

## ADDENDUM INDEX

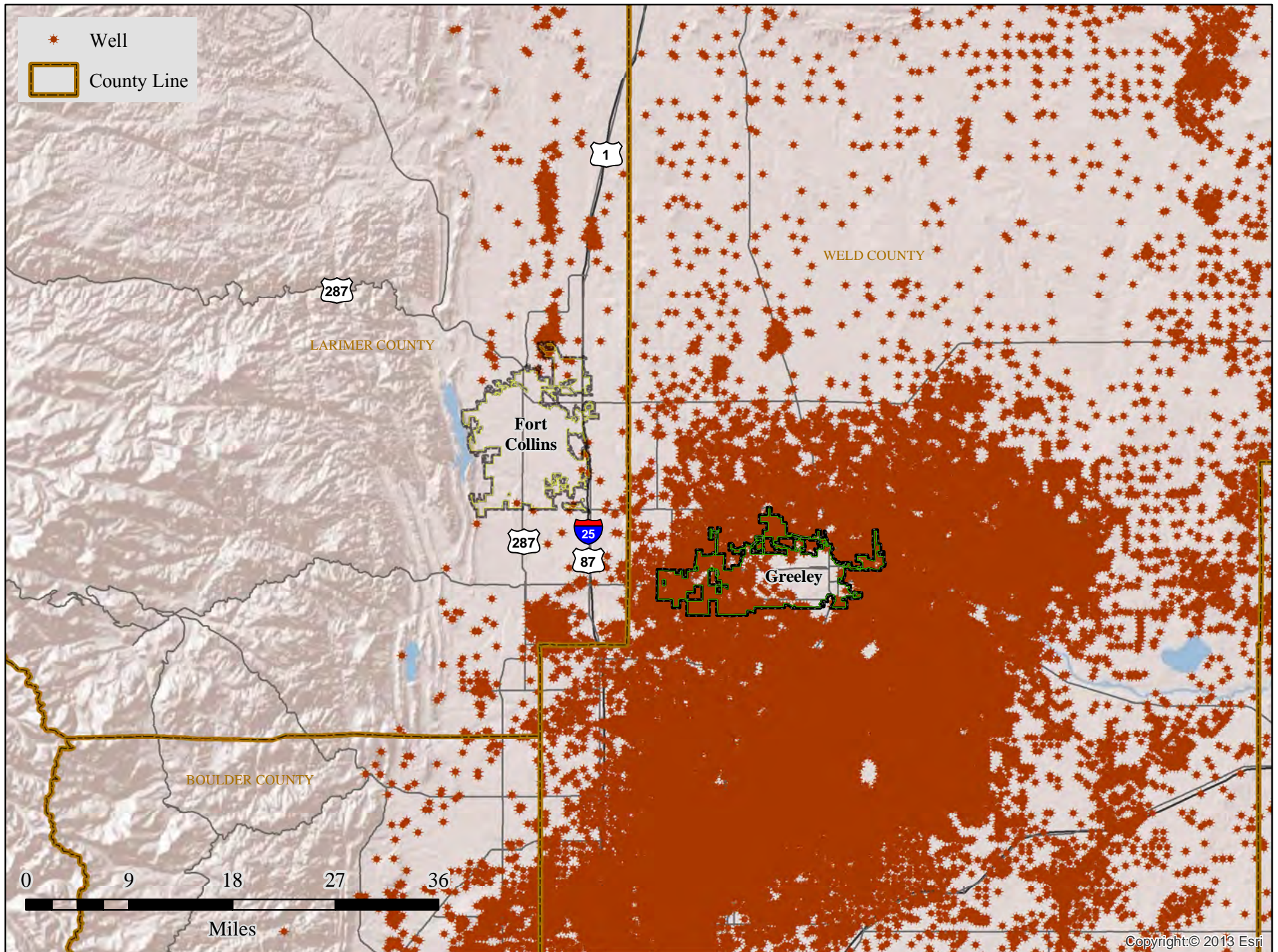
<b>EXH.#</b>	<b>DOCUMENT DESCRIPTION</b>	<b>PAGE #</b>
1	University of Colorado Law School, Intermountain Oil and Gas BMP Project Web Page, January 27, 2015.	1-3
2	National Association of Regional Councils Report – Local, Regional, and State Government Perspectives on Hydraulic Fracturing-Related Oil and Gas Development; Prepared By Samuel Gallaher, PhD Student at School of Public Affairs, University of Colorado Denver, Graduate Research Fellow at the Buechner Institute of Governance (excerpts), full report available at: <a href="http://narc.org/wp-content/uploads/Government-Perspectives-on-Oil-and-Gas-Development-Full-Report-2013-Gallaher.pdf">http://narc.org/wp-content/uploads/Government-Perspectives-on-Oil-and-Gas-Development-Full-Report-2013-Gallaher.pdf</a>	4-16
3	Energy Boomtown & Natural Gas: Implications for Marcellus Shale Local Governments & Rural Communities; NERCRD Rural Development Paper No. 43, 63 pp., Prepared by Jeffrey Jacquet, January 2009 (excerpts), full report available at: <a href="http://aese.psu.edu/nercrd/publications/rdp/rdp43">http://aese.psu.edu/nercrd/publications/rdp/rdp43</a>	17-22
4	Colorado Oil & Gas Association Rule 510 Statement, Prepared By Jamie L. Jost, Managing Shareholder at Jost & Shelton Energy Group, P.C., General Counsel for The Colorado Oil & Gas Association.	23-32
5	The Center for Science and Democracy at the Union of Concerned Scientists Report – Science, Democracy, and Fracking: A Guide for Community Residents and Policy Makers Facing Decisions Over Hydraulic Fracturing.	33-52
6	State of Colorado, Colorado Department of Public Health and Environment Letter Regarding Earth Guardians Request for Rulemaking, April 7, 2014.	53-54
7	Los Angeles Times Article: Message is mixed on Fracking, July 28, 2013.	55-58
8	Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 – Statement of Basis, Specific Statutory Authority, and Purpose Re New Rules and Amendments to Current Rules (2008 Amendments) (excerpts), full copy available at: <a href="http://cogcc.state.co.us/">http://cogcc.state.co.us/</a>	59-65

9	New York State Department of Health Study: A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, December 17, 2014 (excerpts), full report available at: <a href="http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf">http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf</a>	66-83
10	Physicians, Scientists and Engineers for Health/Energy: Impediments to Public Health Research on Shale (Tight) Oil and Gas Development, May 2013.	84-85
11	National Public Radio State Impact: Lifelong Gag Order Imposed on Two Kids in Fracking Case, By Susan Phillips, August 1, 2013.	86-88
12	Pro Publica: EPA's Abandoned Wyoming Fracking Study One Retreat of Many, By Abrahm Lustgarten, July 3, 2013.	89-92
13	Longmont Times Article: Most Oil, Gas Measures Die During Colorado Legislature's 2013 Session, By John Fryar, May 8, 2013.	93-95
14	National Public Radio Broadcast: Close Encounters With Gas Well Pollution; Host Broadcasters: Melissa Block and Robert Siegel, May 15, 2012	96-102
15	Health Impact Assessment for Battlement Mesa, Garfield County, Colorado, conducted by members of the faculty and staff of the Department of Environmental and Occupational Health, Colorado School of Public Health (CSPH), September 2010 (excerpts), full report available at: <a href="http://www.garfield-county.com/public-health/documents/1%20%20%20Complete%20HIA%20without%20Appendix%20D.pdf">http://www.garfield-county.com/public-health/documents/1%20%20%20Complete%20HIA%20without%20Appendix%20D.pdf</a>	103-122
16	U.S. Environmental Protection Agency News Release: EPA Releases Draft Findings of Pavillion, Wyoming Ground Water Investigation for Public Comment and Independent Scientific Review; EPA Contact Larry Jackson; December 8, 2011.	123-124
17	Pro Publica: EPA Finds Compound Used in Fracking in Wyoming Aquifer, By Abrahm Lustgarten, November 10, 2011.	125-126
18	U.S. Environmental Protection Agency Draft Report Regarding Pavillion, Wyoming Groundwater Investigation for Public Comment and Independent Scientific Peer Review, December 8, 2011; Contact Person Richard Mylott, Public Affairs.	127-135

19	Bloomberg BNA: EPA Says Wyoming to Complete Investigation Of Possible Contamination Near Pavillon, Wyoming, By Alan Kovski, June 21.	136-140
20	U.S. Environmental Protection Agency News Release: EPA Initiates Hydraulic Fracturing Study: Agency Seeks Input From Science Advisory Board, March 18, 2010; Contact Person Enesta Jones.	141
21	Pro Publica: EPA Wants to Look at Full Lifecycle of Fracking in New Study, By Nicholas Kusnetz, February 9, 2011.	142-143
22	U.S. Environmental Protection Agency: Power Point Slides Regarding EPA Study of Hydraulic Fracturing and Drinking Water Resources.	144-161
23	Akron Beacon Journal: Article Regarding EPA Study on Fracking Threat to Water Will Take Years, By Bob Downing, January 18, 2013.	162-164
24	Physicians, Scientists and Engineers for Health/Energy: Working Paper – Toward an Understanding of the Environmental and Public Health Impacts of Shale Gas Development: An Analysis of the Peer-Reviewed Scientific Literature, 2009-2014, By Jake Hays and Seth B.C. Shonkoff, January 2015.	165-184
25	Pro Publica Surveys Some Recent Research on Potential Health Implications of Hydro Fracking: Drilling for Certainty - The Latest in Fracking Health Studies, By Naveena Sadasivam, March 5, 2014.	185-188
26	Environmental Health Perspectives, Volume 123, Number 1, January 2015: Proximity to Natural Gas Wells and Reported Health Status-Results of a Household Survey in Washington County, Pennsylvania, By P. M. Rabinowitz, I. B. Slizovskiy, V. Lamers, S. J. Trufan, T. R. Holford, J. D. Dziura, P. N. Peduzzi, M. J. Kane, J. S. Reif, T. R. Weiss, and M. H. Stowe.	189-194
27	Environmental Health Perspectives, Volume 122, Issue 4, April 2014: Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, By L. M. McKenzie, R. Guo, R. Z. Witter, D. A. Savitz, L. S. Newman, and J. L. Adgate.	195-204
28	Physicians, Scientists and Engineers for Health/Energy Water Studies Summary: Surface and Groundwater Contamination Associated with Modern Natural Gas Development, October 2014.	205-206

29	University of Colorado Boulder: CU-Boulder Researchers Confirm Leaks From Front Range Oil and Gas Operations, May 7, 2014.	207-210
30	Colorado State University Report Regarding Characterizing Air Emissions from Natural Gas Drilling and Well Completion Operations, By Jeff Collett, Department of Atmospheric Science.	211-237
31	Rocky Mountain Mineral Law Foundation – Federal Onshore Oil & Gas Pooling & Unitization, Book 1; Mineral Law Series, Volume 2014, Number 4; Article on Pooling and Unitization: A History Perspective and an Introduction to Basic Vocabulary, By Bruce M. Kramer.	238-264
32	U.S. Energy Information Administration: North Dakota Aims to Reduce Natural Gas Flaring, Principal Contributors: Philip Budzik and Michael Ford, October 20, 2014.	265-266
33	National Center for Biotechnology Information Abstract: Impacts of Gas Drilling on Human and Animal Health, 2012.	267-268
34	Denver Business Journal: KC Fed: 50% of Energy Firms Planning Big Spending Cuts, Layoffs This Year, By Heather Draper, January 15, 2015.	269-270
35	The Scottish Government – News: Moratorium Called on Fracking, January 28, 2015.	271-273
36	Declaration of Ava Farouche (with maps).	274-278
37	Colo. Rev. Stat. §§ 34-60-102, 34-60-106.	279-288









*C.R.S. 34-60-102*

## COLORADO REVISED STATUTES

\* This document reflects changes current through all laws passed at the  
Second Regular Session of the Sixty-Ninth General Assembly  
of the State of Colorado (2014)  
and changes approved by the electorate at the November 2014 election \*

TITLE 34. MINERAL RESOURCES  
OIL AND NATURAL GAS  
ARTICLE 60.OIL AND GAS CONSERVATION

## C.R.S. 34-60-102 (2014)

## 34-60-102. Legislative declaration

(1) (a) It is declared to be in the public interest to:

(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources;

(II) Protect the public and private interests against waste in the production and utilization of oil and gas;

(III) Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and

(IV) Plan and manage oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources and the hunting, fishing, and recreation traditions they support, which are an important part of Colorado's economy and culture. Pursuant to section 33-1-101, C.R.S., it is the policy of the state of Colorado that wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.

(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production therefrom.

(2) It is further declared to be in the public interest to assure that producers and consumers of natural gas are afforded the protection and benefits of those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. 3301, and particularly that the oil and gas conservation commission, established by section 34-60-104, be empowered to exercise such powers and authorities as may be delegated to it by the laws or regulations of the United

States, including said "Natural Gas Policy Act of 1978", and, in the exercise of such powers and authorities, to make such rules and regulations and to execute such agreements and waivers as are reasonably required to implement such power and authority.

**HISTORY:** Source: L. 55: p. 656, § 10.CRS 53: § 100-6-22. C.R.S. 1963: § 100-6-22.L. 79: Entire section amended, p. 1319, § 1, effective February 16.L. 94: (1) amended, p. 1978, § 2, effective June 2.L. 2007: (1) amended, p. 1357, § 2, effective May 29; (1) amended, p. 1328, § 1, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 07-1341 and House Bill 07-1298 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 320, Session Laws of Colorado 2007.

#### ANNOTATION

Law reviews. For article, "Prorationing of Natural Gas Production: An Economic Analysis", see 57 U. Colo. L. Rev. 153 (1986). For comment, "The Battle Between the Colorado Oil and Gas Conservation Commission and Local Governments: A Call for a New and Comprehensive Approach", see 76 U. Colo. L. Rev. 561 (2005).

Colorado's public policy reflects federal public policy. The public policy of Colorado regarding the "price and allocation of natural gas" is the policy expressed by congress in the national gas policy act of 1978. *Superior Oil Co. v. Western Slope Gas Co.*, 549 F. Supp. 463 (D. Colo. 1982).

Including indefinite price escalation clauses. The general assembly apparently intended the entire national gas policy act of 1978, including the sections which allow indefinite price escalation clauses in existing intrastate contracts to operate "according to their terms", to exist as the public policy of Colorado. *Superior Oil Co. v. Western Slope Gas Co.*, 549 F. Supp. 463 (D. Colo. 1982).

Favored nations provision in long-term contract for purchase of intrastate gas was not contrary to public policy of Colorado. *Superior Oil Co. v. Western Slope Gas Co.*, 758 F.2d 500 (10th Cir. 1985).



[About LexisNexis](#) | [Privacy Policy](#) | [Terms & Conditions](#) | [Contact Us](#)

Copyright © 2015 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.



*C.R.S. 34-60-106*

## COLORADO REVISED STATUTES

\* This document reflects changes current through all laws passed at the  
Second Regular Session of the Sixty-Ninth General Assembly  
of the State of Colorado (2014)  
and changes approved by the electorate at the November 2014 election \*

TITLE 34. MINERAL RESOURCES  
OIL AND NATURAL GAS  
ARTICLE 60.OIL AND GAS CONSERVATION

## C.R.S. 34-60-106 (2014)

## 34-60-106. Additional powers of commission - rules

(1) The commission also has authority to require:

(a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, and structures;

(b) The making and filing with the commission of copies of well logs, directional surveys, and reports on well location, drilling, and production; except that logs of exploratory or wildcat wells marked "confidential" shall be kept confidential for six months after the filing thereof, unless the operator gives written permission to release such logs at an earlier date;

(c) The drilling, casing, operation, and plugging of seismic holes or exploratory wells in such manner as to prevent the escape of oil or gas from one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, salt water, or brackish water; and measures to prevent blowouts, explosions, cave-ins, seepage, and fires;

(d) (Deleted by amendment, L. 94, p. 1980, § 6, effective June 2, 1994.)

(e) That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state, for a period of five years, complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission, or its agents, at all reasonable times within said period and that every such person shall file with the commission such reasonable reports as it may prescribe with respect to such oil or gas or the products thereof;

(f) That no operations for the drilling of a well for oil and gas shall be commenced without first giving to the commission notice of intention to drill and without first obtaining a permit from the commission, under such rules and regulations as may be prescribed by the commission, and paying to the commission a filing and service fee to be established by the commission for the purpose of paying the expense of administering this article as provided in section 34-60-122, which fee may be transferable or refundable, at the option of the commission, if such permit is not used; but no such fee shall exceed two hundred dollars;

(g) That the production from wells be separated into gaseous and liquid hydrocarbons and that each be accurately measured by such means and standards as prescribed by the commission;

(h) The operation of wells with efficient gas-oil and water-oil ratios, the establishment of these

ratios, and the limitation of the production from wells with inefficient ratios;

(i) Certificates of clearance in connection with the transportation and delivery of oil and gas or any product; and

(j) Metering or other measuring of oil, gas, or product in pipelines, gathering systems, loading racks, refineries, or other places.

(2) The commission has the authority to regulate:

(a) The drilling, producing, and plugging of wells and all other operations for the production of oil or gas;

(b) The shooting and chemical treatment of wells;

(c) The spacing of wells; and

(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

(3) The commission also has the authority to:

(a) Limit the production of oil or gas, or both, from any pool or field for the prevention of waste, and to limit and to allocate the production from such pool or field among or between tracts of land having separate ownerships therein, on a fair and equitable basis so that each such tract will be permitted to produce no more than its just and equitable share from the pool and so as to prevent, insofar as is practicable, reasonably avoidable drainage from each such tract which is not equalized by counter-drainage; and

(b) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this article.

(3.5) The commission shall require the furnishing of reasonable security with the commission by lessees of land for the drilling of oil and gas wells, in instances in which the owner of the surface of lands so leased was not a party to such lease, to protect such owner from unreasonable crop losses or land damage from the use of the premises by said lessee. The commission shall require the furnishing of reasonable security with the commission, to restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with the owner of the surface of lands so leased.

(4) The grant of any specific power or authority to the commission shall not be construed in this article to be in derogation of any of the general powers and authority granted under this article.

(5) The commission shall also have power to make determinations, execute waivers and agreements, grant consent to delegations, and take other actions required or authorized for state agencies by those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., including the power to give written notice of administratively final determinations.

(6) The commission has the authority, as it deems necessary and convenient, to conduct any hearings or to make any determinations it is otherwise empowered to conduct or make by means of an appointed hearing officer, but recommended findings, determinations, or orders of any hearing officer shall not become final until adopted by the commission. Upon appointment

by the commission, a member of the commission may act as a hearing officer.

(7) The commission has the authority to establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. No such fees shall exceed two hundred dollars for any application, petition, or other pleading initiating a proceeding nor one hundred dollars for any protest or other responsive pleadings, and any party to any commission proceeding shall pay no more than one such fee for each proceeding in which it is a party. All such fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and shall be subject to appropriations by the general assembly for the purposes of this article.

(8) The commission shall prescribe special rules and regulations governing the exercise of functions delegated to or specified for it under the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., or such other laws or regulations of the United States which affect the price and allocation of natural gas and crude oil in accordance with the provisions of this article.

(9) Notwithstanding the provisions of section 34-60-120 or any other provision of law, the commission, as to class II injection wells defined in 40 CFR 144.6b, shall also have the power to perform all acts for the purpose of protecting underground sources of drinking water in accordance with state programs authorized by 42 U.S.C. sec. 300f et seq. and regulations thereunder in effect or as may be amended.

(10) The commission shall promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well; except that the commission shall not adopt such rules and regulations with regard to parties or requirements regulated under the federal "Occupational Safety and Health Act of 1970".

(11) (a) By July 16, 2008, the commission shall:

(I) (A) Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.

(B) Repealed.

(II) Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission's decision-making process. This rule-making shall be coordinated with the rule-making required in section 34-60-128 (3) (d) so that the timely and efficient procedure established pursuant to this subsection (11) is applicable to the department and to the division of parks and wildlife.

(b) (I) The general assembly shall review the rules promulgated pursuant to paragraph (a) of this subsection (11) acting by bill pursuant to section 24-4-103, C.R.S., and reserves the right to alter or repeal such rules.

(II) By January 1, 2008, the commission shall promulgate rules to ensure the accuracy of oil and gas production reporting by establishing standards for wellhead oil and gas measurement and reporting. At a minimum, the rules shall address engineering standards, heating value, specific gravity, pressure, temperature, meter certification and calibration, and methodology for sales reconciliation to wellhead meters. The rules shall be consistent with standards established by the American society for testing and materials, the American petroleum institute, the gas processors association, or other applicable standards-setting organizations, and shall not affect contractual rights or obligations.

(12) The commission, in consultation with the state agricultural commission and the



commissioner of agriculture, shall promulgate rules to ensure proper reclamation of the land and soil affected by oil and gas operations and to ensure the protection of the topsoil of said land during such operations.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling any obligation imposed under subsections (11), (12), and (17) of this section. For purposes of this subsection (13), references to "operator" shall include an operator of an underground natural gas storage cavern and an applicant for a certificate of closure under subsection (17) of this section. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net worth to guarantee performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section. Such guarantee and demonstration of net worth shall be annually reviewed by the commission.

(b) A certificate of general liability insurance in a form acceptable to the commission which names the state as an additional insured and which covers occurrences during the policy period of a nature relevant to an obligation imposed by rule under subsections (11), (12), and (17) of this section;

(c) A bond or other surety instrument;

(d) A letter of credit, certificate of deposit, or other financial instrument;

(e) An escrow account or sinking fund dedicated to the performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section;

(f) A lien or other security interest in real or personal property of the operator. Such lien or security interest shall be in a form and priority acceptable to the commission in its sole discretion and shall be reviewed annually by the commission.

(14) Before an operator commences operations for the drilling of any oil or gas well, such operator shall evidence its intention to conduct such operations by giving the surface owner written notice describing the expected date of commencement, the location of the well, and any associated roads and production facilities. Unless excepted by the commission due to exigent circumstances or waived by the surface owner, such notice of drilling shall be mailed or delivered to the surface owner not less than thirty days prior to the date of estimated commencement of operations with heavy equipment. The notice of drilling shall also be provided to the local government in whose jurisdiction the well is located if such local government has registered with the commission for receipt thereof.

(15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract; except that no such assignment shall allow for the imposition of any new tax or fee by the assignee in order to conduct such assigned inspection and monitoring, and no such assignment shall provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee. No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in this subsection (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.

(15.5) The commission shall use a risk-based strategy for inspecting oil and gas locations that targets the operational phases that are most likely to experience spills, excess emissions, and other types of violations and that prioritizes more in-depth inspections. The commission shall:

(a) Repealed.

(b) Implement the systematic risk-based strategy by July 1, 2014. The commission may use a pilot project to test the risk-based strategy.

(16) The commission has the authority to establish, charge, and collect fees for services it provides, including but not limited to the sale of computer disks and tapes.

(17) (a) The commission has exclusive authority to regulate the public health, safety, and welfare aspects, including protection of the environment, of the termination of operations and permanent closure, referred to in this subsection (17) collectively as "closure", of an underground natural gas storage cavern.

(b) No underground natural gas storage cavern may be closed unless the operator has secured a certificate of closure from the commission. The commission shall issue a certificate of closure if the applicant demonstrates that its closure plan protects public health, safety, and welfare, including protection of the environment.

(c) Before submitting its application, an applicant for a certificate of closure must, to the extent such owners are reasonably identifiable from public records, notify all owners of property, both surface and subsurface, occupied by and immediately adjacent to the underground natural gas storage cavern of the applicant's intent to submit a closure plan. "Immediately adjacent to" means contiguous to the boundaries of the underground natural gas storage cavern. The notice shall advise the owners of a location where a full copy of the closure plan may be inspected, that written comments may be submitted to the commission, and that they may participate in the public hearing required by this subsection (17). The applicant shall notify the owners of the date, time, and place of the public hearing. Contemporaneously with notifying the owners, the applicant shall send a copy of the notice to registered homeowners' associations that have submitted a written request for such notice prior to the filing of the application with the commission and the board of county commissioners in the county where the underground natural gas storage cavern is located.

(d) The commission shall provide the public with notice and an opportunity to comment on an application filed under this subsection (17) for a certificate of closure pursuant to the procedures set forth in section 34-60-108 (7). The applicant shall attend the public hearing and shall be available at other reasonable times as the director may request to respond to comments and questions.

(e) The director may consult with other state agencies possessing expertise in matters related to closure of underground natural gas storage caverns in the areas of the jurisdiction of such agencies, including, but not limited to, safety, environmental protection, public health, water resources, and geology. Agencies consulted under this subsection (17) may include, but are not limited to, the public utilities commission, the division of reclamation, mining, and safety, the Colorado geological survey, the division of water resources, and the department of public health and environment. Any agency consulted shall provide advice and assistance with respect to matters within its expertise.

(f) The commission may attach conditions to its certificate of closure, including requiring reasonable recovery of residual natural gas, if the commission determines that such conditions are technically feasible and necessary to ensure compliance with the requirements of this subsection (17), taking into consideration cost-effectiveness. If the closure application requires the abandonment of wells and reclamation of well sites associated with the underground natural gas storage cavern, the commission shall attach conditions to its certificate of closure requiring that such well abandonment and reclamation occur in a manner consistent with applicable commission rules.

(g) The commission may, subject to the limitations contained in paragraph (f) of this subsection (17), attach conditions to its certificate of closure requiring:

(I) Reasonable post-closure monitoring and site security at a closed underground natural gas storage cavern; and

(II) That the applicant for the certificate of closure will perform post-closure corrective actions consistent with this subsection (17), including, but not limited to, the limitations contained in paragraph (f) of this subsection (17) if any such post-closure monitoring establishes that the closure does not protect public health, safety, or welfare, including protection of the environment.

(h) The commission shall require that the applicant for a certificate of closure provide reasonable assurance that it is financially capable of fulfilling any obligation imposed under this subsection (17) including, but not limited to, post-closure corrective action required by paragraph (g) of this subsection (17), in accordance with subsection (13) of this section.

(i) The applicant for a certificate of closure under this subsection (17) shall reimburse the commission's reasonable and necessary costs of reviewing and acting on the application. Such reimbursement shall include:

(I) Reimbursement to the commission, its staff, and any agencies consulted under this subsection (17) for the reasonable cost of the time required to review the application, at a rate commensurate with the hourly compensation of the staff employee performing the actual work, but not to exceed the hourly compensation of the highest paid commission staff employee, based on the employee's annual salary divided by two thousand eighty hours; and

(II) Reimbursement of the reasonable cost to the commission of hiring one or more private consultants to review the application and provide advice to the commission as a result of such review, if the applicant consents in writing to the scope and expected range of costs of the activities to be undertaken by each such private consultant. If the commission and applicant cannot agree on the scope or expected range of costs and if the commission determines a private consultant is necessary in the review of the application, then the commission may hire a private consultant at its own expense.

**HISTORY:** Source: L. 51: p. 660, § 11.CSA: C. 118, § 68(11).CRS 53: § 100-6-15.L. 55: p. 654, § 8. C.R.S. 1963: § 100-6-15.L. 64: p. 509, § 1.L. 73: p. 1071, § 1.L. 77: (3.5) added, p. 1565, § 1, effective July 1.L. 79: (5) to (8) added, p. 1320, § 2, February 16.L. 81: (9) added, p. 1339, § 4, effective July 1; (9) amended, p. 2034, § 53, effective July 14.L. 85: (10) and (11) added, p. 1129, § 1, effective July 1.L. 86: (12) added, p. 1073, § 1, effective April 3.L. 91: (1)(f) and (9) amended, p. 1415, § 3, effective April 19.L. 94: (1)(d), (2)(d), (11), and (12) amended and (13), (14), (15), and (16) added, p. 1980, § 6, effective June 2.L. 96: (15) amended, p. 346, § 1, effective April 17.L. 2001: IP(13), (13)(a), (13)(b), and (13)(e) amended and (17) added, pp. 1303, 1304, § § 2, 3, effective June 5; (14) amended, p. 491, § 6, effective July 1.L. 2005: (7) amended, p. 733, § 3, effective July 1.L. 2006: (17)(e) amended, p. 218, § 16, effective August 7.L. 2007: (2)(d) and (11) amended, pp. 1358, 1359, § § 4, 6, effective May 29; (11) amended, p. 1344, § 1, effective May 29.L. 2008: IP(11)(a), (11)(a)(II), and (11)(b)(I) amended, p. 1033, § 1, effective May 21; (11)(a)(II) amended, p. 1912, § 122, effective August 5.L. 2013: (15.5) added, (SB 13-202), ch. 274, p. 1437, § 2, effective May 24.

Editor's note: (1) Amendments to subsection (11)(a)(II) by House Bill 08-1379 and House Bill 08-1412 were harmonized.

(2) Subsection (11)(a)(I)(B) provided for the repeal of subsection (11)(a)(I)(B), effective July



1, 2010. (See L. 2007, p. 1359.)

(3) Subsection (15.5)(a)(II) provided for the repeal of subsection (15.5)(a), effective September 1, 2014. (See L. 2013, p. 1437.)

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsections (1)(d), (2)(d), (11), and (12) and enacting subsections (13), (14), (15), and (16), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsections (2)(d) and (11), see section 1 of chapter 320, Session Laws of Colorado 2007. For the legislative declaration in the 2013 act adding subsection (15.5), see section 1 of chapter 274, Session Laws of Colorado 2013.

(2) For the federal "Occupational Safety and Health Act of 1970", see 29 U.S.C. 651 et seq.

#### ANNOTATION

Law reviews. For article, "State Law as a Limit on Local Regulation of the Mineral Industry", see 15 Colo. Law. 1657 (1986). For article, "Accommodation Between Surface Development and Oil and Gas Drilling", see 24 Colo. Law. 1323 (1995).

Board of county commissioners lacked authority to deny application for permit to drill exploratory oil well on basis that applicant refused to meet board's conditions since those conditions covered subjects under exclusive regulatory authority of state oil and gas conservation commission. *Oborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989) (decided under law in effect prior to 1986 amendment).

Plaintiff had standing to seek declaratory judgment where allegations in complaint, along with other evidence on issue of standing, established that regulatory scheme threatened to cause injury to the plaintiff's present or imminent activities. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

The Oil and Gas Conservation Act does not expressly or impliedly preempt any and all aspects of a county's authority to enact land-use regulations applicable to oil and gas development and operational activities within the county; although, to the extent that operational conflicts might exist, the county regulations must yield to the state interest. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992); *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

County regulation requiring oil and gas operators to keep records open for inspection by the county was preempted by this section, which excludes the county by omission as an entity authorized to inspect records under subsection (1)(e). *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

County regulations pertaining to matters mentioned in this section are not necessarily preempted. The trial court erred in holding such regulations facially invalid and, instead, should have conducted an evidentiary hearing to determine whether the county regulations created an operational conflict with state law. *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

Federal law does not preempt state or local regulation of oil and gas operations. *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

State's interest in efficient oil and gas development and production as manifested in the Oil and Gas Conservation Act preempts a home-rule city from totally excluding all drilling operations within city limits. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

While the Oil and Gas Conservation Act does not totally preempt a home-rule city's exercise of land-use authority over oil and gas development and operations within the territorial limits of the city, the statewide interest in the efficient development and production of oil and gas resources in a manner calculated to prevent waste, as well as in protecting the correlative rights of owners and producers in a common pool or source to a just and equitable share of the profits of production, prevents a home-rule city from exercising its land-use authority so as to totally ban the drilling of oil, gas, or hydrocarbon wells within the city. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

Both the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations and the imposition of penalties, safety regulations, and land restoration requirements that are contrary to those required by state law are preempted due to operational conflict with state law; however, the local land use permit requirement does not conflict with state law, as it merely delays but does not prevent oil and gas development, and is explicitly contemplated by statute. *Town of Frederick v. N. Am. Res. Co.*, 60 P.3d 758 (Colo. App. 2002).

Because the safety and security of oil and gas facilities are subject to regulation by the commission under subsection (11)(a)(II), the plain language of subsection (15) prohibits a municipality from imposing a fee to conduct safety and security inspections at oil and gas facilities. *Town of Milliken v. Kerr-McGee Oil & Gas Onshore LP*, 2013 COA 72, -- P.3d --.

Commission's regulation that states that permits to drill shall be binding with respect to "any conflicting local governmental permit or land use approval process" is overly broad and void where it conflicts with law providing that oil and gas rules preempt county regulations only when the operational effect of the county regulations conflicts with the application of the state oil and gas statute or state regulations. *Bd. of County Comm'rs v. Colo. Oil & Gas Conservation Comm'n*, 81 P.3d 1119 (Colo. App. 2003).

Rule that precludes nongovernmental third parties from requesting hearings on permit applications is within commission's authority under subsection (1)(f). *Colo. Oil & Gas v. Grand Valley Citizens'*, 2012 CO 52, 279 P.3d 646.

Applied in *Gillespie v. Simpson*, 41 Colo. App. 577, 588 P.2d 890 (1978).