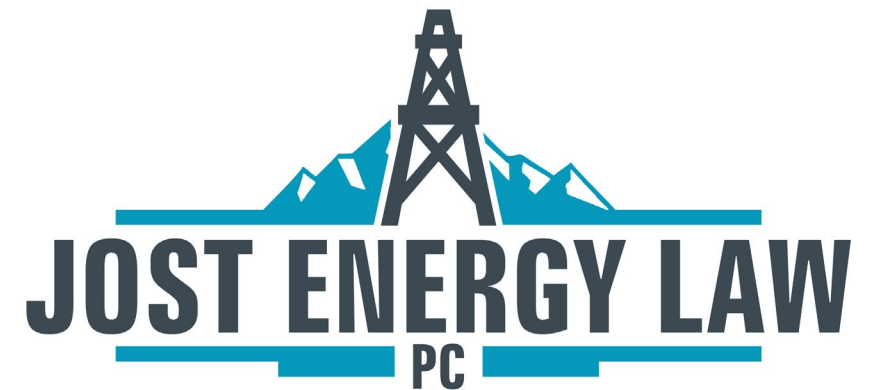


# Understanding the Requirements for Cumulative Impacts & Enhanced Systems and Practices in Colorado

**Kelsey Wasylenky**

**January 16, 2025**



**Q1 2025 RMEHSPG Meeting**

# January 16, 2025 Agenda

- Background
- 2024 Legislative Session
- Overview of Adopted Cumulative Impacts & Enhanced Systems & Practices Rules
  - Definitions
  - 200-Series
  - 300-Series
  - 600-Series
- Q&A

# March 2023: Governor Polis Directive

On March 16, 2023 Gov. Polis issued a letter to the CDPHE and the ECMC directing them to establish future rulemakings to do three things:

1. Reduce NOx emissions from upstream producers in the non-attainment area by 30 percent by 2025, and 50 percent by 2030;
2. Establish voluntary best practices for operations during high ozone days; and
3. Establish an “environmental best practices” approach to incentivize and reward operators who demonstrate industry-leading environmental performance.

# June 2023: HB23-1294

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- On June 6, 2023, the Governor signed into law House Bill 23-1294, which emphasized the importance of the need to address the impact of oil and gas operations on Colorado's ozone problem, and specifically the **cumulative impacts on disproportionately impacted communities**.
- House Bill 23-1294 directed the Commission to “promulgate rules that evaluate and address the cumulative impacts of oil and gas operations” by **April 28, 2024**.
- House Bill 23-1294 also required the Commission to promulgate a definition of cumulative impacts by Rule.
- The Governor’s signing statement explains that the statutory term “addressable impacts” is intended to ensure the Commission is acting within its authority as provided by the Colorado Oil and Gas Conservation Act (“Act”) when making determinations on where and how to avoid, minimize, and mitigate potential impacts.
- The signing statement also clarified that in the Commission’s efforts to address “foreseeable” impacts from “sources that are controlled or owned by the operator,” such analyses should include any non-road engines contracted for services and used as part of an oil and gas location.



# 2024 Legislative Session

- On January 10, 2024 the 75<sup>th</sup> General Assembly kicked off a 120-day Legislative Session
- Several oil and gas “ban” bills failed

# HB 24-1346: Signed 05/21/2024

- Finalizes the necessary requirements for the ECMC to conduct a rulemaking on **Geological Storage** which is defined to include the injection of carbon dioxide in a **Class IV well**.
- Directs the ECMC to conduct a **Cumulative Impacts Rulemaking by September 30, 2024**, and defines Cumulative Impacts and terms associated with Cumulative Impacts including Impact Area, Impacts to Climate and Reasonably Foreseeable Future Development.
  - “Cumulative Impacts” means the effects on public health and the environment, including impacts to air quality, water quality, climate, noise, odor, wildlife, and biological resources, caused by the incremental impacts that a proposed new or amended operation regulated by the Commission pursuant to this Article 60 would have when added to the impacts from other past, present, and reasonably foreseeable future development of any type on the impact area or on a disproportionately impacted community.”
- Authorizes the ECMC to hire or utilize employees as Administrative Law Judges to conduct hearings.
- Defines the ownership of the pore space for the injection, storage and sequestration of carbon dioxide.
- Authorizes the ECMC to provide technical assistance to local governments to assist them with land use and siting regulations for Geological Storage Projects.
- Directs ECMC and CDPHE to work together to develop accounting procedures for Geological Storage Projects and address Air Emissions Issues associated with these projects.

SB 24-229:  
Signed  
05/17/2024

- By August 31, 2026, the CDPHE must promulgate rules to reduce NOx emission from upstream oil and gas activities in the Non-attainment Area from May 1 to September 30 of each year by **50% by 2030** from the 2017 baseline.
- Directs the CDPHE to conduct and publish by December 31, 2024, an Air Quality Enforcement Benchmark Report with data gathered from between October 1, 2019, to September 30, 2023.
- Beginning April 1, 2025, CDPHE must prepare and publish an annual Air Quality Enforcement Report with the first data set being from October 1, 2023, through September 30, 2024.
- Increases penalties that CDPHE can levy for violations.
- **Authorizes the ECMC to appoint two community liaisons for disproportionately impacts communities to act as the liaison between the DIC and the Commission.**
- Creates a new License to Operate at the ECMC
- **Directs the ECMC to conduct a rulemaking by September 30, 2024, to adopt a list of Enhanced Systems and Practices for proposed oil and gas locations.**
- Addresses suspending and revoking an operator's license by the ECMC and potential monetary fines.
- Allows the ECMC to issue an immediate cease-and-desist order if circumstances cause or threaten to cause significant adverse impacts to Public Health, Safety, Welfare, the Environment or Wildlife Resources.
- Expands the Orphan Well Mitigation Enterprise Fund to allow the ECMC to address Marginal Wells.

# ECMC Cumulative Impacts Rulemaking

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- The 2021 Mission Change Rules first required the evaluation of cumulative impacts.
- Rule 904 requires the Commission to report data gathered in the Cumulative Impacts Data Evaluation Repository (“CIDER”), submitted with an OGD Form 2B.
- Rule 904 requires that the Director provide an annual report to the Commission compiled with data from all OGDs approved during the prior calendar year.
- On January 20, 2023, Commissioner Ackerman announced the “Cumulative Impacts Stakeholder Process” consisting of several listening sessions from January to February 2023 to define a general scope of recommendations, followed by a technical evaluation and implementation which may include recommendations for Rulemaking, policies, agency agreements or other approaches



# ECMC Cumulative Impacts Rulemaking

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- On February 8, 2024, the ECMC formally noticed the Cumulative Impacts Rulemaking for Hearing on April 22-26, 2024
- ECMC proposed rules: new Definitions, introduction of a Community Liaison, expanded pre-Application consultation, new Form 2D Emissions Intensity Assessment (for NO<sub>x</sub> and GHG Intensity Targets), expanded Cumulative Impacts Plan analysis, expanded OGDG Consultation, new permit expiration criteria (3-year drilling obligation), and restricted operations in the ozone nonattainment area during ozone season
  - Demonstration of NO<sub>x</sub> Intensity Target Status for OGDGs in nonattainment between May 1 and September 30
  - Director review of Operator request to conduct operations within the nonattainment area between May 1 and September 30
  - Compliance with AQCC Reg 7 BMPs in nonattainment area between May 1 and September 30
  - Demonstration of GHG Intensity Target Status in OGDGs (use as a denial criteria for OGDGs)

# ECMC Cumulative Impacts Rulemaking

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- On April 9, 2024, the Rulemaking Hearing was continued for legislative definition
- HB 24-1346 expanded the definition of Cumulative Impacts, added a directive to include Enhanced Systems and Practices in the Non-Attainment Area, and set a new deadline for rulemaking to be completed by September 30, 2024
- ECMC Staff released an initial set of draft rules in June 2024, and a second set in August 2024
- Rulemaking started September 3, 2024 and **adopted October 15, 2024**
- **Effective Date: December 15, 2024**

# 100 Series – Definitions

- **AREA OF EVALUATION** means a defined geographic area or areas in which operations regulated by the Commission pursuant to the Act have the potential to contribute to Cumulative Impacts. The Commission will determine the Area of Evaluation for a particular proposed operation based on the nature, intensity, and scope of the operation in its proposed location and the geographic extent of potential impacts.
- **BIOLOGICAL RESOURCES** means all invertebrates and rare plants, and their aquatic and terrestrial habitats, including components of those habitats necessary and reasonable to promote self-sustaining populations.
- **ENHANCED SYSTEMS AND PRACTICES (ESPs)** means equipment, methods, or other operational techniques that are designed to avoid, minimize, and mitigate emissions of ozone precursors from Oil and Gas Operations.
- **INDUSTRIAL FACILITY** means a facility that conducts industrial or manufacturing operations.
- **REASONABLY FORESEEABLE FUTURE DEVELOPMENT** means development that has not yet been undertaken for which an applicable local, state, or federal agency has received an application or issued a permit. Future Development is Reasonably Foreseeable only if information related to the permit is publicly available.

# 100 Series - Definitions

- **COMMUNITY LIAISON** means a member of the Director's staff dedicated as a resource for Disproportionately Impacted Communities regarding Commission regulation.
- **COLORADO ENVIROSCREEN** means the Colorado Department of Public Health and Environment's interactive environmental justice mapping tool. Only Colorado EnviroScreen Version 1.0, in effect as of December 15, 2024, applies; later amendments do not apply. Colorado EnviroScreen may be examined at Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and is available online at <https://cdphe.colorado.gov/enviroscreen>.
- **DISPROPORTIONATELY IMPACTED COMMUNITY** means those communities and census block groups that meet the definition in § 24-4- 109(2)(b)(II), C.R.S. (2024).

# 100 Series - Definitions

- **GREENHOUSE GAS INTENSITY TARGETS** means the greenhouse gas intensity targets for Oil and Gas Operations established in AQCC Regulation No. 7, Control of Emissions from Oil and Gas Operations, 5 C.C.R. §§ 1001-9:B.VIII.B & C (hereinafter “AQCC Regulation No. 7 GHG Intensity Targets”). Only the version of the AQCC Regulation No. 7 GHG Intensity Targets in effect as of December 15, 2024 applies; later versions do not apply...
- **NO<sub>x</sub> INTENSITY TARGET** means the NO<sub>x</sub> intensity targets for Oil and Gas Operations established in AQCC Regulation No. 7, Control of Emissions from Oil and Gas Operations, 5 C.C.R. § 1001-9:B.VI.E.2 (hereinafter “AQCC Regulation No. 7 NO<sub>x</sub> Intensity Target”). Only the version of the AQCC Regulation No. 7 NO<sub>x</sub> Intensity Target in effect as of December 15, 2024 applies; later versions do not apply...
- **IMPACTS TO CLIMATE** means the quantification of emissions of greenhouse gases, as defined in § 25- 7-140(6), C.R.S. (2024), that occur from sources that are **controlled or owned by the Operator and reasonably foreseeable truck traffic**, as well as reductions in greenhouse gas emissions, associated with the proposed operation.
- **OZONE NONATTAINMENT AREA** means the 8-Hour Ozone Control Area, Denver 1-Hour Ozone Attainment/Maintenance Area, and Northern Weld County, as defined in AQCC Regulation No. 7, Control of Emissions from Oil and Gas Operations, 5 C.C.R. § 1001-9:A.II.A.1–3 (hereinafter (“AQCC Regulation No. 7 Ozone Area Definitions”). Only the version of the AQCC Regulation No. 7 Ozone Area Definitions in effect as of December 15, 2024 applies; later versions do not apply.

# 200 Series - Rule Changes

- Adoption of two Community Liaison Roles within ECMC
- Purpose: Serves as a dedicated resource for DICs regarding Commission regulations
- Duties:
  - Serve as an advocate for DICs in a nonlegal capacity
  - Be invited by the Director to attend all pre-application consultations for OGDPs with Operations proposed within a DIC
  - Review Community Outreach Plans and providing feedback to the Director and DIC members
  - Provide DIC members with relevant information regarding third-party resources – including legal representation
  - Work to improve the relationships and interactions between DIC and the ECMC
  - Assist DIC members by connecting them with resources and information regarding the ECMC’s complaint process and facilitating outreach regarding complaints to Operators and the Director
  - Act as a resource for sharing information between the ECMC and DIC
  - Engage in outreach to DICs and organizing and attending in-person meetings within DIC members
  - Assist DIC members in understanding and accessing resources related to community benefit agreements
  - Providing to the Director, for inclusion in the Director’s Recommendation, a written review of the Operator’s efforts to engage DIC members and the perspectives of the DIC members regarding the Operations proposed in the OGD
- Timing of Hiring: Recruitment begins no later than December 31, 2024; Director must report monthly on recruitment starting December 4, 2024

# 300 Series Rule Changes

## **300 Series houses the most changes in the Cumulative Impacts Rulemaking**

- Rule 301 Coordination with Local Governments and Federal Agencies; Pre-Application Meetings
- Rule 302 Local Government Siting Information
- Rule 303 OGDPA Requirements; Expanded Public Comment Period and Completeness Notice Footage
- Rule 304 Form 2A Requirements; Expanded ALA Footage and Mandatory CIA; Modified Community Outreach Plan
- Rule 306 & 307 Director and ECMC must address NOx and GHG Intensity Target Compliance in Recommendation and Orders; Mandates timing for Director Recommendation
- Rule 308 Modified timing of APD submissions
- Rule 309 Post Completeness Consultation and Community Meeting
- Rule 312 Subsequent Operations – Possible updated Cumulative Impacts Analysis required
- Rule 314 Comprehensive Area Plan – Pre-Application ECMC & Community meetings, new Form 2F, NOx and GHG details
- Rule 315 Cumulative Impacts Data and Analysis – CIDER data rules & Expanded Cumulative Impacts Analysis (NEW)
- Rule 316 Requirements for Oil and Gas Operations in Ozone Non-Attainment Area, new Form 2D & ESPs (NEW)

# OGDP Pre-Application Meeting

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- Required for all OGDPs
- ECMC Guidance released December 13, 2024 with Pre-App Meeting Request Form, Additional Location Information Form, Additional ALA Sheet & Pre-App Meeting Summary Guidance

## *Pre-Application Meeting Request Form*

3. Please submit the following documents with the Pre-Application Meeting Request Forms:
  - a. At least one\* OGDP or CAP overview map showing:
    - i. All locations
    - ii. Off-location flowlines
    - iii. Drilling and Spacing Unit
    - iv. Haul Route
  - b. At least one\* map per location showing:
    - i. Surface water features/hydrology
    - ii. Wildlife Habitats
    - iii. Residential Building Units, High Occupancy Building Units, School Facilities, and Childcare Facilities
    - iv. Disproportionately Impacted Communities, if present within the Area of Evaluation
  - c. If an Alternative Location Analysis (ALA) is required, at least one\* map per location requiring an ALA showing:
    - i. All alternative locations
    - ii. Surface water features/hydrology
    - iii. Wildlife Habitats
    - iv. Residential Building Units, High Occupancy Building Units, School Facilities, and Childcare Facilities
    - v. Disproportionately Impacted Communities, if present within the Area of Evaluation



# OGDP Pre-Application Community Meeting

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- Required if the proposed Location(s) are:
  - Within **½ mile** of a RBU, HOBUS, School Facility, Childcare Center NOT in a DIC
  - Within **4,000'** of a RBU, HOBUS, School Facility, Childcare Center WITHIN in a DIC and must include the Community Liaison
- Community Meeting must occur no less than 30-days prior to filing



# OGDP Public Comment

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When an OGDP reaches Completeness, the Public Comment Period is as follows:

- **60-days** if RBU, HOBUE, School Facility and/or Child Care Center is within 4,000' of the Working Pad Surface WITHIN a DIC
- **45-days** if RBU, HOBUE, School Facility and/or Child Care Center is within ½ mile of the Working Pad Surface OUTSIDE of a DIC; or the Working Pad Surface is within a DIC
- **30-days** for all other proposed Locations



# Modified ALA Triggers

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10 ALA triggers still remain, 3 are modified:

- i. The proposed Working Pad Surface is within  $\frac{1}{2}$  **mile** of 1 or more Residential Building Units or High Occupancy Building Units;
- ii. The proposed Working Pad Surface is less than  $\frac{1}{2}$  **mile** from a School Facility or Child Care Center;
- x. The proposed Working Pad Surface is within **1 mile** of a Residential Building Unit, High Occupancy Building Unit, School Facility, or Child Care Center located within a Disproportionately Impacted Community

Contents of ALA also include:

- Major Transportation Corridors and HPH within 2,000' of proposed OGL
- For Locations proposed within 1-mile of DIC, description of community outreach efforts and analysis of existing Wells/Locations
- Cumulative Impacts analysis for proposed Location

# Community Outreach Plan

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- Required for Oil and Gas Locations with a Working Pad Surface proposed within **½ mile** of a Residential Building Unit, High Occupancy Building Unit, or School Facility, or Child Care Center, or within **1 mile** of a Building Unit or High Occupancy Building Unit located **within a DIC**, the Operator will submit a consultation, outreach, and engagement plan.
- If a Working Pad Surface is proposed within **1 mile** of a Building Unit or High Occupancy Building Unit located within a DIC, the Operator will consult with the Community Liaison while developing the community outreach plan to identify local community organizations representative of the potentially impacted communities. If the Community Liaison identifies such local community organizations, the Operator will coordinate with such organization(s) to distribute necessary and relevant notice and information to the community.

# NOx/GHG Intensity Targets

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- Rule 306: Director may recommend approval of OGDG if in the Director's judgment, protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and shows that the Operator has demonstrated an **ability to comply with its NOx Intensity and GHG Intensity Targets**, where applicable.
  - Director may recommend COAs related to compliance with NOx Intensity and GHG Intensity Targets
  - Director may recommend denial If the Director determines that an application does not provide necessary and reasonable protections for, or minimize adverse impacts to, public health, safety, welfare, the environment, and wildlife resources, or the Operator has not demonstrated an ability to comply with its NOx Intensity or Greenhouse Gas Intensity Targets, where applicable, or fails to meet the requirements of the Commission's Rules
  - Director's Recommendation must be issued: 14 days prior to OGDG hearing or 30 days if Preliminary Siting Approval OGDG within CAP
- Rule 307: Commission may approve or deny OGDG, but must make a finding of whether the Operator has or has not demonstrated its ability to comply with its NOx Intensity or Greenhouse Gas Intensity Targets, where applicable.

# Drilling Permits

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- An Operator may submit a Form 2, Application for Permit to Drill, if: 1) the Director recommends approval of the Operator's Oil and Gas Development Plan; or 2) the Operator's Form 2A and Drilling and Spacing Unit, where applicable, are approved and the Oil and Gas Location is in compliance with Rule 1003 (reclamation).
- The Director will review the Oil and Gas Location where the Well is located to ensure that necessary and reasonable conditions of approval are applied to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
- The Director *may* require: additional BMPs, a Cumulative Impacts Analysis and/or a Form 2B if *necessary* to evaluate and ensure protection, including when:
  - The Form 2A for the Location was approved prior to January 15, 2021;
  - The expiration date on the Form 2A has passed;
  - Land use surrounding the Location has changed significantly
  - Evaluation of Cumulative Impacts is necessary

# Post-Completeness Requirements

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- Post Completeness Community Meeting: if any RBU or HOBUs, School Facilities, or Child Care Centers are located within **½ mile** of the Oil and Gas Location, or if any RBU, HOBUs, School Facilities, or Child Care Centers within a DIC are located within **4,000 feet** of the proposed Oil and Gas Location, the Operator will hold a post-completeness community meeting.
- Operator will provide notice of the post-completeness community meeting to all Surface Owners, Building Unit and HOBUs owners and tenants, and residents, including tenants of both residential and commercial properties, within **½ mile** of a proposed Oil and Gas Location, and within **4,000 feet** of a proposed Oil and Gas Location for any RBUs within a DIC.
- CDPHE consultation will be requested if Working Pad Surface within **½ mile** outside of DIC or **1-mile** within DIC of a residence; or the Operator proposes an Oil and Gas Location within the Ozone Nonattainment Area and intends to conduct pre-production operations between **May 1 and September 30**

# Rule 315 – CIDER & Cumulative Impacts Analysis

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- CIA required for any proposed Oil and Gas Location pursuant to Rule 304.b.(2) (ALA applies); a Form 2 identified pursuant to Rule 308.c.(2).B (older Form 2A, change in land use); subsequent operations on existing wells pursuant to Rule 312.d.(3); and other matters where the Director determines that a Cumulative Impacts analysis is *necessary and reasonable* to protect public health, safety, welfare, the environment, or wildlife resources, or address Cumulative Impacts.
- Area of Evaluation = 2.5-miles for water; 1-mile default for all other resources
  - Operators may request a contracted Area of Evaluation (West Slope)
- Includes impacts from other past, present and Reasonably Foreseeable Development; measures to Avoid-Minimize-Mitigate; EnviroScreen analysis for proposed Location within 2,000' of resident in a DIC; plain language summary



# Rule 316 – Ozone Nonattainment Area

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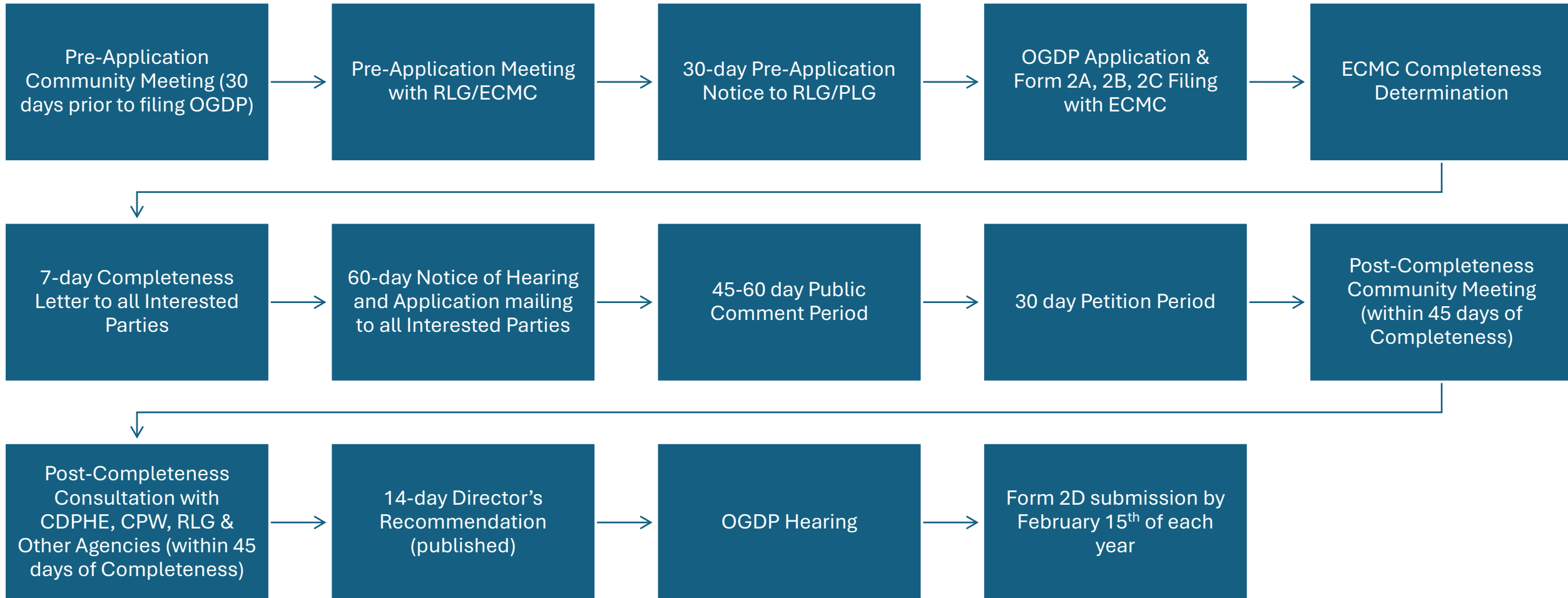
- Each Oil and Gas Development Plan application that seeks approval to conduct pre-production operations in the Ozone Nonattainment Area between **May 1 and September 30** will provide additional information regarding NOx intensity target status on a Form 2B.
- Any Oil and Gas Development Plan application that seeks approval to conduct pre-production operations in the Ozone Nonattainment Area between **May 1 and September 30** must be submitted no later than December 31 of the year prior to the proposed pre-production operations.
- All Operators who conduct, or seek to conduct, Oil and Gas Operations within the Ozone Nonattainment Area will file a Form 2D, Emissions Intensity Assessment, by **February 15, 2025**, and no later than February 15 of each year thereafter

# Rule 316 – Enhanced Systems & Practices

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- The requirements set forth in Rules **316.c.(2)-(3)** will apply to all **new** Oil and Gas Locations within the Ozone Nonattainment Area for which a Form 2A is submitted pursuant to Rule 304.a.(1) on or after **January 1, 2025**.
- The requirements set forth in Rule **316.c.(4)** will apply to all **new** construction of an Oil and Gas Location within the Ozone Nonattainment Area that occurs after **January 1, 2026** for any Form 2A approved after the effective date of these Rules.
  - 316.c.(2): Operators will use drilling rig and completions technology as set forth in AQCC Regulation No. 7 Part B.VI.E.1.
  - 316.c.(3): lists year-round ESPs & Ozone Season ESPs (unless in a DIC)
  - 316.c.(4): lists ESPs for Locations in a DIC and outside of a DIC; some are “where practicable” such as grid power for drilling rig

# OGDP Permitting Process Flowchart – General Overview



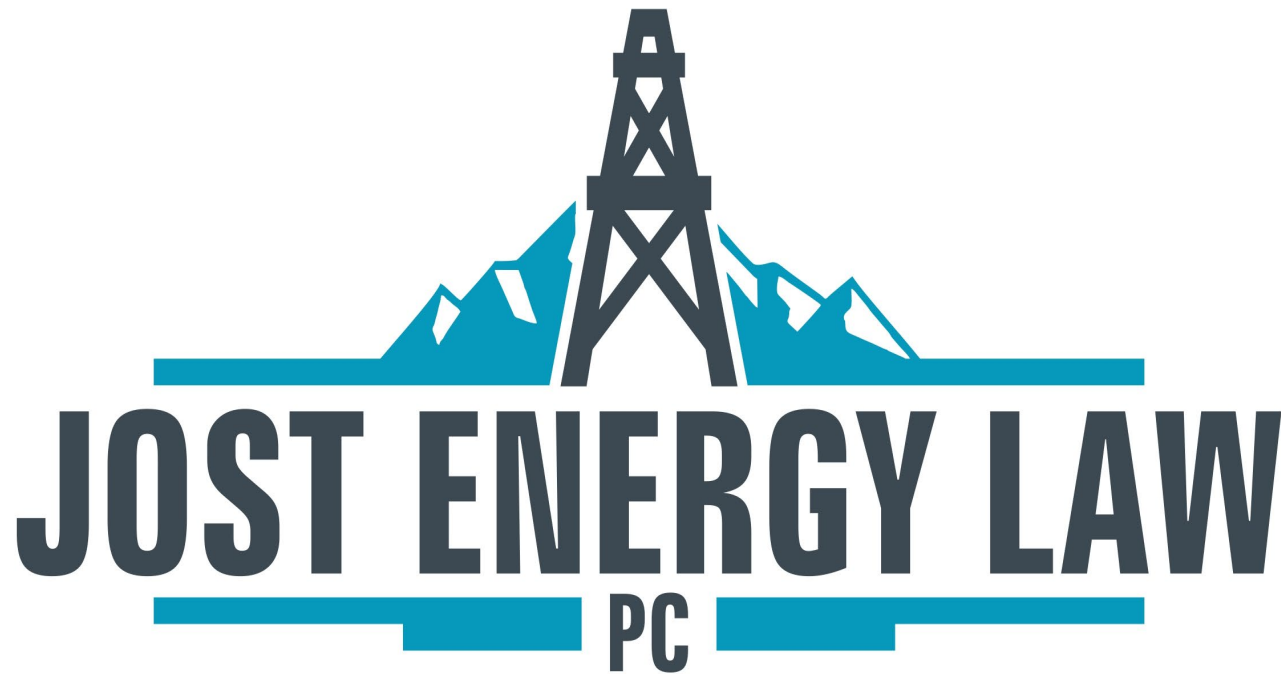
# 600 Series Rule Changes

- Rule 604 Siting within 2,000' of an RBU still prohibited unless 1 of 4 exceptions met
- Rule 604 Without informed consent, preliminary siting in a CAP or equipment outside of 2,000', still need to show substantial equivalence
- Rule 604 NEW Rule 604.b.(4)B applies in a DIC – before finding substantial equivalence, must meet. 4 new threshold requirements on efforts to obtain informed consent, ALA, analysis of EnviroScreen score, and the avoid-minimize-mitigate hierarchy
- Rule 604 If the Commissioners find that the Operator has met each of the four threshold items in 604.b.(4).B.i., then it will review the additional information provided by Operator with its OGD Application – including outreach, comments, community benefit agreements
- Rule 604 As part of the notice of hearing required pursuant to Rules 504.a.(1).A and 303.e.(1).B, the Operator will provide any non-consenting owner or tenant of a Residential Building Unit or High Occupancy Building Unit within 2,000 feet of the Working Pad Surface the contact information for the operator and information about the OGD process and participation



Q&A

# Thank you!



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