

Statement of Basis, Specific Statutory Authority, and Purpose

Amendments to Rules 306.c.(1).A, 604.a.(1) and 604.a.(10) of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-01

This statement sets forth the basis, specific statutory authority, and purpose for amendments to the above-referenced Rules and Regulations and Rules of Practice and Procedure (“Rules”) of the Colorado Oil and Gas Conservation Commission (“COGCC”).

The rulemaking hearing for consideration of amendments to Rules 306.c.(1).A, 604.a.(1) and 604.a.(10) was held on March 30, 2009 (testimony and deliberations). These amendments become effective on May 1, 2009.

Statutory Authority

Amendments to these Rules are promulgated pursuant to the authority granted to the COGCC by House Bill 07-1298 and House Bill 07-1341, codified at sections 34-60-106 and 34-60-128, C.R.S., of the Oil and Gas Conservation Act (“Act”). Additional authority for the promulgation of these amendments is provided by sections 34-60-102, 34-60-103, 34-60-104, 34-60-105, and 34-60-108, C.R.S., of the Act. The Commission also adopted the following statement of basis and purpose consistent with section 34-4-103(4), C.R.S., of the Administrative Procedure Act. This statement is hereby incorporated by reference in the amendments adopted.

Basis and Purpose

On December 11, 2008, the Commission adopted amendments to its Rules of Practice and Procedure (“Rules”). On February 25, 2009, the Office of Legislative Legal Services (OLLS) raised concerns with the Committee on Legal Services concerning Rules 306.c.(1).A, 604.a.(1), and 604.a.(10) while conducting its review pursuant to Section 24-4-103(8)(d), C.R.S. Accordingly, the Commission adopted non-substantive amendments to the cited subsections to resolve OLSS’s concerns.

The Commission amended Rule 306.c.(1).A to bring it into conformance with Rule 1202.b concerning consultation with the Colorado Division of Wildlife. As pointed out by OLLS, Rule 1202.b properly puts the obligation to consult on the Colorado Division of Wildlife by stating that the “Division of Wildlife shall consult with the operator, the surface owner, and the Director.” In contrast, prior to its amendment Rule 306.c.(1).A stated that the “operator shall consult with the Commission, the surface owners, and the Colorado Division of Wildlife.” The amendment of Rule 306.c.(1).A clarified that the obligation to consult rests with the Colorado Division of Wildlife as set forth in Rule 1202.b and thereby corrected the deficiency identified by the Office of Legislative Legal Services. The amendment of Rule 306.c.(1).A does not change the substantive requirements of the Rules, only the procedure by which consultation with the Colorado Division of Wildlife is to take place.

The Commission also amended Rules 604.a.(1) and 604.a.(10) to conform to the Administrative Procedure Act requirements as to the incorporation of material by reference. See C.R.S. § 24-04-103(12.5)(d). These provisions were not substantively changed in the rule amendments adopted by the Commission in December 2008. In fact, these rule sections have been part of the Commission's rules for at least twenty-two years. The Commission, however, submitted the entire regulation to the Secretary of State for republication and to the OLLS for review in accordance with section 24-4-103(8)(d), C.R.S. The staff of the OLLS raised a concern that Rules 604.a.(1) and 604.a.(10) did not conform to the requirements of the Administrative Procedure Act as to the incorporation of material by reference. See C.R.S. § 24-04-103(12.5)(d). The Commission agrees that Rules 604.a.(1) and 604.a.(10) should conform to the Administrative Procedure Act as to material incorporated by reference. Accordingly, amendments to these rules were adopted.