

Colorado Oil and Gas Conservation Commission

Migratory Bird Policy

Inspections and Enforcement Effective March 1, 2007

WHEREAS, the Colorado Oil and Gas Conservation Commission (“COGCC”) has authority to regulate “[o]il 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, taking into consideration cost-effectiveness and technical feasibility.” §34-60-106.(2)(d), C.R.S.

WHEREAS, the United States Fish & Wildlife Service (“USF&WS”) is the primary federal agency responsible for the protection, conservation, and renewal of fish and wildlife and their habitats for this and future generations.

WHEREAS, the USF&WS, Office of Law Enforcement contributes to efforts to manage ecosystems, save endangered species, conserve migratory birds, preserve wildlife habitat, restore fisheries, combat invasive species, and promote international wildlife conservation.

WHEREAS, the Migratory Bird Treaty Act of 1918, as amended, implements various treaties and conventions between the United States and other countries for the protection of migratory birds. Under the Migratory Bird Treaty Act, the taking, killing, capturing, or possessing migratory birds, whether intentionally or unintentionally, is unlawful. Birds protected under the act include all common songbirds, waterfowl, shorebirds, hawks, owls, eagles, ravens, crows, swifts, martins, swallows, and others, including the body parts, nests, and eggs of any such birds.

WHEREAS, the USF&WS and the COGCC have in the past cooperated in regulatory efforts intended to protect migratory birds in the State of Colorado from oil and gas operations.

Background

In May 2006 during a one day period, the USF&WS inspected over twelve sites with heater-treaters in Colorado. USF&WS personnel found dead birds inside most of the heater-treaters and other fired oilfield equipment inspected. According to USF&WS personnel, approximately 50% of the heater-treaters were active and approximately 50% were inactive at the time of the inspection. Abandoned equipment stored on the leases was not inspected. A written report about these inspections was not available from the USF&WS.

Dead birds were found in varying states of decay. Due to this and limited ability for the USF&WS personnel to open or see inside the equipment, the exact number of dead birds in each heater-treater could not be determined. Birds likely die in heater-treaters and fired vessels because once they enter the equipment they often can not fly out or they are asphyxiated.

As a result, the USF&WS, Office of Law Enforcement has determined that heater-treaters on oil and gas leases create a widespread hazard for migratory birds. The USF&WS has no mandate to make the oil and gas industry retrofit equipment, but they have the authority to enforce the MBTA when unlawful bird deaths occur. After March 1, 2007, responsible parties that contribute to migratory bird deaths in heater-treaters will be subject to prosecution by the United States Department of Justice.

Purpose of the Migratory Bird Policy

1. To minimize the potential for duplication of efforts by the USF&WS and the COGCC, this policy will serve as an interim measure for COGCC staff while they develop new or recommend changes to existing COGCC rules and regulations that will ensure oil and gas operators design or equip heater treaters and other fired vessels with devices that prevent migratory birds from entering.
2. To outline COGCC staff responsibilities in relation to both agencies, programs regarding protection of migratory birds.
3. To clarify the enforcement process so that operators will not be subject to duplicative enforcement.
4. To reduce potential significant adverse environmental impacts on biological resources, in particular on migratory birds from oil and gas operations throughout the state.
5. To apply this policy to the protection of migratory birds until such time as appropriate modifications to existing rules or new rules are promulgated that require oil and gas operators to design or to equip heater treaters or other fired vessels with devices that prevent migratory birds from entering.

NOW, THEREFORE, COGCC hereby sets forth its policy regarding the protection of migratory birds from oil and gas operations.

Migratory Bird Policy

1. All oil and gas operators shall install screening or other devices on the stacks and on other openings of heater-treaters or fired vessels to prevent entry by migratory birds.
2. During routine inspections or in response to a complaint, COGCC staff will inspect the site for compliance with COGCC rules and policies, including this Migratory Bird Policy. COGCC staff will observe, to the best of their ability, fired vessels or heater-treaters for potential openings through which migratory birds could enter.
3. COGCC staff will continue to inspect pits to ensure they are operated in compliance with applicable COGCC rules requiring the removal of accumulations of oil and appropriate netting or fencing to prevent access to pits by wildlife.

4. Violations of COGCC rules or policies will result in an unsatisfactory inspection with a list of corrective actions. The operator shall be notified immediately and required to implement the necessary corrective actions as soon as practicable. Significant violations and/or non-response to a failed inspection may result in the issuance of a Notice of Alleged Violation (“NOAV”). Should further enforcement be necessary for significant violations, the COGCC may refer the matter to the USF&WS for enforcement proceedings.
5. The COGCC understands that the USF&WS staff may conduct inspections of oil and gas operations.
6. Should the COGCC become aware that the USF&WS is pursuing enforcement at an oil and gas site, the COGCC will not seek dual enforcement.
7. The USF&WS and COGCC staff may conduct periodic meetings to review the effectiveness of the COGCC Migratory Bird Policy and related COGCC rules.
8. COGCC staff will review existing COGCC Rules and Regulations and if appropriate, recommend new rules or modifications to existing rules to ensure biological resources, including migratory birds, are protected from oil and gas operations.