

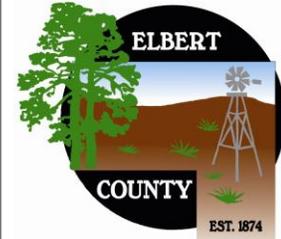
# Elbert County Community & Development

215 Comanche Street/P.O. Box 7

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# Services



## **OIL & GAS REGULATION IN COLORADO:**

### **DEVELOPMENTS DURING THE 2013 LEGISLATIVE SESSION**

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Hydraulic fracturing and horizontal drilling have significantly expanded Colorado's production of clean-burning natural gas, natural gas liquids and oil, but has also generated public concern about perceived environmental and public health risks associated with exploration and development of hydrocarbon reserves. In 2013, Colorado legislators and the Colorado Oil and Gas Conservation Commission (COGCC) responded to these concerns by introducing a number of bills and regulations, including measures seeking to require additional groundwater sampling, increase inspections of oil and natural gas facilities, increase penalties for regulatory violations, revise the COGCC mission, strengthen reporting standards for spills, and increase setback requirements for oil and gas development. While the majority of these proposals failed to become law, the heightened legislative and regulatory focus on oil and gas exploration and production activities is certain to persist beyond 2013.

#### **Spill Reporting Threshold**

One bill that did become law in 2013 was House Bill 1278, which reduces the threshold for spills that must be reported to state and local authorities from five barrels to one barrel. Governor Hickenlooper signed the bill into law on May 11, 2013.

#### **Inspections at Oil and Gas Facilities**

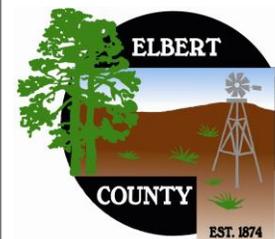
Senate Bill 202, regarding inspections of oil and gas facilities also passed, although only after substantial revisions. In its original form, the bill required the COGCC to employ enough staff to inspect each oil and gas location once per year. As amended, the bill now requires the COGCC to develop a risk-based inspection strategy that targets operational phases most likely to experience spills and violations. The COGCC must report to the legislature and Joint Budget Committee by February 1, 2014, and the risk-based strategy must be implemented by July 1, 2014. The amended bill passed both houses and was transmitted to Governor Hickenlooper for his signature.

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## **Purpose and Composition of the COGCC**

One of the most controversial pieces of oil and gas legislation during the 2013 session—House Bill 1269—sought to revise both the mission and makeup of the COGCC. Currently, the COGCC is charged with balancing energy development and the protection of public health and the environment. The proposed legislation would have changed this formula, requiring the COGCC to prioritize the protection of public health and the environment over the utilization of natural resources. Moreover, the bill would have barred employees of the oil and gas industry from being appointed as commissioners. Under current law, three members of the COGCC are employed in the oil and gas industry. House Bill 1269 ultimately died in the Senate, after facing opposition from industry and business groups and the Hickenlooper administration.

## **Groundwater Sampling Rules**

Another bill introduced in the House sought to overturn portions of COGCC groundwater sampling rules that went into effect May 1, 2013. Specifically, House Bill 1316 proposed uniform groundwater sampling at oil fields statewide, eliminating the unique sampling requirements applicable to the greater Wattenberg basin under the COGCC rules. The COGCC determined that its sampling rules were appropriate based on the "combination of energy development, agriculture, and other industrial and residential use unique to the [Wattenberg] area" and the well-developed regulatory program in Weld County. After meeting resistance from the oil and gas industry and the Hickenlooper administration, House Bill 1316 died in the Senate.

## **Increased Penalties for Oil and Gas Violations**

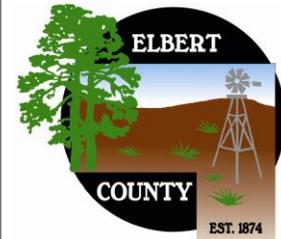
Likewise, a bill to increase the penalties for violations of COGCC rules failed to become law. As introduced, House Bill 1267 would have increased the maximum fine for a violation of the Oil and Gas Conservation Act from \$1,000 per day to \$15,000 per day, and set a minimum fine of \$5,000 per day. While the maximum fine increase was widely supported, including by members of the oil and gas industry and the Governor's office, the inclusion of mandatory minimum penalties was controversial and ultimately caused the bill to fail. Governor Hickenlooper responded to the bill's failure by issuing an executive order directing the COGCC to re-evaluate

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its enforcement and fines policies and establish minimum fines in cases with aggravating factors.

## **Local Government Fees**

House Bill 1273 sought to allow local governments to collect impact fees or development charges when issuing development permits to offset the costs for environmental or public health oversight. It also would have required the COGCC to collect a fee from oil and gas operators, and distribute the fee to local governments whose designees participate in certain COGCC proceedings. The bill died in committee in the Senate.

## **Setback Requirements**

In addition to the measures debated in the legislature, the COGCC promulgated a new, more stringent setback rule that will have significant impacts on oil and gas development in the state. Under the new regulation, new oil and gas operations generally cannot be constructed within 500 feet from residential buildings and certain commercial and warehouse facilities. If new oil and gas operations are located within 1,000 feet of these buildings, the regulation requires stringent mandatory mitigation measures to minimize the effects of the drilling. The new regulation also prohibits oil and gas operations within 1,000 feet of specific high occupancy buildings, including schools, day care centers, hospitals, nursing homes and correctional facilities, without commission approval following a public hearing. Finally, the rule requires notification of the owners of certain property located near oil and gas operations and will increase the opportunities for local government to review and comment on proposed oil and gas locations. The new setback rules become effective on August 1, 2013.

With towns, citizens and environmental groups continuing to advocate for additional regulation of hydraulic fracturing and other oil and gas activities, it is likely that future legislatures and agencies will also attempt to address these issues. The measures that failed in 2013, such as changes to the COGCC, increased sampling requirements, the allowance of local government fees, and mandatory minimum penalties for violations, could signal the types of regulations that the oil and gas industry may face in the future. t: <http://cogcc.state.co.us/>.