

REVIEW OF OIL AND GAS INDUSTRY AND THE COGCC'S COMPLIANCE WITH COLORADO'S SETBACK RULES



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Introduction:

On behalf of the Sierra Club, student attorneys at the University of Denver's Environmental Law Clinic (the Clinic) conducted a review of Oil & Gas Location Assessment Permits (Form 2As) submitted to the Colorado Oil and Gas Conservation Commission (COGCC) since August 1, 2013 - the date the new COGCC setback regulations were implemented. Specifically, the Clinic reviewed industry applications and decisions of the COGCC to determine if they were in compliance with the mandate that new multi-well production facilities proposed within 1,000 feet of a home or commercial building be located "as far as possible" from those building units.

In summary, the legal analysis of the Clinic determined that during a 14-month approval period nearly 200 applications were incomplete. COGCC staff neither required nor had information necessary to determine if the locations were meeting the requirement that well operations be located as far as possible from homes. In addition, the student attorneys advise broadening opportunities for the public and local government to participate in the permit review process. The students also recommend that the COGCC website be updated to make it more user friendly for the average citizen to access permit information and to provide feedback.

Key Findings:

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- 1. The 181 permits approved after August 1, 2013 that lacked legally-required information** will result in 951 wells, 1221 oil and condensate tanks, and 932 separators.
 - 2. Dozens of permits with insufficient data have been approved in Weld County** since the Governor and the Executive Director of the Department of Natural Resources renewed their commitment to review how Setback Rules were implemented in August 2014.
 - 3. Major drilling areas - Weld, Garfield, and La Plata counties - have a significant number of permits approved even though they lack critical information.**
 - 4. Public participation requirements do not notify residents (who are not land or building owners) who could be directly, indirectly or cumulatively impacted by drilling operations.**
 - 5. The COGCC website may be functionally unavailable to laypersons and may ultimately discourage public participation.**

Key Recommendations:

To best execute their statutory duty to protect public health and safety:

1. The COGCC must reject operator forms for any permit application within a buffer or exception zone that fail to include all required documentation thoroughly completed and not just for “significant” attachment deficiencies.
2. Operators should be required to notify all residents, including tenants within a buffer or exception zone, not only the building and surface owners.
3. The public comment period should be a uniform 30 days.
4. The COGCC website needs to be user friendly for the average citizen.
5. The COGCC should further evaluate the sufficiency of current setback limitations and set future limitations based on both the best available science and the precautionary principle.

Background:

In July of 2012, the COGCC sued the City of Longmont over its regulations that prohibited placement of oil and gas facilities in residential areas. Longmont believed that its regulations were a necessary addition to the state regulations which allowed wells and production equipment as close as 150 feet from homes.

In February of 2013, the COGCC updated its regulations to require a greater distance between oil and gas facilities and “building units,” which includes homes and occupied commercial spaces.¹ The regulations changed the minimum setback requirement from 150 feet to 500 feet with numerous exceptions for rural areas, for expanding existing wellhead locations, and for locations with existing surface use agreements.

The Form 2A application is used to ensure the setback regulations are being followed. The Form 2A requires oil and gas operators to provide the number of wells on a single site and the distances from building units and high-occupancy buildings such as schools and hospitals. The 2013 rule changes also required operators to notify homeowners within 1,000 feet of the proposed location about the application and also gave local governments additional time to comment on applications – particularly those within the residential “urban mitigation zones.”

Finally, the rules require that “multi-well production facilities” proposed within the “buffer zone” (1,000 feet of a building unit) be “as far as possible” from building units. Requiring multi-well production facilities to be located as far as possible from homes was recognition that multiple wells and related production equipment have far greater impacts on neighboring land uses than a single well.

In the past ten years, technological advancements in horizontal drilling have allowed oil and gas operators to routinely access oil and gas resources from as far as two miles away. Horizontal drilling provides operators much greater flexibility for the siting and location of well heads and production facilities.

Another advancement in recent years is consolidating multiple wells and production equipment onto a single well pad. These “multi-well production facilities” decrease the amount of surface disturbance but are also substantially more industrial in nature than a single well pad. The sheer volume of oil and gas produced at multi-well sites can require dozens of tanks, separators, and air pollution emission control equipment.

In the past year, a fair amount of controversy emerged as to whether multi-well production facilities were being placed “as far as possible” from homes. In October of 2014, the COGCC added new language to the Form 2A. The form now requires that operators confirm that the location is “as far as possible” from homes and requests additional information to describe other sites that were considered and why they were not chosen. Also in October, the COGCC released “operator guidance” that set out a new Form 2 and Form 2A rejection policy.² The stated purpose of the policy is to speed up the permit review process to 30-45 days.

The COGCC staff presentation that described the new policy to operators made it clear that the agency had been in the habit of accepting incomplete applications. The COGCC has acknowledged that the agency has been far too lax about allowing applications to be submitted without accurate information or the proper attachments. As stated by the COGCC’s Permit Manager, “We end up being your consultants... there are so many errors, instead of reviewing your plan, we are correcting your permit.”³ Thereafter, the COGCC announced its policy of rejecting Form 2As if they were missing three or more attachments. As stated by Deputy Director Dave Kulmann, “We are going to focus just on attachments. You can still make 75 errors in the data entry field and we won’t reject it... you will get a call from us but we won’t reject it.”⁴

Findings of Non-Compliance:

The student attorneys’ research determined that many pending or approved Form 2As lacked critical aspects and details related to well sites – including, but not limited to, a failure to identify the number of wellheads at the operation, what zone the well site may be in, and any comments regarding the well site location.

For permits submitted and approved after August 1, 2013, the Clinic found 181 permits lacking critical information out of approximately 1,300 approved permits. The majority of the approved permits that lacked critical information occurred in counties with significant oil and gas activity: Garfield, La Plata, and Weld.

More importantly, because the 181 permits include multi-well production facilities, the actual number of wells, condensate and oil tanks, and separators is immense: 951 wells, 1221 tanks, and 932 separators. The majority of the permits and subsequent wells, tanks, and separators are located in Weld County. An examination of location permits approved for oil and gas wells in Weld County between August 1, 2013 and October 31, 2014 reveals that permits for 798 wells, 1140 tanks, and 800 separators lacked critical information required for approval.

In addition, the COGCC website was exceedingly difficult to navigate, which can deter or prevent laypersons from accessing information needed to (1) be aware of oil and gas development in their communities; (2) be able to make meaningful comments on concerning pending permits; (3) participate in public hearings. Accessing information on the website is time consuming, confusing, and frequently required multiple attempts to access forms, and it becomes a task virtually impossible for persons lacking highly technical computer and software skills. Other complications with accessing information included: (1) a lack of meaningful geographic reference to wells, which are instead listed by their well name and number; and (2) a mapping system (GIS) that would be meaningless to an average citizen without prior exposure to the tool.

Chart 1

Map of approved multi-well production facility permits that lacked critical information in Weld County. The map shows the distance from well pads to building units, and each dot represents multiple wells, tanks, and/or separators. The permits shown here were approved between August 1, 2013 and October 31, 2014.

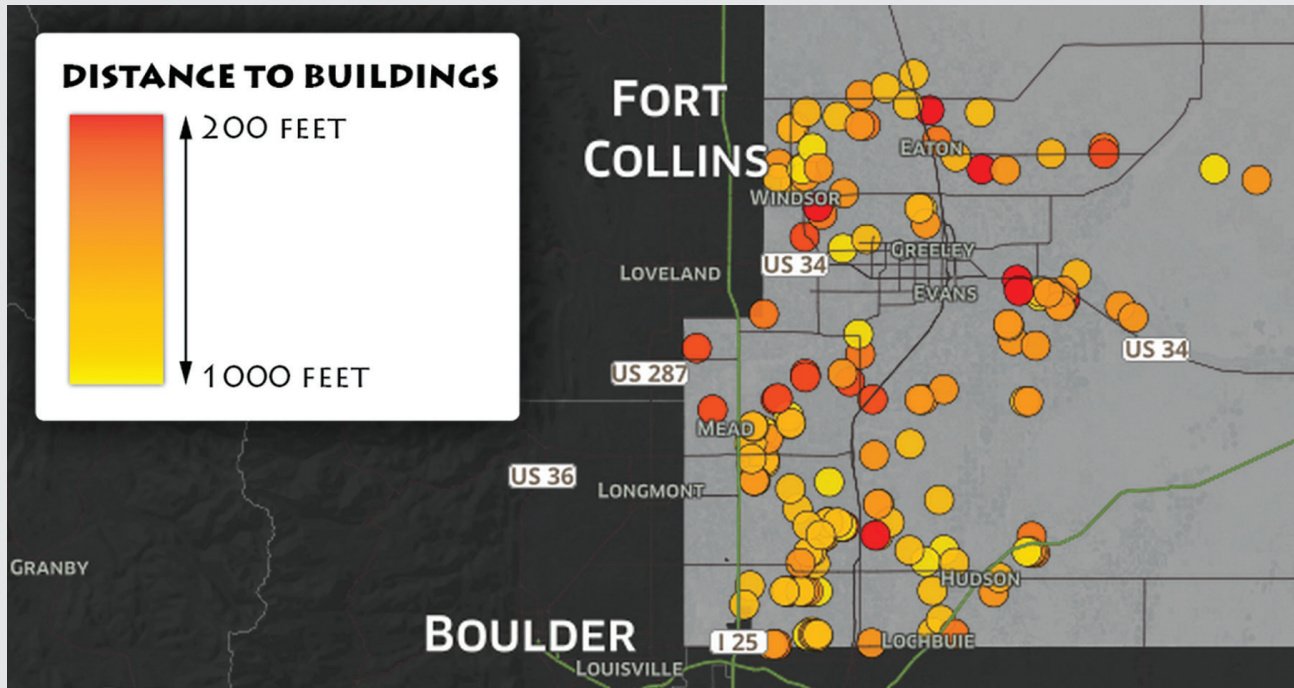
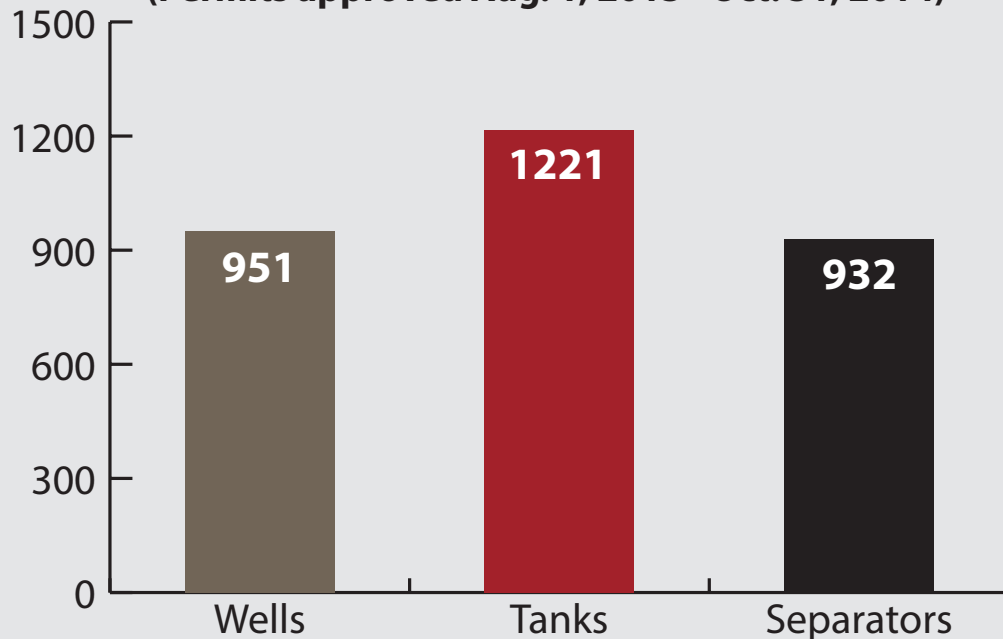


Chart 2

Number of Wells, Tanks, and Separators Statewide Lacking Critical Information (Permits approved Aug. 1, 2013 - Oct. 31, 2014)



Recommendations

1. The number of blanks in the Form 2As approved after August 2013 makes it apparent that the COGCC is not adequately reviewing each permit for compliance with Colorado's Setback Rules. The COGCC's new "rejection" policy implemented November 1, 2014, requiring COGCC rejection of permits missing "significant attachments" to Forms 2 and 2A⁵ may be a step in the right direction if properly enacted. In order to actually fulfill their statutory duty to protect public health and safety, however, COGCC must reject forms for any permit application within a buffer or exception zone that fails to include all required documentation thoroughly completed and not just for "significant" attachment deficiencies.
2. Operators should be required to notify all residents, including tenants, within a buffer or exception zone of a proposed well location, not only building or surface owners. The review process is intended to address health and environment concerns, not simply property ownership concerns.
3. The public comment period on drilling and location permits (Form 2s and 2As) should be a uniform 30 days. This will increase the accessibility of the public comment process to average citizens who may not fully comprehend the regulatory differences between Exemption, Buffer, and Urban Mitigation zones. Currently, comment periods are only 20 days, and the rules for extending that public comment vary (up to a 20-day extension) according to wells within Urban Mitigation and Exception zones, but not other zones. A 30-day public comment period will likewise be consistent with many other public comment periods offered by other Colorado state regulatory agencies. The ability for local governments to receive a 20-day extension of the comment period should be available in both rural and urban mitigation areas.
4. The COGCC website should be more user-friendly for the average citizen. Access points and search tools throughout the website should be upgraded, streamlined, and geared towards public inclusion and utilization. For example, there should be one search option or one numbering system for all permits. The mapping feature also needs to be upgraded and integrated into the permit search function. Technical terminology, such as "GIS," should be replaced by terms more recognizable to a layperson and should be explained more clearly on the main webpage.
5. Given the current scientific understanding and trajectory of future studies of airborne emissions from oil and gas operations, recent harmful incidents at oil and gas pads in Colorado, and their effects on human health and welfare, the COGCC should further evaluate the sufficiency of current setback limitations and set future limitations based on both the best available science and the precautionary principle.⁶

Methodology

At the request of the Sierra Club, the Clinic began their research by selecting a county and looking at each individual pending and approved permit within that county. The Clinic reviewed all pending Form 2A submissions submitted to the COGCC as of October 31, 2014. Likewise, the Clinic reviewed all approved Form 2A submissions submitted to the COGCC after August 1, 2013 when the new setback regulations took effect. In total, almost 1,500 Form 2As were reviewed by the Clinic.

1. 2 Colo. Code Regs. ("CCR") § 404-604.1(a) (2014) ("Setback Rules").

2. https://cogcc.state.co.us/forms/instructions/Form_2_Process_Guidance_PDFs/OperatorGuidanceRejectionProcess_20141029.pdf

3. <https://www.youtube.com/watch?v=y4SRYaJUoXM&feature=youtu.be>; Jane Stanzyck at approximately 25 minutes

4. Id. at 22 minutes

5. Operator Guidance: Form 2 and 2A Rejection Process, Colorado Oil and Gas Conservation Commission, Oct. 29, 2014, attached to this document.

6. A precautionary approach to risk management states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking an action. The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.