



October 8, 2019

Jeff Robbins
Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln St., Suite 801
Denver, CO 80203

Re: Request that you enforce objective criteria, delay approval of permits in the Denver Metro/North Front Range ozone nonattainment area;

Request that you investigate whether companies are chronically violating Colorado's prohibition on flaring gas.

Dear Director Robbins:

WildEarth Guardians and Colorado Rising are writing to request that you enforce the objective criteria you adopted pursuant to Senate Bill 19-181 and delay the approval of oil and gas drilling and location permits located in the Denver Metro/North Front Range 8-hour ozone nonattainment area. All proposed wells and locations developed in the ozone nonattainment area will involve flaring of natural gas. Accordingly, any and all approvals must be delayed.

We further request that you investigate whether operators are chronically violating Colorado's prohibition on flaring and take appropriate enforcement action to remedy these violations.

Objective Criteria Concerns

Under Senate Bill 19-181, the Colorado Oil and Gas Conservation Commission ("COGCC") was directed to adopt new rules to prioritize the protection of public health, safety, and welfare. Under the law, you were tasked with adopting "objective criteria" to determine whether the approval of certain permits should be delayed pending the adoption of new rules.

On May 16, 2019, you adopted final “objective criteria” to determine whether the approval of certain permits should be delayed pending the adoption of new rules. Among your “objective criteria,” you identified, “a request to vent or flare (Form 4) from a location...within the Denver Metro/North Front Range 8-hour ozone nonattainment area.”

Presumably, this means approval of a permit must be delayed pending adoption of new rules if approval would involve venting or flaring from a location in the Denver Metro/North Front 8-hour ozone nonattainment area.

In spite of this, the COGCC has approved numerous permits within the Denver Metro/North Front Range 8-hour ozone nonattainment area, even though development and production of these wells will inevitably lead to the flaring of natural gas at locations. Furthermore, the Commission recently entered into a Memorandum of Understanding with Weld County, most of which is within the 8-hour ozone nonattainment area, that promises to fast-track approval of permits, even though approval will inevitably lead to the flaring of natural gas at locations. See COGCC, “COGCC Establishes Permitting Protocol for 1041 Areas Designated of State Special Interest for Oil and Gas Development” (Sept. 4, 2019), available at https://cogcc.state.co.us/documents/media/Press_Release_1041_MOU_20190904.pdf.

At issue is that oil and gas operators utilize constant flaring to reduce emissions of volatile organic compounds (“VOCs”) at production facilities in the 8-hour ozone nonattainment area. And while operators are burning VOCs to reduce harmful ozone-forming emissions, they’re also burning gases that have value and are normally produced for sale, including methane, ethane, butane, and propane.

A permit application under review by the Colorado Air Pollution Control Division is an example of how operators in the 8-hour ozone nonattainment area are regularly using flares to burn all manner of hydrocarbon gases. In a preliminary analysis for Extraction Oil and Gas’ Enright production facility in the 8-hour ozone nonattainment area of Weld County, the Air Division discloses that the company is using flares to limit emissions. In doing so, the company is burning methane, ethane, propane, butane, and other natural gases. See Exhibit 1, Preliminary Analysis, Extraction Oil and Gas, Enright Production Facility (Sept. 2019), available at <https://drive.google.com/file/d/1i1QgrVZG9x8wRBrBqUMoSZKnpPNUaBAo/view?usp=sharing>. The analysis discloses that:

- The company is using flares to limit VOC emissions. See *e.g.* Exhibit 1 at 3.
- The gas streams burned include methane, ethane, propane, butane, and other natural gases. For example, the analysis discloses that the flared gas stream from the low pressure separators includes approximately 14% methane, 16% ethane, 28% propane, etc. See Exhibit 1 at 12.

This facility is not alone. The Air Pollution Control Division routinely permits oil and gas production facilities to flare VOC emissions and in doing so, flare natural gas from these production facilities.

While this widespread practice of flaring VOCs is often described by companies as “combusting” VOCs, or utilizing “enclosed combustors,” the practice is the same: it burns gas produced from wells. Flaring is flaring, whether it occurs in an enclosed setting or called a different name.

Given this, every permit under consideration by the COGCC in the 8-hour ozone nonattainment area involves flaring at a location. It is telling that in submitted Form 2A applications for locations in the 8-hour ozone nonattainment area, operators acknowledge they intend to install “VOC combustors.” For instance, in a Form 2A application currently out for public comment for PDC Energy’s Lawrence pad, which is located in the 8-hour ozone nonattainment area, the company discloses it intends to construct 10 “VOC Combustor[s].” Exhibit 2, PDC Energy, Form 2A Oil and Gas Location Assessment Submission (Sept. 2019) at 2. Combusting gases means burning gases, meaning these combustors are flares.

Accordingly, under your objective criteria, all permits in the 8-hour ozone nonattainment area must be delayed pending the adoption of new rules under Senate Bill 19-181. **We request that you enforce your criteria and immediately halt the approval of any further permits within this region pursuant to Senate Bill 19-181.**

Chronic Violations of Colorado’s Prohibition on Flaring

The situation regarding flaring in the Denver Metro/North Front Range 8-hour ozone nonattainment area also raises concerns that operators within this region, and perhaps throughout Colorado, are universally failing to comply with the Colorado Oil and Gas Conservation Act and COGCC regulations.

The Oil and Gas Conservation Act prohibits the “waste of oil and gas in the State of Colorado.” C.R.S. 34-60-107. To this end, COGCC rules prohibit the “unnecessary or excessive venting or flaring of natural gas produced from a well.” COGCC Rule 912.a. Although natural gas is not defined specifically by rule, the Oil and Gas Conservation Act defines “gas” to mean “all natural gases and all hydrocarbons not defined in this section as oil.” C.R.S. 34-60-103(5).

With limited exceptions, the flaring or venting of natural gas can only occur after notice has been given and approval obtained from the COGCC Director. COGCC Rule 912.b. Approval must be requested and obtained on a Form 4, which states “the estimated volume and content of the gas” that is to be vented or flared. *Id.*

The widespread use of flares to burn VOCs, which include natural gases and hydrocarbons that are not otherwise defined as oil, at oil and gas production facilities appears to run afoul of Colorado’s prohibition on waste and specifically the COGCC’s prohibition on

venting or flaring of natural gas. This is underscored by the fact that, to our knowledge, operators do not seek or obtain approval for the flaring of VOCs via a Form 4. It appears that operators routinely install and operate flares, or combustors, to burn VOCs without proper COGCC approval.

An example of this is at several production facilities owned and operated by Noble Energy in Weld County. The company is currently seeking approval from the Colorado Air Pollution Control Division to remove vapor recovery systems and flare gas at two production facilities, including the Chandler State and Beebe Draw pads. See Exhibit 3, Preliminary Analysis, Noble Energy, Inc., Chandler State (Feb. 2019), available at <https://environmentalrecords.colorado.gov/HPRMWebDrawer/Record/1381502/File/Document> and Exhibit 4, Preliminary Analysis, Noble Energy, Inc., REI Fed Beebe Draw (Feb. 2019), available at <https://environmentalrecords.colorado.gov/HPRMWebDrawer/Record/1334413/File/Document>. To our knowledge, Noble has not sought or obtained approval from the COGCC to flare gas.

Furthermore, there is no indication that flaring at Noble's facilities is remotely consistent with COGCC Rule 912.a. Noble Energy appears to be removing vapor recovery systems for self-serving economic reasons, which makes it completely unnecessary and excessive. Operators cannot be allowed to waste natural gas because they believe it does not make them enough money. In such situations, the COGCC must prohibit production unless and until an operator can actually capture and sell produced gas.

In light of this, we request COGCC investigate whether the use of flares to combust VOCs at oil and gas production facilities is consistent with COGCC regulations and Colorado's prohibition on waste. We request the COGCC only authorize flaring at oil and gas production facilities in the narrowest situations when it is absolutely necessarily and/or truly not excessive. The COGCC must enforce standards to ensure consistent, un-wasteful recovery of gas. More importantly, the COGCC must limit flaring and venting to ensure protection of air quality, public health, and safety. Particularly given the passage of Senate Bill 19-181, there is simply no reason to allow such widespread flaring and waste of natural gas.

We appreciate your time and attention to this matter.

Sincerely,

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