

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE) CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL &)
GAS CONSERVATION COMMISSION OF THE) DOCKET NO. 181200714
STATE OF COLORADO)
) TYPE: RULEMAKING

NOTICE OF RULEMAKING HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission of the State of Colorado (“Commission”), on its own motion, will consider additions and amendments to Commission Rules of Practice and Procedure, 2 C.C.R. 404-1 (“Rules”), as part of its “School Setback Rulemaking”.

On December 6, 2017, the League of Oil and Gas Impacted Coloradans (“LOGIC”), submitted a Commission petition to conduct a rulemaking to require new oil and gas wells and production facilities be sited no closer than 1,000 feet from the perimeter of a school or child care center property line, as opposed to a building as currently required. LOGIC renewed its petition for rulemaking on July 16, 2018. At the Commission’s July 30, 2018 hearing, it considered LOGIC’s petition and directed Commission staff to proceed with a rulemaking on the issue of school setbacks.

The Commission is exploring LOGIC’s proposed rule changes, as well as other stakeholder recommended rule changes, including potential changes to the current Designated Outdoor Activity Area requirements (Rule 604) or to the current Form 2A Oil and Gas Location Assessment requirements (Rule 303.b.). Any potential rule additions and amendments that provide a buffer between oil and gas development and school / child care center areas that are outside a designated building but still within a property activity area – for example, playgrounds, recreational areas, and other outdoor activity areas – will be considered.

A clean version of LOGIC’s draft proposed rules is attached as **Appendix A**. A redline version of LOGIC’s draft proposed rules is attached as **Appendix B**. The draft Statement of Basis, Specific Statutory Authority and Purpose is attached as **Appendix C**. The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105(1), 34-60-106(2)(d), and 34-60-108, C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the above entitled matter for a rulemaking hearing commencing on:

Date: Monday, December 17, 2018
Tuesday, December 18, 2018

Time: 9:00 a.m.

Place: Colorado Oil and Gas Conservation Commission
The Chancery Building
1120 Lincoln Street, Suite 801
Denver, CO 80203

Public Participation. The Commission encourages the public to participate in the rulemaking by commenting on the proposed rules in advance of or during the rulemaking hearing. Any person may submit written comments in advance of the hearing pursuant to the procedures described below. In addition, any person may participate in the process and offer oral testimony during the public comment period at the hearing. The Commission may place a time limit on public comments during the hearing depending on the number of people who wish to comment.

Persons wishing to make oral comments at the hearing, specific to this rulemaking, are encouraged to sign up in advance via emailing to DNR_COGCC.Rulemaking@state.co.us no later than **Friday, December 7, 2018, 5:00 p.m.** Those who sign-up in advance will be given priority during the public comment period. Those submitting written comments should email them to the same address, also by **Friday, December 7, 2018, 5:00 p.m.** Please note, written comments received after September 10 may not be delivered to the Commissioners prior to the hearing date.

Party Status. Persons or organizations wanting to participate in this rulemaking as a party are required to file a written request for party status with the Commission on or before **Friday, October 26, 2018, 5:00 p.m.** The Commission will compile a list of all parties with contact information and make it available on the Commission's website. Late requests for party status will not be accepted absent good cause for the delay.

The Commission may modify or amend the rules described or proposed herein, and make conforming modifications to other rules, as it determines reasonably necessary through the course of the stakeholder process, comment period, and rulemaking hearing.

In accordance with the Americans with Disabilities Act, if any person requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the proposed Rules and other information about the School Setback Rulemaking are available on the Commission's internet homepage at

<http://cogcc.state.co.us> or upon request at the Commission offices, 1120 Lincoln Street, Suite 801, Denver, CO 80203.

OIL AND GAS CONSERVATION COMMISSION OF
THE STATE OF COLORADO

By 
Julie Spence Frine, Commission Secretary

Dated: August 15, 2018

APPENDIX A

RULES AND REGULATIONS

DEFINITIONS (100 Series)

HIGH OCCUPANCY BUILDING UNIT shall mean: any operating Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons.

SCHOOL shall mean Public School as defined in § 22-7-703(4) C.R.S., Private School as defined in § 22-30.5-103(6.5) C.R.S., or an operating Child Care Center as defined in § 26-6-102(5) C.R.S.

SAFETY REGULATIONS (600 Series)

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. Setbacks.

(1) **Exception Zone Setback.** No Well or Production Facility shall be located five hundred (500) feet or less from a Building Unit except as provided in Rules 604.a.(1) A and B, and 604.b.

A. **Urban Mitigation Areas.** The Director shall not approve a Form 2A or associated Form 2 proposing to locate a Well or a Production Facility within an Exception Zone Setback in an Urban Mitigation Area unless:

i. the Operator submits a waiver from each Building Unit Owner within five hundred (500) feet of the proposed Oil and Gas Location with the Form 2A or associated Form 2, or obtains a variance pursuant to Rule 502; and

ii. the Operator certifies it has complied with Rules 305.a, 305.c., and 306.e.; and

iii. the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable; or

iv. the Oil and Gas Location is approved as part of a Comprehensive Drilling Plan pursuant to Rule 216.

B. **Non-Urban Mitigation Area Locations.** Except as provided in subsection 604.b., below, the Director shall not approve a Form 2 or Form 2A proposing to locate a Well or a Production Facility within an Exception Zone Setback not in an Urban Mitigation Area unless the Operator certifies it has complied with Rules 305.a., 305.c., and 306.e., and the Form 2A or Form 2 contains conditions of approval related to site

specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

- (2) **Buffer Zone Setback.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a Building Unit until the Operator certifies it has complied with Rule 305.a., 305.c., and 306.e. and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures as necessary to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife.
- (3) **High Occupancy Buildings.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a High Occupancy Building Unit without Commission approval following Application and Hearing. Designated Setback Location and Exception Zone Setback mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a High Occupancy Building, unless the Commission determines otherwise.
- (4) **Designated Outside Activity Areas.** No Well or Production Facility shall be located three hundred fifty (350) feet or less from the boundary of a Designated Outside Activity Area. The Commission, in its discretion, may establish a setback of greater than three hundred fifty (350) feet based on the totality of circumstances. Designated Setback Location mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a Designated Outside Activity Area, unless the Commission determines otherwise.
- (5) **Maximum Achievable Setback.** If the applicable setback would extend beyond the area on which the Operator has a legal right to locate the Well or Production Facilities, the Operator may seek a variance under Rule 502.b. to reduce the setback to the maximum achievable distance.
- (6) **Schools.** No well or production facility shall be located one thousand (1,000) feet or less from the property line of a school. Location specific requirements pursuant to Rule 604.c.(2) shall apply to any well or production facility within one thousand and five hundred (1,500) feet from the property line of a school. Exceptions pursuant to Rule 604.b. and variances pursuant to Rule 502.b. shall not apply to setback distances for schools.
 - A. With respect to property owned by a school district or school or property designated as a school site but not yet deeded to a school district or school, the required setback distance of one thousand (1,000) feet applies to any parcel of real property on which construction of a future permanent or temporary school building is planned within five years so long as school districts or schools register these locations with the Commission.
 - B. Except as provided by subsection (A) of this section, the required setback distance of one thousand (1,000) feet does not apply to any well or production facility actively in use or permitted on the date the Commission approves this rule.

APPENDIX B

RULES AND REGULATIONS

**DEFINITIONS
(100 Series)**

HIGH OCCUPANCY BUILDING UNIT shall mean:

any operating ~~Public School as defined in § 22-7-703(4), C.R.S., Nonpublic School as defined in § 22-30.5-103.6(6.5), C.R.S.,~~ Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons; ~~or~~

~~an operating Child Care Center as defined in § 26-6-102(1.5), C.R.S.~~

SCHOOL shall mean Public School as defined in § 22-7-703(4) C.R.S., Private School as defined in § 22-30.5-103(6.5) C.R.S., or an operating Child Care Center as defined in § 26-6-102(5) C.R.S.

**SAFETY REGULATIONS
(600 Series)**

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. Setbacks. ~~Effective August 1, 2013:~~

(1) **Exception Zone Setback.** No Well or Production Facility shall be located five hundred (500) feet or less from a Building Unit except as provided in Rules 604.a.(1) A and B, and 604.b.

A. **Urban Mitigation Areas.** The Director shall not approve a Form 2A or associated Form 2 proposing to locate a Well or a Production Facility within an Exception Zone Setback in an Urban Mitigation Area unless:

- i. the Operator submits a waiver from each Building Unit Owner within five hundred (500) feet of the proposed Oil and Gas Location with the Form 2A or associated Form 2, or obtains a variance pursuant to Rule 502; and
- ii. the Operator certifies it has complied with Rules 305.a, 305.c., and 306.e.; and
- iii. the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable; or
- iv. the Oil and Gas Location is approved as part of a Comprehensive Drilling Plan pursuant to Rule 216.

B. Non-Urban Mitigation Area Locations. Except as provided in subsection 604.b., below, the Director shall not approve a Form 2 or Form 2A proposing to locate a Well or a Production Facility within an Exception Zone Setback not in an Urban Mitigation Area unless the Operator certifies it has complied with Rules 305.a., 305.c., and 306.e., and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

(2) **Buffer Zone Setback.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a Building Unit until the Operator certifies it has complied with Rule 305.a., 305.c., and 306.e. and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures as necessary to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife.

(3) **High Occupancy Buildings.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a High Occupancy Building Unit without Commission approval following Application and Hearing. Designated Setback Location and Exception Zone Setback mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a High Occupancy Building, unless the Commission determines otherwise.

(4) **Designated Outside Activity Areas.** No Well or Production Facility shall be located three hundred fifty (350) feet or less from the boundary of a Designated Outside Activity Area. The Commission, in its discretion, may establish a setback of greater than three hundred fifty (350) feet based on the totality of circumstances. Designated Setback Location mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a Designated Outside Activity Area, unless the Commission determines otherwise.

(5) **Maximum Achievable Setback.** If the applicable setback would extend beyond the area on which the Operator has a legal right to locate the Well or Production Facilities, the Operator may seek a variance under Rule 502.b. to reduce the setback to the maximum achievable distance.

(6) **Schools.** No well or production facility shall be located one thousand (1,000) feet or less from the property line of a school. Location specific requirements pursuant to Rule 604.c.(2) shall apply to any well or production facility within one thousand and five hundred (1,500) feet from the property line of a school. Exceptions pursuant to Rule 604.b. and variances pursuant to Rule 502.b. shall not apply to setback distances for schools.

A. With respect to property owned by a school district or school or property designated as a school site but not yet deeded to a school district or school, the required setback distance of one thousand (1,000) feet applies to any parcel of real property on which construction of a future permanent or temporary school building is planned within five years so long as school districts or schools register these locations with the Commission.

B. Except as provided by subsection (A) of this section, the required setback distance of one thousand (1,000) feet does not apply to any well or production facility actively in use or permitted on the date the Commission approves this rule.

APPENDIX C

Statement of Basis, Specific Statutory Authority, and Purpose Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. IR Docket No. 181200714 School Setback Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“Pooling & Hearing Process Clean-Up Rules”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”). The Commission promulgated the School Setback Rules on December 17 & 18, 2018.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on August 15, 2018, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Background

On December 6, 2017, the League of Oil and Gas Impacted Coloradans (“LOGIC”), submitted to the Commission a petition to conduct a rulemaking to require new oil and gas wells and production facilities be sited no closer than 1,000 feet from the perimeter of a school or child care center property line. LOGIC renewed its petition for rulemaking on July 16, 2018. At the Commission’s July 30, 2018 hearing, it considered LOGIC’s petition and directed Commission staff to proceed with a rulemaking on the issue of school setbacks. The rulemaking implements changes to the Commission’s setback rules.

Stakeholder and Public Participation.

On August 15, 2018, the Commission noticed that it was exploring LOGIC’s proposed rule changes, as well as other stakeholder recommended rule changes to provide a buffer between oil and gas development and school / child care center areas that are outside a designated building but still within a property area – for example, playgrounds, recreational areas, and other outdoor activity areas. In transmitting the Notice of Rulemaking to stakeholders, the Commission solicited stakeholders to submit comments regarding proposed School Setback Rulemaking on or before November 9, 2018. Stakeholder comments were received in writing, and in person at three stakeholder meetings that were held on August 24, 2018; September 14, 2018; and October 5, 2018.

The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. Persons or organizations desiring to do so could also participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative rules or amendments, and respond to the prehearing statements and

APPENDIX C

comments submitted by other parties.

Statutory Authority.

The Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), §§ 34-60-101 - 130, C.R.S.:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules necessary to enforce the Act);
- Section 34-60-106(2)(a), C.R.S. (Commission has authority to regulate the drilling, producing, and plugging of wells and all other operations for the production of oil and gas);
- Section 34-60-106(2)(d), C.R.S. (Commission has the authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility."); and
- Section 34-60-108, C.R.S. (Commission has authority and procedure to adopt rules).

Effective Date.

The Commission adopted proposed amendments at its hearing on December 17-18 2018, in Cause No. IR, Docket No. 181200714. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication in the Colorado Register