This section shall be known and may be cited as the "Colorado Habitat Stewardship Act of 2007".

(2) The commission shall administer this article so as to minimize adverse impacts to wildlife resources affected by oil and gas operations.

(3) In order to minimize adverse impacts to wildlife resources, the commission shall:

(a) Establish a timely and efficient procedure for consultation with the parks and wildlife commission and division of parks and wildlife on decision-making that impacts wildlife resources;

(b) Provide for commission consultation and consent of the affected surface owner, or the surface owner's appointed tenant, on permit-specific conditions for wildlife habitat protection that directly impact the affected surface owner's property or use of that property. Such permit-specific conditions for wildlife habitat protection shall be discontinued when final reclamation has occurred. Permit-specific conditions for wildlife habitat protection that do not directly impact the affected surface owner's property or use of that property, such as off-site compensatory mitigation requirements, do not require the consent of the surface owner or the surface owner's appointed tenant.

(c) Implement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources;

(d) Promulgate rules, by July 16, 2008, in consultation with the parks and wildlife commission, to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations. At a minimum, the rules shall address:

(I) Developing a timely and efficient consultation process with the division of parks and wildlife governing notification and consultation on minimizing adverse impacts, and other issues relating to wildlife resources;

(II) Encouraging operators to utilize comprehensive drilling plans and geographic area analysis strategies to provide for orderly development of oil and gas fields;

(III) Minimizing surface disturbance and fragmentation in important wildlife habitat by incorporating appropriate best management practices:

(A) In orders or rules establishing drilling units or allowing the drilling of additional wells in drilling units pursuant to section 34-60-116;

(B) In orders approving agreements for development or unit operations pursuant to section 34-60-118; and

(C) On a site-specific basis, as conditions of approval to a permit to drill pursuant to section 34-60-106 (1)(f).

(4) Repealed.

Source: L. 2007: Entire section added, p. 1329, § 3, effective July 1. **L. 2008:** IP(3)(d) amended, p. 1034, § 2, effective May 21. **L. 2012:** (3)(a) and IP(3)(d) amended, (HB 12-1317), ch. 248, p. 1235, § 91, effective June 4. **L. 2019:** (3)(b) amended and (4) repealed, (SB 19-181), ch. 120, p. 520, § 16, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.

34-60-129. Coalbed methane seepage - fund created - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 1586, § 1, effective May 31.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 1586.)

34-60-130. Reporting of spills - rules. (1) If one barrel or more of oil or exploration and production waste is spilled outside of berms or other secondary containment, the spill shall be reported within twenty-four hours after the discovery of the spill, to:

(a) The commission; and
(b) The entity with jurisdiction over emergency response within the local municipality, if the spill occurred within a municipality, or the local county if the spill did not occur within a municipality.

(2) The spill report must include any available information concerning the type of waste involved in the spill.

(3) The commission may promulgate rules to implement this section.

Source: L. 2013: Entire section added, (HB 13-1278), ch. 188, p. 759, § 1, effective August 7.

34-60-131. No land use preemption. Local governments and state agencies, including the commission and agencies listed in section 34-60-105 (1)(b), have regulatory authority over oil and gas development, including as specified in section 34-60-105 (1)(b). A local government's regulations may be more protective or stricter than state requirements.

Source: L. 2019: Entire section added, (SB 19-181), ch. 120, p. 520, § 17, effective April 16.

Editor's note: Section 19 of chapter 120 (SB 19-181), Session Laws of Colorado 2019, provides that the act adding this section applies to conduct occurring on or after April 16, 2019, including determinations of applications pending on April 16, 2019.