



## Board Summary Report

---

**File #:** 24-387

**Agenda Date:** 7/22/2024

**Agenda #:**

---

**To:** Board of County Commissioners

**Through:** Bryan Weimer, Director, Public Works & Development

**Prepared By:**

Chris Laramie, Energy Specialist, Public Works & Development; Ava Pecherzewski, Development Review Planning Manager, Public Works & Development; Jason Reynolds, Planning Division Manager, Public Works & Development

**Presenter:** Chris Laramie, Energy Specialist, Public Works & Development

**Subject:**

10:30 AM \*Proposed Phase 2B Oil and Gas Regulations Amendment

**Purpose and Request:**

At their October 16, 2023, study session, the Board of County Commissioners (BOCC) directed staff to work on additional amendments to the Oil & Gas Regulations to include requirements for financial assurances, create additional requirements for air quality standards and monitoring, disallow commercial injection wells, and create an inspection program. The purpose of this study session is to provide the BOCC with a draft of the proposed code amendment for comment/feedback, direction on additional modification and/or concurrence, seek direction on how to structure an inspection program, and give direction on the public outreach process for the proposed regulations.

**Background and Discussion:**

The BOCC directed staff at their October 16, 2023, study session to proceed with draft amendments to Land Development Code Section 5-3.6 - Regulations for oil and gas development applications. The Board directed staff to complete various updates to the regulations, including:

- Create requirements for financial assurances;
- Include additional requirements for air quality standards and monitoring;
- Disallow commercial injection wells;
- Create an inspection program;

- Increase Reverse Setbacks.

Over the past several months, staff have been conducting research on best practices and have reviewed regulations in other neighboring counties and cities to determine the best requirements for Arapahoe County. Attached to this report are the draft regulations in redline format for the BOCC's consideration (Attachment 2).

This Study Session will summarize the changes proposed to the O&G regulations and seeks to obtain concurrence on moving these draft regulations forward for public review and comment. In addition, we will be requesting direction of the structure of a proposed inspection program. being proposed in the regulations. Below is a summary of the proposed code amendment.

### **Financial Assurances**

Currently, the state requires financial assurances from oil and gas operators, however, the BOCC directed staff to update our provisions based on best practices in other jurisdictions. Staff has reviewed financial assurance requirements in other municipalities and has developed a code amendment that requires local financial assurances for oil and gas drilling activity. Proposed requirements include:

- **Amount** - The financial assurance must be at least \$90,000 multiplied by the number of approved wells on the pad, adjusted annually for inflation. This ensures there are sufficient funds to cover the costs of plugging and abandoning and site reclamation, protecting the environment and public interest. The guarantee shall be in a form acceptable to Arapahoe County as specified in the regulations.
- **Term** - The assurance lasts until all wells are properly plugged, abandoned, and the site is reclaimed to the standards, or until alternate assurance is provided and approved by the Director of Public Works and Development. This ensures ongoing financial coverage throughout the lifecycle of the project reducing potential liabilities for Arapahoe County.
- **Insurance Requirements** - Specifies mandatory insurance coverage to protect against operation risks, such as bodily injury, property damage, and environmental pollution. Additional insured endorsements extend protection to Arapahoe County and its officials, minimizing financial risks associated with operational hazards.
- **Low Producing Wells** - Requires financial assurance for wells that become low-producing, ensuring ongoing financial responsibility regardless of well productivity.
- **Corrective Actions** - Stipulates forfeiture of the performance bond if corrective actions are needed due to Operator non-compliance, covering expenses incurred by Arapahoe County.
- **Transfer/Sale of Facility** - Requires assessment of compliance status before transfer. With plans for any necessary corrective actions. This ensures continuity of financial responsibility through ownership changes, preventing gaps in regulatory compliance.

The proposed Arapahoe County Financial Assurance section share the same core principles with the ECMC 700 series ensuring financial responsibility for plugging, abandonment, reclamation, protection of surface owners. The proposed financial assurance section of Arapahoe County provides more specific details on the amount of financial assurance, types and amounts of required insurance, and specific procedures for low-producing wells and corrective actions.

### **Air Quality Requirements**

Currently, the State of Colorado requires air and water quality monitoring at oil and gas facilities through the

---

Colorado Department of Public Health and Environment (CDPHE). Comments from the public suggested the County enact more protective rules for air quality reporting. The BOCC directed staff to further enhance the County regulations adopted in November 2023 for air quality monitoring, and staff conducted extensive research into additional requirements, in collaboration with staff from the Arapahoe County Public Health Department. Proposed additions include:

- **Emphasis on Avoidance** - Shifting from minimizing to avoiding harmful emissions and impacts represents a more proactive approach to air quality protection. More details regarding pollutants to be monitored and procedures for baseline testing.
- **Detailed Monitoring Requirements** - Enhanced detail in monitoring requirements ensures more comprehensive and accurate tracking of air quality impacts. Proposed additions add several new requirements aimed at further reducing emissions and ensuring compliance with more stringent standards.
- **Specific Sampling Frequency and Triggers** - Specifying sampling frequencies and automatic triggers for sample collection improves the responsiveness and effectiveness of air quality monitoring.
- **Operational Changes to Minimize Emissions** - Introducing specific operational changes provides clear guidelines for operators to reduce emissions, potentially leading to better compliance and air quality outcomes.
- **Enhanced Reporting Requirements** - More detailed reporting ensures better transparency and accountability, facilitating improved regulatory oversight. These additions are crucial for enhancing the effectiveness of air quality regulations, ensuring better protection for public health and the environment. If the regulations are adopted, a public-facing and frequently updated dashboard would be added to the Arapahoe County website.

### **Commercial Injection Wells**

In the course of oil and gas drilling, operators may inject used, contaminated water from the hydraulic fracturing process into underground wells placed underground into deep rock formations for disposal. While these injection wells do have layers of protective casing, concerns remain regarding potential leaks and compromising the water table. Commercial injection wells also generate a significant amount of truck traffic and have the potential to draw that traffic from well sites outside Arapahoe County, which would increase wear on county roads. Finally, commercial injection wells have created seismicity in Colorado. While the state responded to those events by requiring slower injection rates and monitoring, prohibiting commercial injection wells for the disposal of wastewater removes the risk altogether. The BOCC directed staff to prohibit the use of commercial injection wells in Arapahoe County, and staff has added a code section clarifying that this activity is not permitted.

### **Reverse Setbacks**

The regulations set minimum distances that new oil and gas facilities must be set back from existing structures and bodies of water. Reverse setbacks are applicable to new development that is proposed from an existing oil and gas facility. Currently, the Land Development Code requires new developments to be set back 250 feet from an oil and gas facility of any status (permitted but not drilled yet, drilling, completing, producing, active gas storage, injecting, shut-in, temporarily abandoned, dry and abandoned, or plugged and abandoned prior to 2014). The reverse setback for new developments proposed adjacent to a plugged and abandoned oil and gas well that was abandoned in 2014 or later is 150 feet. During community discourse last year, there was concern raised that these setbacks were too close and it was recommended that the reverse setbacks be expanded. The proposed regulations would expand the reverse setback requirement from 250 feet to 2,000 feet for oil and gas facilities under application review or permitted but not drilled; or to 1,000 feet for oil and gas facilities that are actively producing, shut-in or temporarily abandoned; or 250 feet from oil and gas facilities that are plugged

and abandoned.

### **Inspection Program**

Currently, the State of Colorado conducts inspections on oil and gas wells (both ECMC and CDPHE). However, there are relatively few inspectors for the large number of well pads throughout the state. The BOCC directed staff to look into setting up a County inspection program to be funded by operators through fees. While the operators pay the state for inspection, this County program would be an enhancement to the state's program that is not able to keep up with the inspection demands and therefore increase the level of service (ie inspection performed). Staff has researched inspection programs in other municipalities and has found that there are two different approaches for implementing an inspection program:

- The first is an independent inspection program, which is solely a full-time employee with equipment, process and procedure development, training and salary fully funded by the municipality. The advantages to this approach are local control and the ability to design the County's inspection program specific to the needs and concerns of the County's residents and environment. The disadvantages of this type of inspection program are the initial high costs, a longer implementation time, limited expertise, heavy reliance/coordination with Operators for site access, and potential duplication of efforts with the States inspection program.
- The second approach is to enter into an IGA (Intergovernmental Agreement) with the State ECMC. The advantages of an IGA with the State of Colorado are technical advisement through the staffing process, an established training program, access to an Energy & Carbon Management Commission (ECMC) field supervisor for assistance with technical aspects of inspection, access to the State's database, established processes, a quicker program implementation, and cost savings associated with training, equipment procurement and process development. Potential disadvantages of the IGA approach are shared control which may limit decision making and enforcement. Staff would evaluate the program after a year to determine workload and whether an additional FTE would be necessary.

Staff would like direction from the BOCC as to which structure they would prefer for the inspection program. Staff is recommending entering into an IGA with the ECMC because of the support, training, and ability to implement the program sooner.

Staff has included a section in the attached code amendment which establishes an inspection program. Staff has also completed comprehensive research into the costs associated with staffing and equipping an inspection program, and the cost analysis is attached (Attachment 2).

### **Regulation Clean-up**

Staff have taken the time to clean-up the formatting of the regulations, typos that were found, clarified previous regulations where needed, removed some duplicate section, and moved provisions to more appropriate applicable sections in the regulations. All of these changes are in the Track Changes version of the regulations as an attachment for this Study Session

### **Public Outreach**

Staff is recommending that the proposed draft regulations supported by the BOCC be posted on the County's website for public comment beginning the week of July 22, 2024. The comment period would be open for 30-days. Staff would hold a Public Open House during the first part of August to collect share information and collect additional comments. Further opportunities for the public to provide comments would be during the

Planning Commission and BOCC Public Hearings on the regulations.

**Schedule**

The following is the tentative schedule moving forward for adoption of these regulations:

|                         |   |
|-------------------------|---|
| July 22, 2024           | BOCC Study Session                                      |
| Week of July 29, 2024   | Post Draft Regulations on Website & Open Comment Period |
| Week of August 19, 2024 | Hold Public Meeting                                     |
| Week of August 26, 2024 | Website Comment Period Closes                           |
| August 26 - September 6 | Update Regs based on Comments                           |
| September 17, 2024      | Planning Commission Study Session                       |
| October 1, 2024         | Planning Commission Hearing                             |
| October 22, 2024        | BOCC Adoption   |

**Fiscal Impact:** There is no fiscal impact for this study session. Fiscal impact from the proposed rules are expected if an inspection program is set up. If an inspection program is desired by the BOCC, PWD will be submitting the appropriate budget package for consideration of the 2025 County Budget.

**Alternatives:** The BOCC can 1) concur with the proposed changes made in the referenced regulations, 2) suggest/direct modifications to all or a portion of the draft regulations, 3) decline to give direction on these draft regulations. Also, Staff is requesting the BOCC provide direction on which type of inspection program governance model is preferred.

**Alignment with Strategic Plan:**

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

**Staff Recommendation:** Staff recommends that BOCC consider the proposed staff changes and additions to the Oil and Gas regulations as proposed and either give concurrence to proceed with distribution of the draft regulations for public comment per the schedule identified and/or provided suggested changes.

**Concurrence:** The County Attorney’s Office and Arapahoe County Public Health Department have reviewed

this report.