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

IN THE MATTER OF CHANGES TO THE RULES AND REGULATIONS OF THE OIL & GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO	) CAUSE NO. 1R)) DOCKET NO. 200300071)) TYPE: RULEMAKING

AFFILATED LOCAL GOVERNMENT COALITION'S and GUNNISON COUNTY'S RESPONSE TO SEPTEMBER 18, 2020 DRAFT RULES

Boulder County, the City of Lafayette, the City and County of Broomfield, the Town of Erie, the City of Fort Collins, the City of Longmont and the Northwest Colorado Council of Governments by and through its Water Quality/Quantity Committee (NWCCOG/QQ), participating as the Affiliated Local Government Coalition (the "ALGC"), and Gunnison County, a separate party, by the undersigned, submit their Response to Staff's September 18, 2020 Draft of the 200-600 Series.

The ALGC and Gunnison County appreciate Staff's efforts to strengthen the proposed rules as directed by the Commission. We urge the Commission to adopt the following revisions: addition of information regarding methane and speciated HAP emissions, surrounding oil and gas impacts, and other industrial impacts to Rules 303.a(5) and 304.c(19); the Rule 304.c.(19) requirement for Cumulative Impact Plans for all applications; the revision to the Rule 423-1 Table setting a maximum permissible level of 60 for db(C) noise; the Rule 437 statewide ban on toxic chemicals; the revisions to Rule 502 that further clarify the types of variances that can be administratively approved; and the Rule 507 Affected Person status for all surface owners and residents within 2,000 feet of a proposed Working Pad Surface.

The following are issues for which we recommend further changes.

1. **Setbacks**. We appreciate and support the addition of a 2,000-foot setback from residential building units ("RBUs") and high occupancy building units ("HOBUs"). Testimony, including from many residents in ALGC jurisdictions, demonstrated both the significant adverse air and noise impacts within 2,000 feet of oil and gas facilities and the need for protections. For these reasons, Broomfield adopted a 2,000-foot setback. However, the numerous exceptions and variance provisions, as well as the secondary 500-foot setback, in the new Rule 604 weaken and confuse the efforts to be protective. A clear and reliable setback is critical to protecting public health, safety, and welfare, and the environment and wildlife resources ("PHSWEW") and providing certainty. We urge the Commission to clarify and streamline Rule 604 to provide: (i) 2,000 feet as the single setback distance between a Working Pad Surface and a RBU or HOBU; (ii) only with a variance after a Commission hearing may a facility be located within the setback area; (iii) if the operator seeks a variance, the Commission can only approve of a location within the setback distance with a finding that the proposed location will provide substantially equivalent protections for PHSWEW; and (iv) any signed contract (surface use agreement or waiver) is a factor for Commission consideration at the variance hearing, among others as noted in the draft rule. With a protective 2,000-foot setback in this manner, there is no longer a need for Rule 604.a(4) and its smaller setback or the phrase "more than 500 feet and" in Rule 604.b.

2. **Alternative Location Analysis**. We recommend two changes to the Rule 304.b alternative location analysis (ALA). First, as we argued previously, the Director cannot determine an ALA is not required during completeness review of an application package (*see* Rule 304.b(2)A.i). An ALA should be mandatory if any of the criteria are met; the agency cannot waive this requirement before it has carefully reviewed the proposal and this provision should be removed. Second, we recommend that the distance trigger for requiring an ALA in

304.b.(2).B be larger than the setback distance in Rule 604. Locations within the setback distance are already subject to extra scrutiny, but sites beyond that, but still within zones where impacts are known to be felt, should also be reviewed carefully. We request at least 500' beyond the setback distance.

3. **Comprehensive Area Plans ("CAPs")**. As we argued previously, the Commission needs the authority to require an operator use the CAP process in circumstances where the larger-scale planning will be more protective of PHSWEW than piecemeal OGDP applications. Rather than "encouraging" operators, and the Director "requesting" meetings to discuss (*see* Rules 303a.(8), 314.a(3)) the Commission should *direct* the operator to *consult* with the Director and give itself the authority to *require* a CAP. Second, we request clarity that the Relevant Local Government (RLG) and any Proximate Local Government (PLG) will receive notice of and have the opportunity to consult in any request for preliminary siting approval. Third, the RLG should certify any changes to land use "contemplated in a local government planning document" in 314.a(5). Fourth, RLGs should have the right to consult on any extensions of CAP duration, including whether a proposed, extended schedule is consistent with RLG planning documents (*see* Rule 314.c(11)).

4. **Pre-application Consultation.** We appreciate the new Rule 301.f(3) provision for a pre-application consultation at the request of the RLG; this adds useful opportunities to review the proposal before an application is filed to, for example, consider whether a CAP may be more appropriate in the circumstances. However, the rule needs clarification to ensure that the RLG gets notice of an impending OGDP filing so that it can timely make the request (if, for example, the operator has not already submitted the proposal to the RLG).

5. **Notice Before Return to Service.** In Rule 417.b(4) the notice period before returning an inactive, shut-in well to service should be changed from "48 hours" to "two business days" to ensure adequate time for all necessary inspections.

6. **Previous Requests We Repeat.** We reiterate the following requests from our previously submitted rule redlines and closing slides for each rule series:

- Changing operators "ensuring" compliance by their contractors to "being responsible for" compliance in Rule 201.b to improve enforcement procedures.
- Adding an assignment or conveyance document in Rule 305.a(2)L.
- Eliminating Rule 525.c(4).
- Adding Proximate Local Government to what is now Rule 301.f(4)B.
- Conserving resources by not reviewing or approving a location that has already been denied by the RLG (*see* Rule 302.c.(2)).
- Clarifying that COGCC is the evaluator of cumulative impacts in Rule 303.a.(5)B.
- Adding three criteria to the ALA triggers in Rule 304.b(2).
- Removing R.423.b.(2).A. increases in noise levels during pre-production.
- Ensuring Rule 424 control standards are measurable and enforceable.
- Requiring an ALA to include a rationale for the operator's preferential ranking of the alternatives and requiring a minimum of three clearly distinct alternative sites in Rule 304.b(2)C.
- Adding to Rule 304.c(19) the requirement that CIPs address impacts at a reasonable geographic scale, taking into account the affected resource and the size of the proposed Oil and Gas Location(s).

RESPECTFULLY SUBMITTED this 22nd day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFILIATED LOCAL GOVERNMENT COALITION'S and GUNNISON COUNTY'S RESPONSE TO SEPTEMBER 18, 2020, DRAFT RULES** was served electronically, this 22nd day of September, 2020, to the following:

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