

STATE OF COLORADO

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COLORADO



DEPARTMENT OF
NATURAL
RESOURCES

Memorandum

To: Members of the Colorado General Assembly
From: Mike King, Executive Director *M.K.*
Date: November 1, 2012
Re: Departmental Regulatory Agenda

John W. Hickenlooper
Governor

Mike King
Executive Director

On May 17, 2012, Governor Hickenlooper signed into law [HB 12-1008](#), which amends the Colorado Administrative Procedures Act (APA) and requires rulemaking agencies to undertake certain additional methods for soliciting input on executive-branch agencies' rulemaking activities.

Beginning November 1, 2012 and annually thereafter, executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules; and
- An identification and listing of persons or parties that may be affected positively or negatively by the rules.

Commencing on and after November 1, 2013, the DRA is to include a list and brief summary of all permanent and temporary rules actually adopted since the previous DRA was filed.

The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the *Colorado Register*. Commencing with the 2013 legislative session, each department is to present its DRA as part of its hearing and presentation pursuant to 2-7-203(2)(a)(III)(A), C.R.S.

Four of DNR's divisions anticipate proposing new or amended rules in 2013. The following comprises the Department of Natural Resources' Departmental Regulatory Agenda for 2013 and is provided in accordance with 24-7-203(2)(a)(IV), C.R.S. Please let me know if you have any questions.

1) Division of Parks and Wildlife

The Parks and Wildlife Commission is a citizen board, appointed by the Governor, that sets regulations and policies for Colorado's state parks and wildlife programs. While some annual regulations passed by the Commission contain substantive programmatic and management changes, they most often address public use of state parks and hunting and fishing restrictions, including season dates, hunting areas, bag and possession limits, licensing requirements, manner of take provisions, land use regulations, and any other special conditions or restrictions necessary to properly manage Colorado's state parks and wildlife.

The rulemaking proceedings that the Division anticipates proposing in 2013 are set out below, and these will be considered pursuant to the Parks and Wildlife Commission's authority in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105, C.R.S.

Month	Chapter	Purpose of Regulatory Change	Step	Finalized	Affected Parties
January	Ch. 0: General Provisions	Open annually for all issues	Step 3 of 3	Jan. 10, 2013	Hunters/anglers
	Ch. 2: Big Game	Annual changes to sheep and goat quotas	Step 1 of 1	Jan. 10, 2013	Hunters
	Ch. 7 (Parks): Passes, Permits and Registrations	Lyons overlook (Roxborough State park) fee increase	Step 1 of 2	Mar. 7, 2013	Parks users
	Ch. 9: Division Properties	Open annually for all issues	Step. 1 of 3	May 9, 2013	Hunters/anglers
	Ch. 16: Procedural Rules for the Wildlife Commission	Open for implementation of HB 12-1330 (License Suspension Termination)	Step 3 of 3	Jan. 10, 2013	Hunters/anglers
March	Ch. 2: Big Game	Annual big game clean-up	Step 1 of 1	Mar. 7, 2013	Hunters
	Ch. 3: Furbearers and Small game, except Migratory Birds	Open for five-year review including all issues, except turkey	Step. 1 of 3	July 11, 2013	Hunters
	Ch. 5: Small Game – Migratory Birds	Open annually for all issues	Step 1 of 3	July 11, 2013	Hunters
	Ch. 7 (Parks): Passes, Permits and Regulations	Lyons overlook (Roxborough State park) fee increase	Step 2 of 2	Mar. 7, 2013	Parks users
	Ch. 9: Division Properties	Open annually for all issues	Step 2 of 3	May 9, 2013	Hunters/anglers
May	Ch. 2: Big Game	Annual changes to deer, elk, pronghorn, bear, and moose quotas	Step 1 of 1	May 9, 2013	Hunters
	Ch. 3: Furbearers and Small game, except Migratory Birds	Open for five-year review including all issues, except turkey	Step 2 of 3	July 11, 2013	Hunters
	Ch. 5: Small Game – Migratory Birds	Open annually for all issues	Step 2 of 3	July 11, 2013	Hunters
	Ch. 9: Division Properties	Open annually for all issues	Step 3 of 3	May 9, 2013	Hunters/Anglers
July	Ch. 1: Fishing	Open annually for all issues	Step 1 of 3	Nov. 14, 2013	Anglers
	Ch. 3: Furbearers and Small game, except Migratory Birds	Open for five-year review including all issues, except turkey	Step 3 of 3	July 11, 2013	Hunters
	Ch. 5: Small Game – Migratory Birds	Open annually for all issues	Step 3 of 3	July 11, 2013	Hunters
August	Ch. 5: Small Game – Migratory Birds	Changes to late season waterfowl package if July adoptions do not adhere to federal regulations published after July	Step 1 of 1	Aug. 8, 2013	Hunters

Sept.	Ch. 0: General Provisions	Open annually for all issues	Step 1 of 3	Jan. 10, 2013	Hunters/anglers
	Ch. 1: Fishing	Open annually for all issues	Step 2 of 3	Nov. 14, 2013	Anglers
	Ch. 2: Big Game	Annual changes to lion harvest quotas	Step 3 of 3	Sept. 12, 2013	Hunters
	Ch. 2: Big Game	Open annually for CPI adjustments to nonresident big game license fees	Step 1 of 2	Nov. 13, 2013	Hunters
	Ch. 3: Furbearers and Small game, except Migratory Birds	Annual changes to turkey seasons	Step 1 of 2	Nov. 13, 2013	Hunters
	Ch. 15: License Agents	Open annually for CPI adjustments to the sale of licenses by license agents	Step 1 of 2	Nov. 13, 2013	License Agents
Nov.	Ch. 0: General Provisions	Open annually for all issues	Step 2 of 3	Jan. 10, 2013	Hunters/Anglers
	Ch. 1: Fishing	Open annually for all issues	Step 3 of 3	Nov. 14, 2013	Anglers
	Ch. 2: Big Game	Annual changes to deer, elk, pronghorn, bear, moose, sheep, goat, and lion seasons	Step 1 of 2	Jan. 10, 2013	Hunters
	Ch. 2: Big Game	Open annually for CPI adjustments to nonresident big game license fees	Step 2 of 2	Nov. 14, 2013	Hunters
	Ch. 3: Furbearers and Small game, except Migratory Birds	Annual changes to turkey quotas	Step 1 of 1	Nov. 14, 2013	Hunters
	Ch. 3: Furbearers and Small game, except Migratory Birds	Annual changes to turkey seasons	Step 2 of 2	Nov. 14, 2013	Hunters
	Ch. 15: License Agents	Open annually for CPI adjustments to the sale of licenses by license agents	Step 2 of 2	Nov. 14, 2013	License Agents

2) Division of Water Resources

A. Rio Grande Basin Groundwater Rules

While the Division of Water Resources (DWR) anticipates final promulgation of groundwater use rules in the Rio Grande basin before December 31, 2012, an upcoming water court trial on the Rio Grande Annual Replacement Plan may delay that filing into the second quarter of 2013. These rules are intended to allow groundwater use while protecting senior surface water rights and the Rio Grande Compact. DWR convened a Special Advisory Committee to work on these rules, which has included entities that could be impacted by the rules such as municipalities, local governments, county governments, state agencies, conservation districts, irrigation districts, conservancy districts, individual water users, and water user associations.

These rules will be promulgated pursuant to the State Engineer's statutory authority under the Water Right Determination and Administration Act, 37-92-501, C.R.S. Pursuant to the Act, these rules will be filed with the Colorado Water Court and not promulgated pursuant to general rulemaking authority under the Colorado APA.

B. Republican River Basin Well-Metering Rules

DWR also anticipates amending the well metering rules in the Republican River Basin in the second quarter of 2013. These rules became effective in 2008, and during their promulgation an area to the south of the basin was inadvertently left out of the legal description. The local groundwater management district noted the issue and has asked DWR to modify the rules to include its area. While the wells are already metered, these anticipated rule amendments would bring the reporting and certification standards for these wells in line with the rest of the wells in the Republican River Basin. Entities that could be impacted by the rules include management districts, conservation districts, well

users, and towns. The statutory bases for these rules are 37-80-104 and 37-80-102(1)(g), C.R.S., and action is expected in Spring 2013.

3) Division of Reclamation, Mining, and Safety

In 2013, the Division of Reclamation, Mining and Safety (DRMS) anticipates proposing to the Mined Land Reclamation Board (MLRB) the adoption of changes and corrections to its coal-mining rules pursuant to rulemaking authority under the Colorado Surface Coal Mining Reclamation Act, 34-33-108(1), C.R.S. Specifically, DRMS anticipates proposing amendments to 2 CCR 407-2, the Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining, including Rules 1.03.2; 1.04; 1.07 through 1.15; 2.01.3; 2.02.2; 2.02.3; 2.02.4; 2.02.5; 2.03.3; 2.03.4; 2.03.5; 2.03.7; 2.04.5; 2.04.6; 2.04.12; 2.04.13; 2.05.3; 2.05.4; 2.05.6; 2.06.8; 2.07.1; 2.07.3; 2.07.4; 2.07.6; 2.07.7; 2.07.8; 2.07.9; 2.07.10; 2.08.4; 2.08.5; 2.08.6; 2.11; 2.11.1; 2.11.2; 2.11.3; 2.11.4; 3.03.2; 4.03.1; 4.03.2; 4.03.3; 4.05.3; 4.05.9; 4.05.13; 4.05.15; 4.06.4; 4.07.3; 4.08.1; 4.08.2; 4.08.4; 4.08.5; 4.09.1; 4.09.3; 4.10.2; 4.10.4; 4.11.3; 4.11.5; 4.14.2; 4.14.4; 4.14.5; 4.15.1; 4.15.7; 4.15.8; 4.15.9; 4.15.11; 4.16.3; 4.17; 4.18; 4.20.1; 4.20.3; 4.20.4; 4.22.4; 4.25.2; 4.25.3; 4.25.5; 4.30.1; 5.02.2; 5.03.2; 5.03.5; 5.04; 5.04.3; 5.04.7; 5.04.8; 5.05.1; 5.06; 5.06.1; 5.06.2; 5.06.3; 5.06.4; 6.01.1; 6.01.3; 6.04; 7.06.2; and 7.06.3.

These rule amendments will be proposed to clarify existing rules and correct typographical errors; to be no less effective than and to conform to the Federal counterpart regulations at 30 CFR Part 700; and to conform to requirements set forth by the Director of the U.S. Department of the Interior Office of Surface Mining (OSM) as a result of deficiencies identified by OSM in its ongoing review of the MLRB coal-mining rules. Failure to adopt these rule amendments could result in OSM substituting direct federal enforcement on all or part of DRMS's approved regulatory program for coal mining activities, as outlined in 30 C.F.R. §§ 732.17, 733.12, and 733.13.

The changes that DRMS anticipates proposing include minor edits and corrections to errors and omissions, as well as substantive amendments and revisions to several sections of the Rules that address protection of the hydrologic balance; subsidence; valid existing rights determinations to mine lands designated unsuitable for mining; roads; coal exploration; technical revisions to a permit; performance bonds; blasting; backfilling and grading; revegetation; petitions to designate lands unsuitable for coal mining; permit application review; permit eligibility; application information; applicant, operator, and permittee information; automated information entry and maintenance; permit suspension and rescission; ownership and control findings and challenge procedures; transfer, assignment, or sale of permit rights; and alternative enforcement.

These rule amendments will be proposed after DRMS receives approval from OSM to move forward. The proposed rules were submitted to the OSM for informal review on March 30, 2009, March 12, 2010, and February 28, 2011. Comments from and revisions required by OSM have been and will be incorporated into the rules that DRMS will propose.

DRMS has held two public meetings to discuss the proposed rule revisions and has received written comments from the Colorado Mining Association and others. In addition to members of the mining industry, other impacted groups include interested citizens, interested environmental groups, and local jurisdictions in which coal mines are located.

4) Colorado Oil and Gas Conservation Commission

The Colorado Oil and Gas Conservation Commission (COGCC) anticipates proposing to its Commissioners six rulemaking proceedings during 2013. The Commission has statutory authority to conduct rulemaking pursuant to § 34-60-105, C.R.S. and has specific authority to promulgate the rules discussed below pursuant to § 34-60-106(2)(d), C.R.S. The following presents a brief discussion of each of these proceedings.

A. Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations.

During a rulemaking process in 2008, the COGCC Commissioners considered but ultimately deferred changes to well-to-building setback requirements. Since that time, some local governments, environmental groups, and interested citizens have raised questions and expressed concerns about these requirements.

The COGCC will commence a rulemaking hearing on statewide setbacks and location requirements for oil and gas facilities and operations on November 14, 2012. The COGCC Commissioners will consider amendments to the 100 Series (Definitions), 200 Series (General), 300 Series (Drilling, Development, Production and Abandonment), 500 Series (Practice and Procedure), 600 Series (Safety), 800 Series (Aesthetic and Noise Control), 900 Series (Exploration & Production Waste Management), 1100 Series (Pipeline Regulations), and 1200 Series (Protection of Wildlife Resources) of the Commission's Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). Such amendments will establish new rules for statewide setbacks in drilling and well servicing operations and high density areas, amend aesthetic and noise control regulations, and clarify existing rules' applicability. The COGCC anticipates the rulemaking hearings may extend into January 2013, when proposed new or amended rules would be adopted.

These rule amendments could impact local governments, environmental groups, interested citizens, and members of the oil and gas industry.

B. Statewide Groundwater Sampling and Monitoring

The COGCC will commence rulemaking on statewide groundwater baseline sampling and monitoring in November 2012. The COGCC Commissioners will consider amendments to the 600 Series (Safety) of the Commission's Rules to establish new rules for statewide groundwater sampling and monitoring and to clarify existing rules. There is currently an industry-led voluntary groundwater quality monitoring program through the Colorado Oil and Gas Association. These proposed rule amendments will modify this voluntary program, make it mandatory statewide, and provide for its enforcement through the Commission. The COGCC anticipates the rulemaking hearings may extend into January 2013, when proposed new or amended rules would be adopted.

These rule amendments could impact local governments, environmental groups, interested citizens, and members of the oil and gas industry.

C. Update of Restricted Surface Occupancy ("RSO") Areas and Sensitive Wildlife Habitat ("SWH") Maps for Wildlife Species

Also in the first quarter of 2013, the COGCC, in conjunction with Colorado Parks and Wildlife, anticipates proposing updates to maps showing and spatial data identifying the individual and combined extents of RSO and SWH areas for Greater sage-grouse, Columbian sharp-tailed grouse, Gunnison sage-grouse, and

perhaps other wildlife species. Under existing regulation, these maps may be updated through the Commission's rulemaking process no more frequently than annually for RSO areas and biennially for SWH areas. It has been more than two years since the relevant maps were updated. The rulemaking proceeding would result in changes to the 100 Series (Definitions) of the Commission's Rules.

These rule amendments could impact members of the oil and gas industry, surface owners, environmental groups, wildlife groups, ecologists, interested citizens, and sportsmen.

D. Fugitive emissions

In the second quarter of 2013, the Commission will consider whether amendments to the 100 Series (Definitions) and 800 Series (Aesthetic and Noise Control) of the Commission's Rules to establish new or amended regulatory requirements to address fugitive emissions from oil and gas drilling and production operations are necessary and appropriate.

Rule amendments concerning fugitive emissions could impact local governments, environmental groups, interested citizens, and members of the oil and gas industry.

E. Rule clean-up

Also in the second quarter of 2013, the Commission will consider amendments to the 100 Series (Definitions), 300 Series (Series Drilling, Development, Production, and Abandonment), 400 Series (Unit Operations, Enhanced Recovery Projects, and Storage of Liquid Hydrocarbons), 600 Series (Series Safety Regulations), and 800 Series (Aesthetic and Noise Control Regulations) of the Commission's Rules to correct typographical or cross-reference errors, update references to applicable forms, and make other non-substantive revisions to the Commission's Rules.

The amendments to be proposed are non-substantive, and the rulemaking is expected to have a neutral effect on all parties.

F. Well-bore integrity

In the third quarter of 2013, the Commission will consider whether amendments to the 100 Series (Definitions), 300 Series (Series Drilling, Development, Production, and Abandonment), 600 Series (Safety), and 800 Series (Aesthetic and Noise Control) of the Commission's Rules to establish new and amended rules for well-bore integrity standards and practices are necessary and appropriate.

Rule amendments concerning well-bore integrity could impact local governments, environmental groups, interested citizens, and members of the oil and gas industry.