

STATE OF COLORADO

OFFICE OF THE EXECUTIVE DIRECTOR

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April 18, 2012

Governor John W. Hickenlooper
Speaker Frank McNulty, Colorado House of Representatives
President Brandon Shaffer, Colorado Senate

John W. Hickenlooper
Governor

Mike King
Executive Director

RE: Recommendations from the Task Force Established by Executive Order 2012-002 Regarding Mechanisms to Work Collaboratively and Coordinate State and Local Oil and Gas Regulatory Structures

Dear Governor Hickenlooper, Speaker McNulty, and President Shaffer,

On February 29, 2012, Governor Hickenlooper issued Executive Order B 2012-002, establishing a Task Force to develop cooperative strategies regarding the regulation of oil and gas development and to report its recommendations to the Governor, Speaker of the House and President of the Senate no later than April 18, 2012.

The Task Force members, comprised of representatives from counties, municipalities, the state, the industry, civic organizations and the public share an interest in efficient and effective oil and gas regulation that provides for the responsible development of our resources. Through the Task Force, the state and local jurisdictions, in collaboration with the oil and gas industry, believe they have established mechanisms to achieve complementary implementation of regulations that benefit our economy and protect our public health, safety, welfare, environment and wildlife.

The Task Force convened on March 9 and met once per week through April 12, in addition to two additional subcommittee working sessions. At the meetings, the Task Force was briefed on the Colorado Oil and Gas Conservation Commission's (COGCC) Local Government Designee (LGD) program, the COGCC inspection program, and received an overview of COGCC's permitting process and regulatory timelines. Members learned about the legal underpinnings for Memorandums of Understanding (MOU) and Intergovernmental Agreements (IGA) between the state and local jurisdictions with regard to inspection authority. The Task Force also heard policy perspectives from Gunnison County, a local jurisdiction that recently entered into an MOU and has a pending IGA with the State, as well as from LGDs in jurisdictions where oil and gas activity has long been established. Finally, the Task Force received over 1,600 public comments. All meetings of the Task Force were publicly noticed and streamed on the internet. All documents considered or generated by the Task Force were posted on a dedicated web page and available for the public to download and review.

Task Force members agreed that coordinated regulation through a collaborative approach is desirable. The Task Force focused on enhancing the LGD process and possible use of COGCC's authority to delegate

inspection duties. The Task Force created a subcommittee to develop specific protocols on an expanded and improved LGD program, and the opportunity to use local inspectors through COGCC's delegation authority. The subcommittee convened two working sessions and generated recommended protocols with deliverables that are included in the attached tables.

The Task Force does not make recommendations for new laws, but instead recommends a collaborative process through which issues can be resolved without litigation or new legislation. The Task Force determined that whether there is sufficient reason to amend COGCC rules on substantive issues listed in the Executive Order, such as those impacting landowners, should be resolved on an issue-by-issue basis through a robust stakeholder process. Colorado Association of Homebuilders, for example, has expressed a concern regarding setbacks, and a stakeholder group to discuss COGCC drilling setbacks has already been convened and its next meeting is on April 19, 2012.

The Task Force discussed jurisdictional issues regarding substantive regulations but determined that drawing bright lines between state and local jurisdictional authority was neither realistic nor productive. A more constructive approach will result from collaboration and coordination as outlined above. Through these processes, and the protocols that give them structure, questions around jurisdictional regulatory schemes will most effectively be resolved.

Sincerely,



Mike King, Chair

On behalf of Task Force members:

Diana Allen, Member, Lakewood City Council (on behalf of Colorado Municipal League)

Brian Bagley, Attorney, Longmont (on behalf of President, Colorado Senate)

Reeves Brown, Executive Director, Colorado Department of Local Affairs

Stan Dempsey, President, Colorado Petroleum Association

Barbara Green, Attorney, Denver (on behalf of Colorado Conservation Voters)

Jack Hilbert, Commissioner, Douglas County Board of County Commissioners (on behalf of Colorado Counties, Inc.)

Tommy Holton, Mayor, Ft. Lupton and Colorado Oil and Gas Conservation Commissioner

Tisha Conoly Schuller, Chief Executive Officer, Colorado Oil and Gas Association

Casey Shpall, Deputy Attorney General

Andy Spielman, Attorney, Denver and Colorado Oil and Gas Conservation Commissioner

Ken Wonstolen, Attorney, Denver (on behalf of Speaker, Colorado House of Representatives)

Task Force on Cooperative Strategies Regarding State and Local Regulation of Oil and Gas Development: Protocols Recommendations

EDUCATION AND OUTREACH PROTOCOLS

Purpose: Colorado communities seek to promote a responsible approach to oil and gas development by proactive coordination among the oil and gas industry, the Colorado Oil and Gas Conservation Commission (COGCC), local governments, and the public. This can be achieved and maintained through enhanced involvement of local governments, through Local Government Designees (LGDs), at all phases of development and through coordinated public education and outreach.

Recommendations:

	Description	Responsible Party(ies)	Timeline	Deliverables
1	<p>Encourage local governments to designate an LGD and to participate in the COGCC’s LGD program. Encourage LGDs to communicate industry proposals and issues with local elected officials and the public as soon as possible. However, if there is no LGD, then the municipal or county clerk may be the contact for a local jurisdiction.</p> <p>Provide strong encouragement to oil and gas operators to engage local government officials and the public as early in the COGCC permitting process as possible to solicit input. Initial outreach to the LGDs should occur before the application for permit to drill is filed with the COGCC. Issues to be addressed will vary on site-by-site basis.</p>	Colorado Counties, Inc. (CCI), Colorado Municipal League (CML), individual local governments, COGCC, Colorado Dept. of Local Affairs (DOLA), Colorado Oil and Gas Association (COGA), Colorado Petroleum Ass’n (CPA), and individual oil and gas operators	Immediate, Ongoing	<ul style="list-style-type: none"> • COGCC, CCI, CML, and DOLA will work with local governments to promote and encourage participation in the LGD program. • Communicate strong encouragement to operators to engage local governments. • Provide adequate opportunity for local governments to engage with operators and COGCC prior to decision-making process through meetings and work sessions, as appropriate. • COGA, CPA, and DOLA develop local government best practices recommendations, including those relevant to pre-application engagement.
2	<p>Inform LGDs of opportunity to request additional 10 days to review permits and to request assistance from Colorado Department of Public Health and Environment (CDPHE). COGCC shall inform LGDs if formal consultation with CDPHE or CPW is to occur on a drilling permit application (APD).</p>	COGCC	Immediate, Ongoing	<ul style="list-style-type: none"> • Identify and communicate phases of the APD process for local government interaction with oil and gas operators and COGCC.
3	<p>Take actions to ensure that the two new LGD liaisons at COGCC will be effective in working with local governments, oil and gas operators, and the public.</p>	COGCC	Immediate, Ongoing	<ul style="list-style-type: none"> • Provide description of new LGD liaisons roles and functions to LGDs

4	Provide for a mutual understanding of oil and gas industry and local government practices by facilitating distribution of accurate information. Local governments, oil and gas operators, and COGCC should collaborate to, for example, identify the potential development impacts, duration of drilling operations, and proposed mitigation to protect public health, safety, welfare and the environment.	CCI, CML, individual local governments, COGCC, DOLA, COGA, CPA, and individual oil and gas operators	Short-term, Ongoing	<ul style="list-style-type: none"> • COGCC and DOLA to develop a guidebook for conducting effective strategic work sessions.
5	Formalize and promote opportunities for technical training of LGDs and other training/briefings for the general public. This should include annual training for new LGDs and periodic work sessions for LGDs or local government entities, based on need.	COGCC	Short-term, Ongoing	<ul style="list-style-type: none"> • Develop training curriculum for new LGDs and agenda for LGD/local government annual work session. • Schedule trainings and work sessions for implementation in 2012. • Develop education regarding COGCC rules pertaining to LGDs.
6	Provide general education presentations in community forums, covering the entire state periodically.	COGCC, DOLA, CDPHE	Periodically, beginning June 2012.	<ul style="list-style-type: none"> • Develop and distribute informational materials and presentations for the public on LGD program and opportunities for LGD input into permitting.
7	Local governments and operators should consider using an Memorandum of Understanding (MOU) and/or Intergovernmental Agreement (IGA), as appropriate, to address issues of local concern (e.g. standard conditions of approval, public outreach, etc.).	COGCC, DOLA, CDPHE, CCI, CML, individual local governments, COGA, CPA, and individual oil and gas operators	Ongoing	<ul style="list-style-type: none"> • Maintain library of sample MOUs between operators and local governments and IGAs between local governments and COGCC on COGCC website. • Inform local governments of availability of library.
8	Promote opportunity for COGCC staff to obtain information regarding local government process and requirements, as appropriate. Local governments are encouraged to notify COGCC early in the process of developing local regulations.	COGCC, LGDs, CML, CCI, and individual local governments	Ongoing	<ul style="list-style-type: none"> • Provide COGCC with information on local processes or requirements, as appropriate. • COGCC to create links on website to information on local government processes and requirements.

INSPECTION PROTOCOLS

Purpose: The COGCC should consider delegating its inspection functions when requested by local governments, pursuant to its permissive authority under the Oil and Gas Conservation Act (OGCA), 34-60-106(15), C.R.S. Enforcement of COGCC rules and the OGCA, consistent with statute, will continue to be led by the COGCC.

Recommendations:

	Description	Responsible Party(ies)	Timeline	Deliverables
1	Delegated inspectors ¹ have the same authority as COGCC inspectors as to those matters for which they will be inspecting. Upon assignment of inspection authority, inform operators and surface owners of delegated inspectors' right of access to development sites for inspections per COGCC rules and IGA.	Local government, COGCC	Immediate, Ongoing	<ul style="list-style-type: none"> COGCC to communicate assignment authorities to surface owners and operators. Provide a copy of the IGA memorializing relationship between COGCC and local entity, as appropriate.
2	Ensure that delegated inspectors, as to those matters for which they will be inspecting, meet the same training requirements as state inspectors. Ensure a consistent understanding of the program's expectations by local governments, COGCC, oil and gas operators, and the public.	COGCC	Short-term	<ul style="list-style-type: none"> Develop minimum qualifications for delegated inspectors, consistent with COGCC inspector requirements and consistent with the scope of inspection assignments. Develop curriculum for certifications consistent with COGCC inspector requirements and consistent with the scope of inspection assignments.
3	A delegated inspectors' area of jurisdiction will be defined in the MOU and IGA.	COGCC, local government	Ongoing	<ul style="list-style-type: none"> When an IGA is entered into, COGCC will post the change in inspection authority on its website.
4	Develop and implement a training curriculum that ensures delegated inspectors meet the criteria for assignment of inspection authority identified above, consistent with scope of the inspection assignment.	COGCC	Short-term	<ul style="list-style-type: none"> Develop a program to train delegated inspectors to be fully trained inspectors consistent with other COGCC inspectors. Utilize COGCC inspection forms for inspections conducted by delegated inspectors trained by the COGCC.

¹ The term "delegated inspectors" as used herein refers to inspectors to whom the COGCC has delegated its inspection authority, pursuant to 34-60-106(15), C.R.S.

				<ul style="list-style-type: none"> Establish thresholds and frequency parameters for routine inspections.
5	COGCC should address issues identified by delegated inspectors acting pursuant to assigned authority in the same 24-48 hour response period applied to complaints.	COGCC	Ongoing	<ul style="list-style-type: none"> Provide a description of the COGCC inspection/report/response process to local governments and public.

REPORTING AND RESPONSE PROTOCOLS

Purpose: The COGCC, oil and gas operators, local governments, and the public benefit from a transparent and navigable system for reporting on notices of alleged violations (NOAV), self-reported incidents, or emergencies related to oil and gas operations. Additionally, the COGCC, oil and gas operators, local governments, and the public benefit from a user-friendly and consistent approach to the dissemination of information related to complaints, responses to reported complaints, NOAVs, self-reported incidents, or emergencies. Enhanced accountability of oil and gas operators and the state is demonstrated through deliberate management of expectations and effective two-way communication.

Recommendations:

	Description	Responsible Party(ies)	Timeline	Deliverables
1	An operator should provide its 24-hour contact information to the Local Emergency Planning Committee (LEPC) and other local emergency responders.	Local government, other agencies, COGA, CPA, and individual oil and gas operators	Immediate, Ongoing	<ul style="list-style-type: none"> Industry will provide to the LEPC, or other emergency responder, contact information during the permitting process. This information should be updated when the emergency contact changes.
2	COGCC will transmit to local government an electronic copy of an NOAV that has been issued in its jurisdiction, including links to enforcement documents related to ongoing matters, or other relevant notifications that are available in the COGCC database. Spill reporting will follow procedures under COGCC Rule 906.	COGCC, COGA, CPA, and oil and individual gas operators	Short-term, Ongoing	<ul style="list-style-type: none"> COGCC will develop protocols for communicating NOAVs or related enforcement documents to LGDs or other designated authority. Review Form 29 (Local Government Designee) and update accordingly to capture new opportunities for LGD notification options.
3	Enhance user-friendliness of the COGCC database to foster transparency, accountability, and public trust in the safety of oil and gas development operations by adding additional tools that assist members of the community to use the most relevant parts of the database.	COGCC, local government, COGA, CPA, and individual oil and gas operators	Short-term	<ul style="list-style-type: none"> COGCC will update website and publications where necessary according to feedback received by LGDs, industry, public, and other entities. COGCC will provide a new area on the homepage that will facilitate ease of use by members of the public.
4	Provide information to the public regarding COGCC's enforcement and complaint-response processes and resulting penalties.	COGCC	May 2012	<ul style="list-style-type: none"> Develop brochure, FAQ, and public outreach materials to explain enforcement and compliance process & history of past enforcement activities. Provide contact information so that the public can follow-up in appropriate way.