

Environmental, Social, Governance and Regulatory Issues Colorado Focus

Ryder Scott Virtual Reserves Conference

September 16-17, 2020



Overview of Presentation

- ❑ Introduction to “ESG” – Environmental, Social and Governance Factors
- ❑ ESG Factors and Oil and Gas Operators
- ❑ Colorado Overview
- ❑ Status of Colorado Rulemakings – COGCC, CDPHE and Local Governments
- ❑ ESG Focus of Rulemakings
- ❑ Closing Remarks
- ❑ Live Q&A

Environmental, Social, Governance and Regulatory Issues

Introduction to “ESG”
and
ESG Factors for Oil and Gas
Operators

Introduction to “ESG”

Environmental, social and governance criteria are a set of standards that investors use to screen potential investments

- Environmental criteria: how a company performs as a steward of nature
- Social criteria: how a company manages relationships with employees, suppliers, customers, and communities
- Governance: relates to company leadership, executive pay, audits, internal controls, and shareholder rights



Why is “ESG” important for oil and gas corporate sustainability?

- ❑ Obtaining investment from financial institutions
 - “We are committed to constant innovation to remain at the forefront of the responsible investment landscape.” - *Melanie Adams, Vice-President and Head, Corporate Governance and Responsible Investment, RBC*
 - “70% of Respondents use ESG principles as part of their investment approach and decision making.” - RBC Global Asset Management October 14, 2019 Responsible Investment Survey Executive Summary
- ❑ Rise in Shareholder demands re: ESG opportunity and risk
 - BlackRock Letter: “A Fundamental Reshaping of Finance” letter to CEOs – Larry Fink, January 2020
 - State Street Global Advisors:, “CEO’s Letter on our 2020 Proxy Voting Agenda” - Cyrus Taraporevala, January 2020
- ❑ Expectations to address Racial Equity and Environmental Justice are immediate
- ❑ Leadership from Board of Directors and creating ESG Culture is expected
- ❑ Reputation and media treatment of company is critical

ESG Topics for Corporate Consideration

Environmental Components & Topics

- Conservation of the natural world
- Sustainability
- Pollution reduction
- Waste Management
- Energy Conservation
- Renewable Energy
- Salt water disposal and reuse
- Technology reducing power consumption

Social Components & Topics

- Human Rights
- Community relations
- Shared stakeholder responsibilities
- personal privacy
- Community services
- Foundation work

Governance Components & Topics

- Board and executive compensation
- Investor Relations
- Good stewardship of the stakeholders interests
- Accountability
- Auditing systems



Environmental, Social, Governance and Regulatory Issues

Colorado Overview

Governing Authority: Colorado Oil & Gas Operations

Colorado Oil and Gas Conservation Commission

Local Governments

Colorado Department of Public Health and Environment

Colorado Parks and Wildlife

Colorado Division of Water Resources

Colorado State Land Board

Public Utilities Commission

Bureau of Land Management

U.S. Forest Service

Bureau of Indian Affairs

Environmental Protection Agency

SB 19-181:

Overview

03/01/2019: Introduced In Senate - Assigned to Transportation & Energy

03/14/2019: Introduced In House - Assigned to Energy & Environment + Finance + Appropriations

04/03/2019: Passed

04/16/2019: Signed by Governor Polis into law

Adopted to prioritize the protection of public safety, health, welfare and environment, and wildlife in the regulation the oil and gas industry by modifying the oil and gas statute and by clarifying, reinforcing, and establishing local governments' regulatory authority over the surface impacts of oil and gas development

SB 19-181:

Key Provisions with Immediate Impacts

- ❑ Change in Legislative Declaration of Commission
 - “Foster” to “Regulate”
- ❑ Mandatory Rulemakings: CDPHE – AQCC & COGCC
- ❑ Local Government Siting Authority Confirmed
- ❑ Director Objective Criteria review adopted for permits until conclusion and effective date of COGCC rulemakings
- ❑ Establish a Professional Commission
- ❑ Modify of Colorado State Preemption Law
- ❑ Establish 45% ownership/consent threshold for pooling
- ❑ Change in Definition of “Waste”

SB 19-181:

Mandated State Agency Rulemakings

AQCD: Minimize Methane Emissions and other HC's, VOC's and Oxides of Nitrogen from Facilities in all segments of the OG supply chain (25-7-109(10.a.))

COGCC: Technical Review Board (29-20-104(3)(a) & 34-60-104.5(3)(a))

COGCC: 100 Series Definitions (34-60-103)

COGCC: 300/600 Series Rules: New Form 2A and Form 2 requirements and permit reviews/delays/criteria/approvals (34-60-106(1)(f))

COGCC: Adoption of Fees (34-60-106(7)(b))

COGCC: Overhaul of Rules for PHSWE&W (34-60-106(2.5))

COGCC: Alternative Location Analysis and criteria & evaluation of cumulative impacts of OG development (34-60-106(11)(c))

COGCC: Wellbore integrity (34-60-106(18))

COGCC: Flowline, Inactive, TA & SI well requirements (34-60-106(19))

COGCC: Certification for Workers under OSHA, API, ASME, HazMat, Welders (34-60-106(20))

COGCC: Pooling Threshold and new application requirements (34-60-116)

COGCC: Overhaul of rules to address dual jurisdiction between COGCC and LG for siting and oil and gas operations (34-60-131)

COGCC: Financial Assurances (34-60-112)

Colorado Oil and Gas Conservation Commission

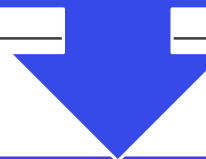
Charged with regulating oil and gas development to protect and mitigate adverse impacts to public health, safety, welfare, the environment and wildlife resources

Jurisdiction over oil and gas operations in Colorado – more limited after adoption of SB 19-181

All authority derived from Colorado Oil & Gas Conservation Act
C.R.S. 34-60-101, *et seq.*

Colorado Department of Public Health and Environment

Charged with protecting and improving the health of Colorado's people and the quality of its environment



Jurisdiction over air, stormwater and water quality matters for oil and gas development



Consultation on COGCC permits/applications:

- Under COGCC Operator Guidance, LGD request, or when operator seeks a variance from certain specified rules, COGCC consults with CDPHE
- Operator can consult with CDPHE prior to submission of APD
- Consultation usually leads to COAs on APDs

Charged with regulating the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, welfare and the environment

Local Governments

Minimize adverse impacts = to extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimizing and mitigating the extent and severity of those impacts that cannot be avoided

Required to obtain LG Disposition of LG permit:

- Prior to approval of COGCC permit, must obtain disposition of LG permit unless LG has waived requirement or does not regulate oil and gas operations
- LG permit usually leads to COAs on APDs

Environmental, Social,
Governance and Regulatory
Issues

Status of Colorado
Rulemakings and Local
Government Actions

SB 19-181: State Regulatory Actions since 4/16/2019

500 Series Rulemaking – Complete

- As directed by SB19-181, this rulemaking enables the use of administrative law judges and hearing officers to ensure the COGCC is properly processing applications.

Flowline Rulemaking – Complete

- Following the 2018 and SB 19-181 rule changes, additional public disclosure, inspection, and deactivation requirements were added.

AQCC Regulation Number 7 & Regulation Number 3 - Complete

- Reg 7 addresses control of Ozone and control Volatile Organic Compounds and Nitrogen Oxide emissions. Reg 3 addresses stationary source permitting and air pollutant emission notice requirements.

Wellbore Integrity Rulemaking - Complete

- This rule strengthened the groundwater protection requirements for oil and natural gas development.

AQCC Regulation Number 22 - Complete

- This rule developed Colorado greenhouse gas reporting and emission reduction requirements.

Mill Levy Rulemaking – Complete

- This rulemaking increased the current mill levy from \$0.0011 to \$0.0015.

Mission Change Rulemaking – In process

- This rulemaking overhauls the 100-1200 Series COGCC regulations to comply with the new mission and mandates of the Oil and Gas Conservation Act.

AQCC Regulation No. 7 – In process

- This rulemaking serves to reduce actual emission of nitrogen oxides (NOx) from stationary source engines and applies to existing natural gas fired reciprocating internal combustion engines and those placed in service, modified, or relocated after adoption.

AQCC GHG Reductions – Stakeholder Meetings in Process & Rulemakings in 2021

SB 19-181: Local Regulatory Actions since 4/16/2019

Adams County:

- 6-month moratorium passed in March 2019
- Regulatory Update – Completed September 2019
- Moratorium lifted in September 2019 after regulations passed

Arapahoe County:

- Working on Traffic Impact Fee
- Currently updating oil and gas regulations

Aurora:

- Currently updating oil and gas regulations

Broomfield:

- Passed 6-month moratorium in May 2019 and have passed extensions with current expiration now in Dec. 2020
- May 2020, Broomfield passes 2,000' setbacks along with new zoning restrictions
- Expected to develop further regulations

Berthoud:

- Passed first moratorium in May 2019 and it is still in effect today
- First discussion of oil and gas code update in July 2020

Boulder County:

- Passed initial moratorium on June 28, 2019 and has continued to be extended in 6-month increments. Expiration is now December 31, 2020
- Currently updating oil and gas regulations

City of Boulder:

- Moratorium on oil and gas has been in place for over 7 years
- Current moratorium set to expire at the end of 2020 unless extended

SB 19-181: Local Regulatory Actions since 4/16/2019

City and County of Denver:

- Current push for a fracking ban on Denver's November 2020 ballot

Commerce City:

- Currently updating oil and gas regulations

Erie:

- Initially adopted moratorium in July 2018, extended on Jan. 22, 2019, then extended again on June 25, 2019 after SB19-181 was passed
- Moratorium has continued and is currently set to expire in Dec. 2020
- Currently updating regulations

Fort Collins:

- Currently updating regulations

Lafayette:

- Moratorium initially passed in November 2017 and has been continuously extended
- Current moratorium set to expire in November 2020 unless extended

Larimer County:

- Oil and Gas Task Force Charter formed March 2019
- New oil and gas regulations approved April 2020

SB 19-181:

Local Regulatory Actions since 4/16/2019

Lochbuie:

- 6-Month Moratorium passed in August 2019, extended 3 months in January 2020, but repealed in February 2020
- Updated several provisions of oil and gas code

Longmont:

- Environmental groups looking to reinstate Longmont's fracking ban which was struck down in 2016

Superior:

- Enacted 6-month moratorium in January 2019, extended in July 2019 until April 2020
- New regulations passed April 13, 2020 and moratorium expired

Timnath:

- 3-month moratorium passed April 2019 (not extended upon expiration)
- Interim oil and gas regulations passed July 2019

Weld County:

- 1041 Designation – 2019
- MOU w/COGCC – 2019
- 1041 WOLGA Code Change – currently in public hearing phase
- Location Assessment for Pipelines update (to happen later in 2020)

Environmental, Social,
Governance and Regulatory
Issues

ESG Components of
Colorado Rulemakings and
Local Government Actions

25,000'
overview:

COGCC Proposed Rules

100 Series: New definitions for every series rules

200 Series: Limitations on transfer of operatorship timing and liability

300 Series: Full permitting process Overhaul – Oil and Gas Development Plan, CAP, and LG approvals; Rule 318A WSU terminated

400 Series: Operations, reporting and substantial Noise, Odor, dust and lighting modifications

500 Series: Procedural modifications, standing and “affected person” allowances

600 Series: Setbacks of 1,500 feet from 10 or more Building Units or 1 High Occupancy Building Unit

800 Series: Modifications to UIC wells and aquifer exemptions

900 Series: Overlapping jurisdiction with CDPHE; modifications to flaring

1200 Series: New definition of High Priority Habitat; new plans for APDs

ESG Focus Points:

COGCC and CDPHE Rulemakings

Cumulative Impacts: Senate Bill 19-181 also directed the Commission to adopt rules, in consultation with the Colorado Department of Public Health and Environment to “evaluate and address the potential cumulative impacts of oil and gas development.” C.R.S. § 34-60-106(11)(c)(II)

- To include review and analysis of air, water, soil and wildlife impacts from development – climate change and water protection focus
- Creation of Cumulative Impacts Data Evaluation Repository (“CIDER”)

Alternative Location Analysis: Senate Bill 19-181 further directed the Commission to “adopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process.” C.R.S. § 34-60-106(11)(c)(I)

- To include review and analysis of Disproportionately Impacted Communities as focus on environmental and racial justice

ESG Focus Points:

COGCC and CDPHE Rulemakings

Environmental Protections: Senate Bill 19-181 further directed the Commission to reduce emissions of methane and other hydrocarbons, VOCs, and NOx from oil and natural gas exploration and production facilities and natural gas facilities in the processing, gathering and boosting, storage and transmission segments of the natural gas supply chain C.R.S. § 25-7-109(10)(a)

- Greenhouse Gas, Methane, Ozone, NOx and VOC reduction, reduced flaring and venting allowances

Social Protections: Increased standing, comprehensive and intensive notice requirements, public meeting and forum allowances, outreach and involvement with Local Governments

Environmental, Social, Governance and Regulatory Issues

Update on Colorado Rulemakings



Update on COGCC Mission Change Rulemakings

Rulemaking Timeline (as of 9/17/2020):

- 9/18/2020: Staff Presentation of Revised 200-600 Series Rules
- 9/21/2020-9/23/2020: Party Statements on Revised 200-600 Series Rules and Commissioner Deliberations
- 9/28/2020 – 9/30/2020: 800 Series Rulemaking
- 10/13/2020 – 10/16/2020: 1200 Series Rulemaking
- 10/23/2020– 10/30/2020: 900 Series Rulemaking

At the end of the 900 Series Rulemaking, the COGCC will likely have a day or two of reviewing the entire 100 – 1200 series adopted rules to ensure clarity and proper references before closing the record.

January 1, 2021: Proposed Effective Date of COGCC Rules

Update on COGCC Mission Change Rulemakings

Issues of Specific Focus:

- Potential Significant increase to setbacks from Residential Building Units and High Occupancy Building Units
 - Limitations on exceptions
 - Potential requirement for informed consent
- Variance Allowances
- Permitting Timeline
- Standing of Affected Persons
- Modification to definition of protected wildlife area (High Priority Habitat) and limitations on development

Environmental, Social,
Governance and Regulatory
Issues

Practical Considerations and
Closing Remarks

Practical Considerations

- ❑ Consult an ESG expert or advisor to become skilled in the history and reasons for ESG and become educated on the impacts ESG can have on your business
- ❑ Stay in front of required ESG measures – the environmental and social factors being the most critical in certain circumstances
- ❑ Understand that ESG factors and criteria remain fluid – be adaptable and open for change
- ❑ In Colorado, understand the current regulations, new COGCC and CDPHE regulations, and local government Codes and ordinances as they relate to ESG issues

Closing Remarks

- ❑ ESG plays an important role for oil and gas operators – both in the financial realm and sustainability of operations realm
- ❑ Colorado remains open for business and, in addition to voluntary ESG measures, oil and gas operators are required to comply with updated environmental and social regulations to ensure sustainable, responsible development
- ❑ Many progressive operators were advancing ESG priorities in varying capacities long before Colorado’s 2018 election and the adoption of Senate Bill 19-181, and such focus on ESG priorities are attributable to their forward thinking, their hearing and accounting for the concerns and issues, and then adapting their company operations to those needs
- ❑ “The sooner, the better” - companies need to ensure ESG analysis and actions are built into their everyday operations for a sustainable company and culture



3511 Ringsby Court, Unit 103
Denver, Colorado 80216
(720) 466-5620 – Main
www.jostenergylaw.com
jjost@jostenergylaw.com

Jost Energy Law, P.C. extends our warm appreciation to Mr. Ali Porbandarwala and Mr. Ed Polishuk for the opportunity to present this session at the Ryder Scott 2020 Virtual Reserves Conference.

Thank You


JAMIE JOST



Managing Shareholder Jost Energy Law, P.C.

Jamie is the Founder and Managing Shareholder of Jost Energy Law, P.C., a female owned and operated firm specializing in oil and gas and natural resources law. Under her guidance, Jost Energy Law has cultivated an innovative culture that supports each attorney and staff member and allows them to grow and thrive in their positions. Jamie has distinguished herself as a preeminent leader in energy law and is recognized as a top attorney in her field. She has represented the oil and gas industry in the private sector since 2002, and her growing firm continues to diligently support clients throughout the Rocky Mountain region.

Contact Me

 jjost@jostenergylaw.com

 720-362-0875

3511 Ringsby Court, Unit 103 

Denver, CO 80216

www.jostenergylaw.com 

Numbers to Count On. Experts to Trust.