

Colorado Oil & Gas Association

Testimony to the Senate Committee on Judiciary
May 2, 2012

Vote NO on SB 107

The Colorado Oil & Gas Association (“COGA”) opposes SB 107_L.002 because it ignores the fact that the issues it raises were comprehensively addressed by the Colorado Oil & Gas Conservation Commission (“COGCC”) in its 2008-2009 rulemaking, and because it contains a number of redundant, confusing and punitive provisions. Most significantly, the new water well testing requirement in the bill would impose a cumulative regulatory cost on the oil and gas industry in the neighborhood of one-half billion dollars over the next decade.

- (2) This section requires the COGCC to engage in a wide-ranging rulemaking covering at least eight discrete topics. This rulemaking would come on the heels of the comprehensive overhaul of the entire COGCC rulebook in 2008-2009, which addressed the same environmental protection goals set out in SB 107. ***Directing the COGCC to engage in yet another massive rulemaking effort would necessarily introduce an element of regulatory uncertainty and investment risk with respect to doing business in Colorado. This will work to the disadvantage of the state as it competes with other capital-intensive resource plays ranging from the Utica Shale in Ohio to the Eagle Ford in Texas.***
- (a) This section requires new rules when hydraulic fracturing (“HF”) operations are conducted “near” radioactive materials, explosives and CERCLA national priority sites. It is unclear whether “near” refers surface or underground distance, or to lateral or vertical separation. ***The COGCC examines all surface disturbance and underground risk issues in its current permitting process, ensuring, for example, that wells are constructed to isolate hydrocarbon-bearing formations from other geologic strata, including aquifers.***
- (b) This section requires the “shut down” of HF operations when pressure readings indicate that HF fluid has entered a “nontargeted area of the geologic formation.” It is not clear whether this term refers to an area of the geologic formation being stimulated, or some other formation above or below the target formation. In addition, the ***pressure readings required by COGCC Rule 341 indicate whether a well has lost containment integrity. These pressure readings do not provide information about fracture extension.*** Operators conducting modern HF operations conduct real-time computer modeling regarding fracture growth – often including micro-seismic data -- in order to ensure that fracture “wings” remain in the target formation, or, even, particular “benches” within formations.
- (c) This section requires increased setbacks for wells and production facilities. The ***Administrative Procedure Act requires that regulations be based on sound science and evidence. SB 107 ignores this fundamental principle of rulemaking and simply mandates an across-the-board increase in setbacks, regardless of the evidence.*** A

likely side-effect of such an increase in setbacks applicable to the oil and gas industry would be a corresponding increase in the setbacks applied to the homebuilder industry when they encroach on wells. The COGCC is currently engaged in a review of its setbacks through a stakeholder task force. According to COGCC data, 91% of wells are located at least 350 feet from the nearest occupied structure, and 74% are located at least 500 feet away.

- (d) ***This section requires new rules regarding the use of pits, despite that fact that the COGCC overhauled its pit rules in 2008-2009.*** Pit operations require a surface disturbance analysis, appropriate lining and stringent reclamation. Due to these factors, the industry is rapidly transitioning to the use of “closed loop” mud systems in lieu of reserve pits.
- (e) This section requires use of “closed-loop” systems for HF operations. ***Closed-loop systems are used during drilling operations in order to avoid the construction and use of “reserve pits” to store and circulate fresh-water based drilling mud. The use of this term in relation to HF operations is confusing.*** If the intent is to address potential air emissions associated with HF operations, COGCC rules already require, under appropriate circumstances, the use of sand traps, surge vessels, separators and closed-top tanks to minimize and control such emissions. COGCC Rule 805.b(3). If such so-called “green completion” systems are not technically-feasible (e.g. where no pipeline is available), then CDPHE air quality rules require the use of flares to combust methane and volatile organic compounds during the initial production stage of a well.
- (f) This section requires the COGCC to consult with the Air Quality Control Commission of the CDPHE to develop new rules to minimize air emissions from oil and gas operations. Such consultation and rule development already occurred during the 2008-2009 rulemaking, and the results are incorporated in COGCC Rule 805. In addition, the ***EPA has recently issued a new 588 page air quality rule, largely modeled on the existing Colorado oil and gas air quality program.*** This “new source performance standard” will be administered by the CDPHE, pursuant to a delegation of authority from the EPA, not by the COGCC.
- (g) This section requires the collection of water quality samples from all water wells within 1/2 mile of a well to be hydraulically-fractured, as well as one post-drilling sample. Operators responsible for over 90% of the wells starts in Colorado are already engaged in the water well sampling program developed by the COGA Environment, Health and Safety Committee, the parameters of which have been endorsed by the COGCC. Those parameters limit the testing requirement to 2 nearby wells. The COGCC can and does require water quality samples, where appropriate, by rule (see COGCC Rules 318A; 608); order or permit condition. ***Based on the annual well starts and average proximity to water wells described in the fiscal note, this requirement would impose a first-year regulatory cost of \$28,000,000 on the industry in Colorado. This annual cost rises to \$56,000,000 once the post-drilling testing interval kicks in.*** This significant increase in the cost of doing business in Colorado would be imposed ***despite the fact that EPA Administrator Lisa Jackson, as recently as last Friday, confirmed that “In no case have we made a definitive determination that the fracking process has caused chemicals to enter groundwater.”*** This new requirement violates the directive in the Oil and Gas Conservation Act that the COGCC’s environmental protection requirements take into consideration “cost-effectiveness.” C.R.S. 34-60-106(2)(d).

- (h) This section requires that the financial assurance program administered by the COGCC be sufficient to cover remediation of “all foreseeable damages” that could result from a spill or other incident of contamination. It is highly unlikely that such an open-ended performance security, based on a “worst case” scenario, would be available from bond underwriters. *The outcome would be that large operators would “self-insure” by depositing cash into a dedicated certificate of deposit, thereby tying up capital and reducing investment in Colorado. Small operators would be devastated.*
- (3)(b) This section loads all of the new administrative cost on COGCC permit fees, ignoring the other sources of COGCC funding via the severance tax operational account and the conservation mill levy. Because the bill requires the COGCC to administer these new rules using existing staff resources, the result would be, as described in the fiscal note: “longer permit processing times, fewer drilling permits, delays in processing ... production reports, completion reports and sundry notices, ... a reduction in routine field inspections and baseline water sampling; delays and a significant reduction in enforcement actions ... and the inability to process all hearing applications” *In other words, the routine, but essential daily administrative functions of the COGCC would be impaired, and industry would not enjoy “timely and efficient” permitting (as required by the Act) nor have the ability to establish drilling units and obtain other business-related COGCC orders in a timely and predictable fashion.*

In summary, SB 107 presumes that oil and gas operations will result in a range of negative public health and environmental consequences without evidence to support its assumptions. The bill covers issues recently addressed in a comprehensive rulemaking and already subject to effective regulation by the COGCC and CDPHE. It would establish a punitive regulatory regime for oil and gas operators in Colorado, placing the state at a distinct disadvantage in the competition for industry investment.

COGA urges a NO vote on SB 107.

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