

Current Regulatory and Legislative Issues for COGCC

WSLCA Working Group Conference

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COLORADO

Oil & Gas Conservation
Commission

Department of Natural Resources

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Overview

- Introduction to the COGCC
- Drilling in Neighborhoods: Colorado's Recent Regulatory Experience
- Who Regulates What in Colorado
- Current Issue: Gaining Compliance with Low Commodity Prices

Introduction to the Colorado Oil and Gas Conservation Commission

COGCC

- Established in 1951.
- Governed by the Colorado Oil and Gas Conservation Act, ss. 34-60-101, *et seq.*, C.R.S.
- The 9-member adjudicatory body meets 8-10 times per year.
- Funded by severance taxes and mill levy (a tax on production).
- Staffed by approximately 110 people.

COGCC

- ✧ Mission: to foster the responsible development of Colorado's oil and gas natural resources.



*Drilling in
Neighborhoods:
Colorado's Recent
Regulatory Experience*

Governor's Task Force

- In 2014, the role and extent of regulating oil and gas confronted Coloradans:
 - Unprecedented growth both in population and oil and gas activity created increasing conflict.
 - District Courts issued orders rejecting local ordinances banning or imposing moratorium on hydraulic fracturing activity in favor of state regulation.
 - Four ballot initiatives relating to oil and gas received signatures and were on the ballot for the November 2014 election.

Governor's Task Force

- Established by Executive Order B-2014-005 on September 8, 2014.
- 21 Members, met 7 times.
- 9 of 36 recommendations received 2/3 support and were adopted in the Final Report issued February 27, 2015.
- 7 recommendations pertained to COGCC with 2 anticipating rulemaking:
 - Recommendation 17; and
 - Recommendation 20.

Governor's Task Force

- Recommendation 17:
 - Recommended COGCC rulemaking to address Local Government collaboration with Operators concerning siting of "Large Scale Oil and Gas Facilities" in "Urban Mitigation Areas," (UMAs) as defined in COGCC rules.
 - Recommended COGCC define "Large Scale Oil and Gas Facility."
 - Addressed "authority of and procedures to be used by COGCC to regulate the locations when permitting Large Scale Oil and Gas Facilities for the purpose of reducing impacts to and conflicts with communities."
 - Described pre-site selection notification, consultation, & mediation processes, and potential for Commission hearing.

Governor's Task Force

- Recommendation 20:
 - Recommended operators be required to register with municipalities, if requested.
 - Recommended, if requested, operators should provide municipality with operational information to allow the municipality to incorporate planned oil and gas development into local comprehensive drilling plans and inform the local planning processes. The information to be provided recommended was:
 - An estimate of the number of wells intended to drilled in the next 5 years; and
 - A map of existing well sites and facilities, pending permits, and sites identified for development on the operator's current schedule for which it has not yet sought a COGCC drilling permit.

GTF Rulemaking: Timeline

- July & August 2015 - 11 Outreach meetings conducted by COGCC across state.
- October 6, 2015 - COGCC Issues initial draft Rules.
- October 14, 15, & 16 - Stakeholder meetings.
- November 15 & 16, December 7, 2015, & January 25, 2016 - Commission Hearings.
- February 4, 2016 - Final Order entered adopting new and amended rules.
- February 25, 2016 - New and amended rules published in Colorado Register.
- March 16, 2016 - Effective date of amended Rules.

GTF Rulemaking: Highlights

- Recommendation 17:
 - Define Large UMA Facility, but did not amend existing definition of an Urban Mitigation Area (UMA);
 - Establish consultation process for operator and jurisdictional local government (if it chooses to participate) for **reaching agreement** regarding siting a Large UMA Facility prior to COGCC process before submitting Form 2A to COGCC;
 - Require that a Large UMA Facility will comply with best available mitigation measures; and
 - Create an advance notification process for Proximate Local Governments.
- Recommendation 20:
 - Create a process for operators to register with and communicate development plans to local governments.

GTF Rulemaking: Rec. 17

- Large UMA Facility Definition:
 - Any Oil and Gas Location to be to be located in an *Urban Mitigation Area* and on which:
 - The operator proposes too drill 8 or more new wells; OR
 - The cumulative new and existing on-site storage for produced hydrocarbons exceeds 4,000 barrels.

GTF Rulemaking: Rec. 17

- Drilling Rig on-site:



GTF Rulemaking: Rec. 17

- 4 wellheads; temporary frac tanks; homes 700 ft. in the distance.

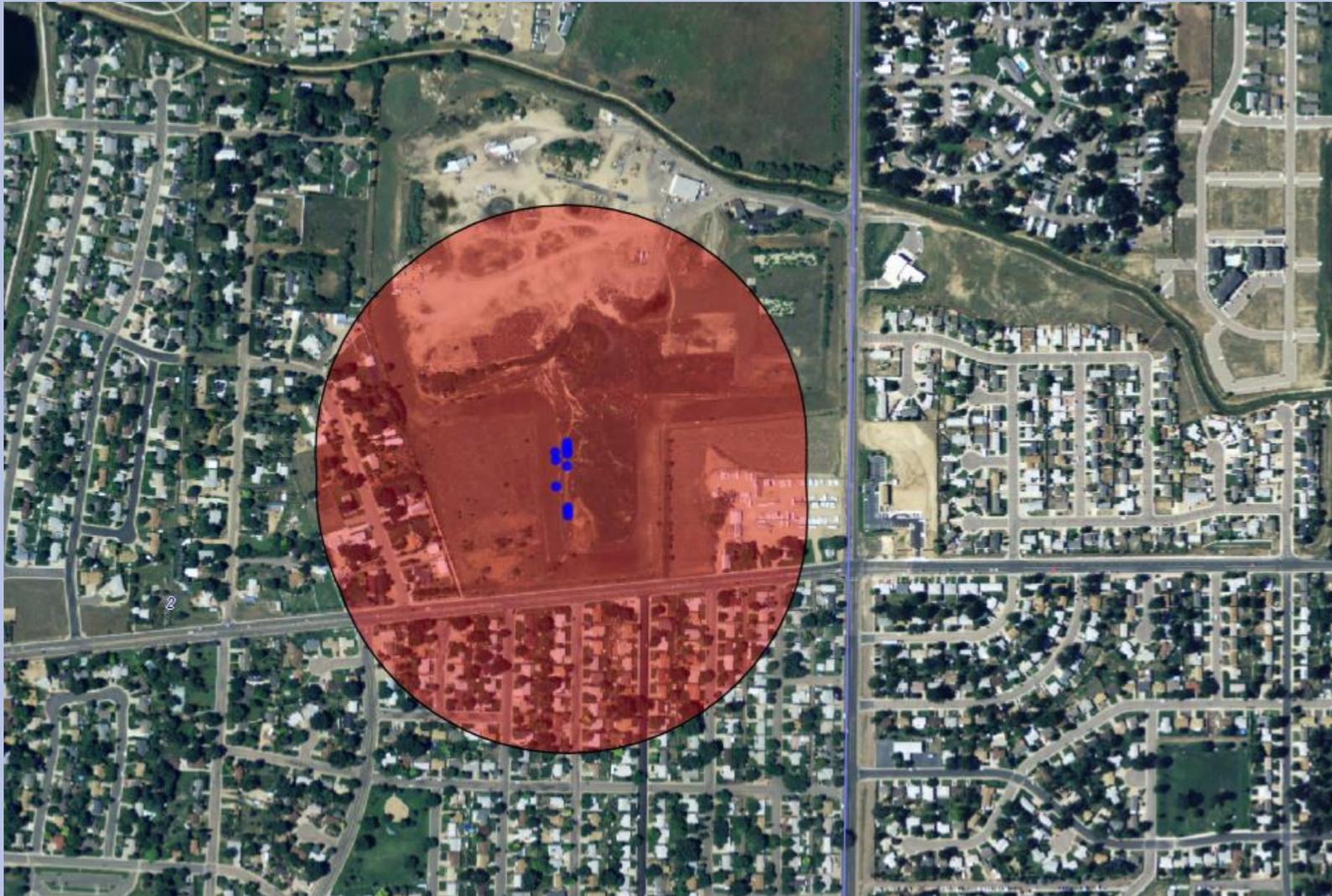


GTF Rulemaking: Rec. 17

- 12 500-barrel tanks; ECDs:



GTF Rulemaking: Rec. 17



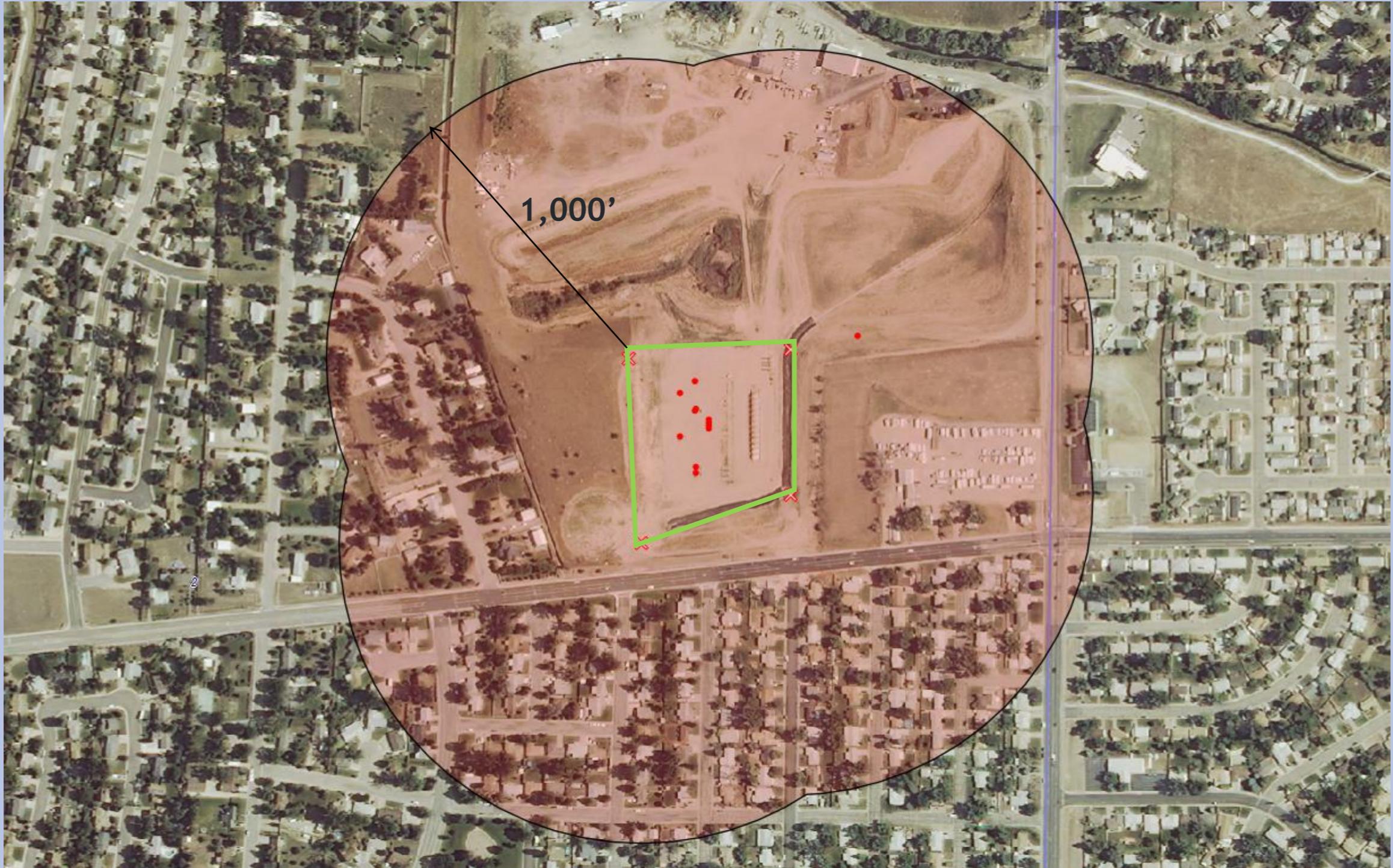
Urban Mitigation Area:

- At least 22 Building Units or 1 HOBUs within 1,000 foot radius, or
- At least 11 Building Units or 1 HOBUs in any semi-circle within 1,000 ft. radius.

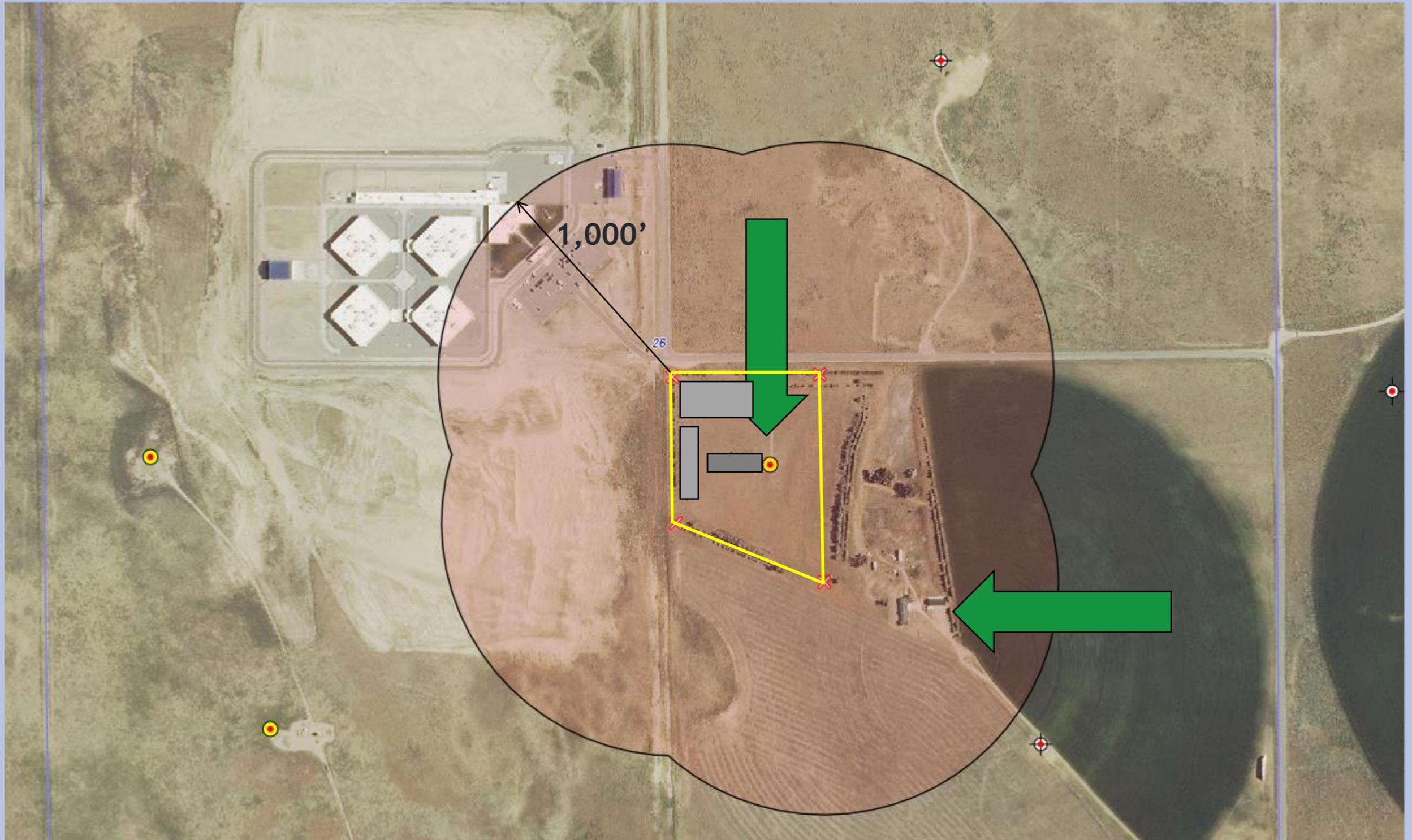
● Proposed well or production facility

● 1,000 foot radius from well or production facility

GTF Rulemaking: Rec. 17



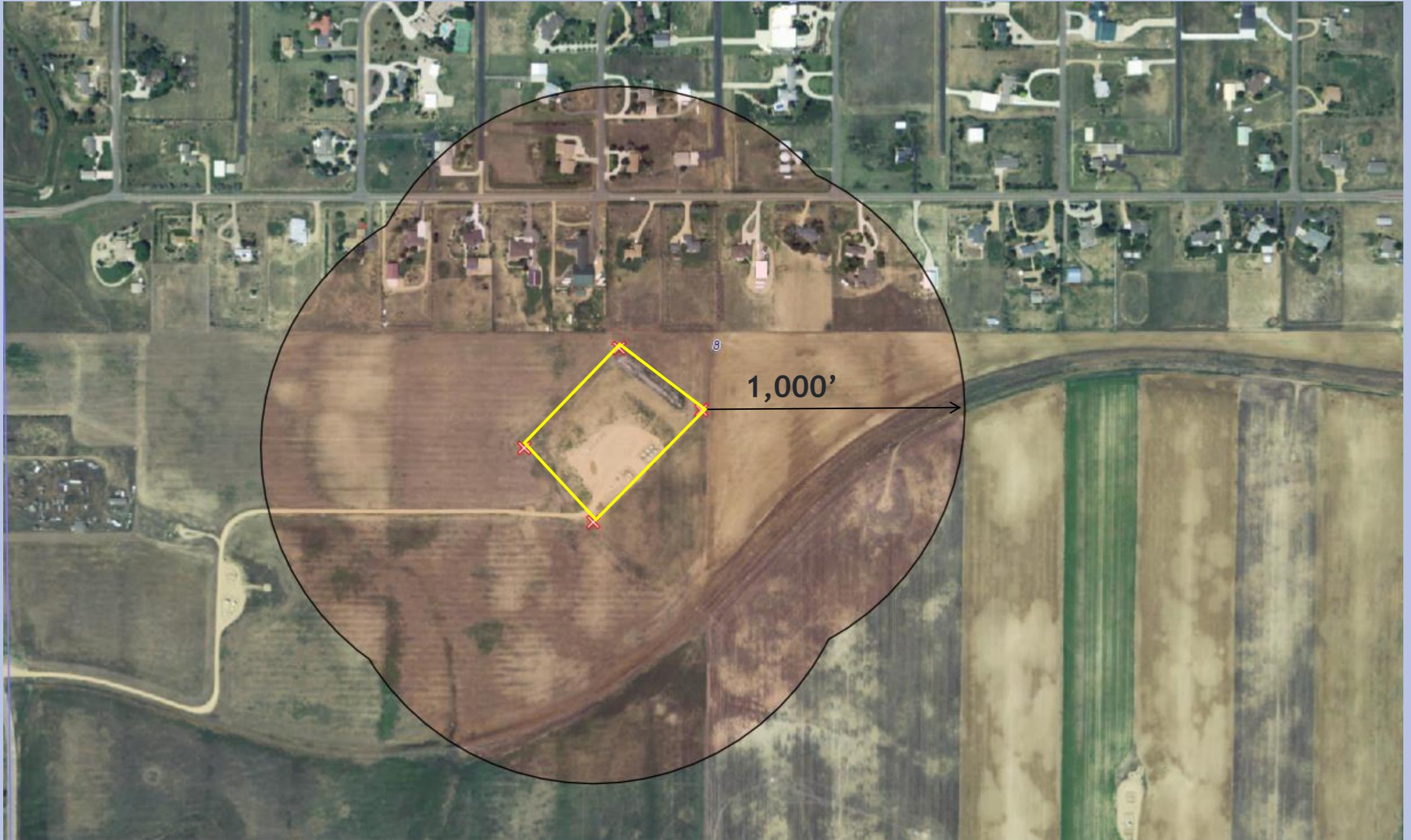
GTF Rulemaking: Rec. 17



GTF Rulemaking: Rec. 17



GTF Rulemaking: Rec. 17



GTF Rulemaking: Rec. 17

- Notice for a Large UMA Facility:
 - Operators must notify Local Government with land use authority and Surface Owner by sending
 - A written Notice of Intent to construct a Large UMA Facility at least 90 days before initiating Form 2A process with COGCC (limited exceptions) and
 - Before finalizing a specific location with Surface Owner.

GTF Rulemaking: Rec. 17

- Consultation and Mediation Process to Reach Agreement:
 - Local Government has 30 days to accept offer to consult.
 - Surface Owner (SO) must be invited to participate in the consultation by the operator.
 - COGCC will participate upon request of either the operator or local government.
 - If consultation occurs, but no agreement can be reached, the operator shall offer mediation.

GTF Rulemaking: Rec. 17

- Outcomes allowing Operator to file Form 2A for a Large UMA Facility:
 - Operator and Local Government reach agreement regarding siting.
 - Operator asserts an exception per 305A.e.
 - Local Government waives consultation or does not timely respond to Notice.
 - 90 days have passed since Local Government received Notice, but Local Government and Operator have not reached agreement during ensuing consultation.

GTF Rulemaking: Rec. 17

- Best Management Practices:
 - Build as “far away as possible” from existing Building Units (primarily structures for residential use).
 - Use “Best Available Technology” to avoid or minimize adverse impacts to adjoining land uses.
 - Will require a combination of Best Management Practices and required mitigation measures.
 - Site-specific Conditions of Approval may be imposed related to operation and technical aspects of a Large UMA Facility.
 - 604.c.(3) Exception Zone Setback required for all proposed Large UMA facilities.

GTF Rulemaking: Rec. 17

- Operators must notify all local governments within 1,000 feet of proposed Large UMA Facility (i.e., Proximate Local Governments) not less than 45 days before submitting a Form 2A to COGCC.
- Proximate Local Government notice must include:
 - Operator's contact information;
 - Description of the location and Large UMA Facility; and
 - Reminder of the comment opportunity.
- Proximate Local Governments can opt out of this requirement.

GTF Rulemaking: Rec. 17

- Other changes:
 - For Large UMA Facility, comment period is 40 days (which is 20 days longer than the typical comment period), but may be **extended or reopened** for 20 additional days (at Director's sole discretion).
 - CDPHE automatic consult regarding the Form 2A.
 - If operator and local government do not reach agreement prior to submitting a Form 2A, Staff has 120 days to review the application after completeness.

GTF Rulemaking: Rec. 20

- On May 1, 2016, operators registered with Commission shall register with each city, town, and county where it has:
 - an approved or pending Form 2 or 2A or
 - an approved drilling and spacing unit.

GTF Rulemaking: Rec. 20

- **Municipal local jurisdictions may request the following information:**
 - An operator's **estimate** of # of wells intended to be drilled in next 5 years.
 - A map showing:
 - Operator's existing well sites and production facilities; and
 - Approved or pending applications for: Drilling units and spacing orders; Form 2s or Form 2As; and sites the operator has on drilling schedule, but not yet applied for COGCC Form 2 or 2A permit.

Who Regulates What in Colorado

Who Regulates What

- COGCC and Federal Agencies
- COGCC and State Agencies
- COGCC and Local Governments
 - Preemption
 - Legal Battles
- Upcoming Changes
 - Legislation
 - Ballot Initiatives
 - Rulemakings

Who Regulates What: Federal

- BLM:
 - 6 MOUs governing permitting, sharing inspections, enforcement, etc.;
 - Hydraulic Fracturing Fluids Rules (challenged);
 - Venting and Flaring Rules proposed.
- PHMSA: pipeline safety and transport of hazardous materials.
- EPA:
 - Clean Power Plan;
 - Methane Emission Rules proposed.
- OSHA: workplace safety.

Who Regulates What: State

- CDPHE:
 - AQCD—air quality regulations, including methane regulations;
 - WQCD—water quality regulations for waste that is not exploration and production waste.

Who Regulates What: Local

- Recent Local Control Lawsuits:
 - Longmont I (*dismissed*): COGCC and COGA sued Longmont to invalidate 2012 Longmont ordinances that banned fracking in residential areas and regulated fracking elsewhere.
 - Longmont II (*pending*): COGA and COGCC sued Longmont to invalidate a 2013 citizen referendum banning fracking and fracking fluid disposal within Longmont.
 - Fort Collins (*pending*): COGA sued Fort Collins to invalidate a 5 year moratorium passed in 2013 on fracking to allow Fort Collins to investigate the health and public safety impacts.

Who Regulates What: Local

- Preemption: analytical framework to address the preeminence of state or local regulatory structures.
 - Express;
 - Implied; and
 - Operational Conflict: is the matter of state, mixed, or local concern.
- Oil and Gas specific: The local imposition of technical regulations on a well where the state imposes no such conditions gives rise to operational conflicts and requires that the local regulations yield.

Who Regulates What: Local

- Pending Supreme Court decisions:
 - Whether home-rule cities are preempted from promulgating local land-use regulations that prohibit the use of hydraulic fracturing in oil and gas operations and the storage of such waste products within city limits when the Colorado Oil and Gas Conservation Commission regulates hydraulic fracturing within the state.
- Oral Arguments held December 9, 2015.
- Awaiting a decision.

Who Regulates What: Changes?

- Legislation:
 - HB 16-1310.
 - Adjusts reasonable accommodation doctrine; creates highest duty of care for oil and gas operations to avoid causing earthquakes and breaching the duty creates liability for damages.
 - Passed House March 18, 2016; pending in Senate Agriculture, Natural Resources, and Energy Committee.
 - HB 16-1430.
 - Codifies registration and information-sharing requirements of COGCC's rules implementing Rec. 20, but applies both requirements to counties.
 - Passed second reading in House with amendments; pending third reading before referred to Senate.

Who Regulates What: Changes?

- Pending Ballot Initiatives:
 - Initiative 78 expands setbacks to 2,500 feet from an occupied structure, public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space.
 - Initiative 75 grants local governments authority to regulate oil and gas development.
 - Initiative 63 creates a right to a healthy environment.
 - Initiative 40 allows local governments to define or eliminate rights and powers of businesses in their jurisdiction.
- These four must each gather 98,492 signatures by August 8, 2016 to be placed on the ballot.

Who Regulates What: Changes?

- Rulemaking:
 - Staff and stakeholders have some degree of rulemaking fatigue—nothing specific on the horizon.
 - Some preliminary discussions about changing the Wellbore Spacing Unit process for administratively-approved units in the Greater Wattenberg Area (GWA).
 - Clean-ups, clarifications constantly identified, but no plans to undertake process for change.

*Current Issue:
Gaining Compliance with
Low Commodity Prices*

Updating Financial Assurances

- COGCC's systematic evaluation of operator compliance with Rule 707's financial assurance requirements has yielded \$4.3M in additional financial assurance.
 - To protect the State from the liability of financial responsibility for plugging and reclaiming inactive wells, Rule 707 requires additional financial assurance for each "excess inactive well" according to the amounts in Rule 706: \$10,000 per well less than 3,000 feet deep, and \$20,000 per well greater than 3,000 feet deep.
 - An operator with a blanket plugging bond has "excess Inactive Wells" when the number of inactive wells poses the risk that the plugging and reclamation costs for those wells will be greater than the value of the operator's blanket bond.

Anadarko's DUC Variance

- COGCC and Anadarko developed variance terms that protect public health, safety, and welfare and the environment while providing Anadarko with substantial economic savings.
 - Rule 308A requires the submittal of the cement bond log with the Drilling Completion Report (Form 5) within 60 days of rig release.
 - Operators, like Anadarko, often run the cement bond log during completions not drilling operations.
 - Due to low prices, Anadarko is delaying completing a number of its wells beyond 60 days and requested a variance from the Rule 308A requirement.

Risk-Based Inspection Program

- Senate Bill 13-202 enacted language directing COGCC to use a risk-based strategy to inspect oil and gas locations.
- COGCC developed a manageable GIS-based model to generate daily relative risk factor scores for active wells in Colorado that automatically integrates and updates COGCC's field inspection staff to guide an inspector's daily workload with reports and map layers.
- Metrics can evaluate COGCC's progress and update interested persons - including confirming wells classified as higher risk are inspected annually.

Risk-Based Inspection Program

- COGCC's model establishes a well's relative risk by:
 - Classifying individual data parameters on a 1-5 scale;
 - Combining parameter values to get risk-factor area scores; and
 - Further combining weighted area scores to calculate an overall risk score.

- Risk-factor areas based on:
 - Population density and urbanization;
 - Environment (wildlife and water);
 - Time since last inspection;
 - Years in service;
 - Reported spills at the location; and
 - Corrective actions at the location.

- Implemented the model on March 1, 2016, so tweaking model parameters and getting practical feedback



THANK YOU!



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Required BMPs at Proposed Large UMA Facilities Must Address

- Fire, explosion, chemical, and toxic emission hazards, including lightning strike hazards
- Fluid leak detection, repair, reporting, and record keeping for above and below ground on-site fluid handling, storage, and transportation equipment
- Automated well shut-in control measures to prevent gas venting during emission control failures or other upset conditions
- Storage Tank pressure and fluid management
- Proppant dust control

Site Specific Mitigation Measures at Large UMA Facilities

- Site-specific COAs may be imposed to mitigate against anticipated impacts to the maximum extent achievable
- Non-inclusive list of impacts that may be evaluated:
 - Noise
 - Ground and surface water protection
 - Visual impacts associated with placement of wells or production equipment
 - Remote stimulation operators

Director will consider and give substantial deference to mitigation measures and or BMPs agreed to by operator and local government with land use authority