



COLORADO

Oil & Gas Conservation Commission

Hearings and Applications Process Guidebook

Created October 13, 2019

INTRODUCTION

The Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”) is an administrative agency responsible for implementing the Colorado Oil and Gas Conservation Act, § 34-60-101, C.R.S. *et seq.*, as amended (the “Act”). The mission of the COGCC is to regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, welfare, the environment and wildlife resources.

Adherence to our mission results in:

- The protection of public health, safety, welfare, environment and wildlife
- The efficient exploration and production of oil and gas resources
- Addressing cumulative impacts from oil and gas development
- Cooperative relationships between COGCC and local governments as well as state and federal agencies with oversight of oil and gas operations

The COGCC seeks to serve, solicit participation from, and maintain working relationships with all those having an interest in Colorado's oil and gas natural resources.

The Commission implements its mission through its various work units, including the hearings unit. This Guidebook is intended as a resource for members of the regulated community and the general public who have business before the hearings unit. This Guidebook has been prepared to provide members of the regulated community and the public information on the Commission’s hearings process.

If you wish to participate in an application pending before the Commission, you are responsible for reviewing the relevant statutes and rules that apply to the process to make sure you understand your rights and responsibilities. More details regarding this process may be found in the Commission’s Rules of Practice and Procedure, 4 CCR 404-1, the Act, § 34-60-101, C.R.S. *et seq.*, and the Colorado Administrative Procedure Act (APA), § 24-4-103, C.R.S. *et seq.* The Commission hopes that this Guidebook will help facilitate public involvement and improve the understanding of the hearings process.

This Guidebook is only intended to provide general information regarding the Commission’s hearings process. Many of the processes discussed below are in the discretion of the Commission, and may be modified as circumstances require. Further, this Guidebook is not intended to be, nor is it, legal advice.

For further information regarding any of the topics addressed in the Guidebook, please contact the Commission Office at:

Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, STE 801
Denver, Colorado 80203

Email: cogcc.hearings_unit@state.co.us

Web: <https://cogcc.state.co.us>

Thank you.

PROCESS SUMMARY

As noted in the Introduction, the Commission is the administrative agency responsible for regulating the development of oil and gas natural resources in Colorado. The Commission is comprised of several work units each of which is responsible for a facet of the Commission's oil and gas regulatory system. The hearings unit is charged with receiving and processing applications for activities related to the conduct of oil and gas operations in Colorado. These applications include requests to identify and group mineral acreage for oil and gas development; facilitate or require payment to mineral owners for the development of their minerals; the prosecution by Commission staff of oil and gas operators when a Commission rule or the Act have been violated; and all other applications allowed under the Commission's rules.

The hearings unit is comprised of hearing officers, enforcement officers and the Commissioners themselves. When the hearing officers and the Commissioners review and recommend decisions on hearing applications, they are acting in a quasi-judicial capacity. This means that the hearing officers and Commissioners are conducting hearing processes similar to how a judge conducts a court proceeding, though with some specific and important differences applicable to administrative proceedings.

The rules that govern the hearings process are found in the [500 Series Rules](#). The 500 Series Rules were updated as of September 30, 2019, by the Commission. This Guidebook addresses this most recent version of the 500 Series Rules.

I. Types Of Applications Filed With The Commission

Rule 503 identifies the types of applications that may be filed with the Commission. The most frequently filed applications are:

- A. Drilling and Spacing Unit Applications
- B. Pooling Applications
- C. Enforcement Applications
- D. Payment of Proceeds Applications

A. Drilling and Spacing Unit Applications.

Before an oil and gas operator can drill and produce minerals from a well, it is required to obtain a series of state and local permits issued by the COGCC, the Colorado Department of Public Health and Environment (CDPHE) and the applicable local regulatory authority. In addition to these permits, an oil and gas operator must generally have an order from the Commission that spaces the lands for the proposed well. This order is called a Drilling and Spacing Unit (DSU) order. Rule 503.b.(1) addresses DSU

applications.

Spacing of lands for oil and gas development is critical to ensure that lands and wells are not unnecessarily developed. Before the Commission was authorized to regulate oil and gas development through spacing, the only way an individual mineral owner could protect their right to produce their oil and gas interests was to drill a well. As a result, hundreds, if not thousands, of individual wells were drilled unnecessarily, and there was no thought put into how the wells should be spaced or how the land was to be protected.

Spacing prevents overdevelopment by identifying a designated area of land for future development of oil and gas resources, limiting the number of wells that may be drilled in the DSU, and limiting the number of surface locations from which the wells may be drilled.

B. Pooling Applications.

Pooling is a concept that goes hand-in-hand with spacing. Pooling joins together mineral interests in a DSU in order to set the terms of payment for the minerals developed. Since a DSU can be many hundreds of acres, and since there are often many mineral owners in the unit whose minerals may be produced, pooling ensures that each mineral owner shares proportionately in the costs and proceeds from oil and gas development from a pooled unit, without requiring each mineral owner to drill his or her own well.

The pooling process can be done voluntarily through private contract, or it can be done through the Commission administrative hearing application process. The administrative pooling process is frequently called "statutory pooling" or "forced pooling." Rule 503.b.(2) addresses pooling applications.

To file a pooling application, the applicant must either own or have leases from owners of: 1) 45% or more of the minerals to be pooled; or 2) have the consent of the owners of more than 45% of the minerals to be pooled. § 34-60-116(6)(b)(I), C.R.S.

C. Enforcement Applications.

The hearings unit includes enforcement officers. Enforcement officers are not hearing officers. Enforcement officers are charged with prosecuting oil and gas operators who are alleged to have violated a Commission rule. The enforcement process begins when the enforcement unit is notified by a member of the Commission staff of an alleged violation of one or more of the Commission's rules. The enforcement unit may then issue a Notice of Alleged Violation (NOAV) which identifies the alleged violations. Once the

NOAV is issued, the enforcement officer serves the NOAV on the operator and files an enforcement application with the Commission. Only enforcement officers on behalf of the COGCC Director may file an enforcement application. Rule 503.b.(3) addresses enforcement applications.

D. Payment of Proceeds Applications.

Mineral owners and operators may disagree whether the proper royalty amount on mineral production was paid. When such disputes arise, mineral owners have the option of filing an application for payment of proceeds with the Commission. Rules 328.g. and 329.e. address payment of proceeds claims and the forms that must be filed to initiate a Commission review of the claim.

II. How To File An Application With The Commission

A. Preparing and submitting an application.

A hearings application is a formal document that contains specific information necessary for hearings staff to evaluate the relief requested from the applicant. Rule 503.a. explains what information must be included in applications. As explained in Rule 503.a., all applications must include at a minimum the following:

- the operator's name and identification number;
- cause number
- the type of application being submitted (e.g. Spacing, Pooling etc.);
- all applicable geologic formations;
- the location of applicable lands (including county, field name, Township / Range / Section, and nearby public crossroads)¹ and map of the same;
- the name and contact information (including email) for an operator representative designated to receive questions, protests, and interventions;
- list of all interested parties (name and address) who will be served a copy of the application and notice of hearing;
- detailed explanation of all Commission Rules and prior Commission Orders affecting the lands subject to the application;
- detailed information of the relief requested and the legal and factual grounds for that relief;
- a separate "prayer for relief" setting out in separate paragraphs each item of relief requested; and

¹ The description of the lands should be set forth using symbols and upper/lower case font. For example, S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 1, Township 6 South, Range 92 West, 6th P.M. is an acceptable legal description in an application. However, S/2NW/4 T6S, R92W is not an acceptable legal description.

- the signature of the attorney(s) submitting the application, including the attorney's name, their firm name, mailing address, telephone number, and email.

The application should be:

- Typewritten
- Letter size (8½" x 11") paper
- No less than twelve (12) point font, including footnotes
- One inch margins all around
- Single Spaced

The Commission does not accept paper copies of filings unless the filer lacks access to email. Applicants should submit a Word and PDF version of the application including all attachments, to the following email address: dnr_HearingApplications@state.co.us.

B. What happens after an application is filed.

1. Review of the application.

When you submit your application electronically you will receive an email from the hearings unit confirming that your application was received. Once the hearing application is received, hearings staff will review the application to determine whether it is complete. Once that review is conducted, the applicant will receive an email either: 1) assigning a docket number to the application; or 2) informing the applicant that additional information is required before the application can be assigned a docket number.

Once the application has a docket number it will be assigned to either a hearing officer or to the full Commission for adjudication. Rule 503.c. provides that all applications are automatically assigned to a hearing officer unless:

- on its own motion the Commission elects to hear the application
- the application is for a Comprehensive Drilling Plan
- the application is filed pursuant to Rules 216.f.(4), 303.j.(2), or 604.a.(6)
- the application is for a Rule 502.b. variance
- it is an application requesting that the Commission amend its rules or adopt a new rule

2. COGCC technical staff's review of the application.

As explained earlier, the COGCC includes several work units, each of which is responsible for a facet of the Commission's oil and gas regulatory system. Once an application has a docket number, but before it is noticed

for hearing, COGCC permitting and engineering staff review the application. Permitting and engineering staff's review of an application submitted after September 30, 2019, will be in writing and available to the applicant and the hearing officer. Technical staff may have material and non-material comments to an application. For example, a material comment to a DSU application may be that the lands proposed to be spaced are already subject to a DSU order that the applicant has not addressed in its application. A non-material comment can include noting typographical errors in an application.

In considering and addressing material comments from technical staff, the applicant should correspond directly with staff. The hearing officer is a neutral decision maker. Questions, concerns or objections to staff's material comments are not properly made to the hearing officer. Rather, the applicant should correspond and work directly with staff to address staff's material comments.

3. Setting the hearing and noticing the application.

Once an application is assigned a docket number and staff has completed its technical review, the application will be set for hearing and must be noticed in accordance with Commission Rules. No application will be heard by a hearing officer or the Commission unless notice of the hearing has been provided at least **60 days** prior to the noticed hearing date. When determining who must receive notice of an application, applicants must comply with Rules 507.b. and 507.c. and § 34-60-108(4), C.R.S. The notice of hearing is prepared by hearings staff and provided to the applicant's legal counsel for review and finalization.

Once the notice is finalized, it is the responsibility of the applicant to mail and deliver the notice and the application to all persons required to receive the notice. No later than **30 days** before the noticed hearing date, the applicant must submit to the Secretary of the Commission a certificate of service that identifies and affirms that it served all interested parties a copy of the application and the notice of hearing. No later than **30 days** before the noticed hearing date, the applicant must also submit to the Secretary of the Commission a notarized affidavit attesting that the applicant published a copy of the notice in relevant newspapers, and the date of publication for each newspaper used. Applicants should submit the certificate of service and affidavit to the following email address: dnr_HearingApplications@state.co.us.

On September 30, 2019, revisions to the 500 Series Rules became effective. These revisions included amendments to Rules 503 and 507. Prior to these amendments, applications were filed in time to be heard by the Commission at a specific hearing. With the September 30, 2019 amendments, applications may be filed at any time for the Commission to consider the application. However, the application may not be considered

and decided until the **90 day** notice period has passed. No sooner than **90 days** from notice will an application be heard by a hearing officer or the Commission.

All applications that were noticed and pending prior to September 30, 2019, will continue to be processed and heard as soon as practicable, taking into consideration the hearing officers' and Commissioners' work load. Applications submitted and noticed prior to September 30, 2019, do not need to be renoticed.

4. What happens if I need to amend my application?

The Commission recognizes that an applicant may need to amend an application after it has been noticed. If a minor, non-material amendment to an application is needed, the Commission or hearing officer will generally accept the amendment. However, as detailed in Rule 503.e., the Commission or hearing officer might not accept material amendments to an application. If a material amendment to an application is made, the hearing officer or Commission may reject the application and require a new application to be filed.

III. How Do I Protest An Application?

A. What is a protest?

Persons who have interests that are affected by a hearings application can protest the application. If you receive notice of a hearings application and you believe that you will be directly and adversely aggrieved if the application were to be granted, you can file a document with the hearings unit that "protests" the application. When you file a protest you must explain what you believe your injury is if the application is approved, and where in the Act the Commission has been provided with the jurisdiction to protect your interest. If the protest does not specify a legally protected interest under the Act that the Commission can protect, a protest may not succeed. A deficient protest may be dismissed and converted to a Rule 510 statement by order of the hearing officer. Rule 510 sets forth how persons may make oral or written statements in an adjudicatory proceeding.

If a protest is accepted, then the protestant becomes a party and participates in all of the prehearing processes. If an application is protested the application must go to a hearing before either the hearing officer or the Commission.

B. What if I don't satisfy the protest requirements, but still believe that the application should be denied?

If you are not able to satisfy the requirements to file a protest, you can file a request to intervene in the application docket. Rule 509.a.(1)B.(ii) explains what is called a “permissive intervenor.” A permissive intervenor is someone who believes that his or her intervention in the application would serve the public interest.

C. When does a protest or intervention have to be filed and what does it have to include?

A protest or intervention must be filed with the Commission and served on the applicant’s lawyer within **30 days** after service of the notice of application. The protestant is responsible for serving the applicant with a copy of the protest. Service must be made by email. If the applicant or the protestant does not have an email address, then service will be made by first class mail.

In accordance with Rule 509.a.(3) the protest or intervention must include:

- The application docket number;
- A general statement of the factual or legal basis for the protest or intervention;
- A statement of the relief requested, which must be within the Commission’s jurisdiction to grant;
- A description of the protestant’s or intervenor’s intended presentation to the hearing officer or Commission, including a list of proposed witnesses;
- A time estimate to hear the protest or intervention; and
- A certificate of service attesting that the protest or intervention has been served on the applicant and any other party that has filed a protest or intervention in the proceeding.

The protest or intervention should be:

- Typewritten
- Letter size (8½” x 11”) paper
- No less than twelve (12) point font, including footnotes
- One inch margins all around
- Single Spaced

IV. Does an Applicant Have to Provide Evidence in Support of its Application?

After an application is filed, the applicant may be required to submit sworn Rule 511 testimony. For example, sworn geologic, engineering, regulatory, and land testimony is necessary to support a DSU application. And land testimony is necessary to support a pooling application. The

hearing officer will review the 511 testimony and determine whether additional testimony is needed. If additional testimony is needed and cannot be provided in time prior to the hearing date, the hearing will be continued.

V. Taking an Application to Hearing

Once the application has been noticed, the protest/intervention deadline has passed, and the necessary 511 testimony received, then the application will be placed on either a contested or uncontested hearing track.

A. Contested Applications.

A contested hearing application means that a protest or intervention has been filed and that the application must go before the hearing officer or Commissioners for hearing.

To prepare the application for hearing, it is necessary for the parties to the matter to participate in prehearing conferences. The purposes of a prehearing conference are to establish communication between the parties in contested matters, discuss the potential for settling disputed matters, narrow the issues disputed between the parties, and set time frames for the conduct of the hearing. The hearing officer may require the parties to provide prehearing statements, address substantive issues and various procedural matters for the hearing, specify how many witnesses each party may call at hearing, and address other matters raised by the parties, Commission, or hearing officer. The hearing officer will prepare a Case Management Order that addresses the deadlines for discovery (if allowed by the hearing officer) and the various prehearing filings, and set a deadline for the parties to furnish a proposed order for consideration.

The parties to a contested application will have the opportunity to make presentations at the hearing, call witnesses in support of their position, and cross-examine witnesses called by the opposing party. The hearing officer will provide in a Final Prehearing Order the framework for how the hearing will be conducted, including how much time each party will have to present its case to the hearing officer.

At the conclusion of the hearing, no more evidence or argument will be heard and the matter will be ready for a decision. If the matter is heard by a hearing officer, the hearing officer will make a written recommended order based upon evidence in the record, consistent with the Act and Commission rules, permit, or other orders. The Commission reviews each hearing officer's recommended order. Accordingly, the written recommended order will be made no sooner than 15 days prior to the

next regularly scheduled Commission hearing. (Rule 532.b.).

If the Commission disagrees with a recommended order, it may stay the recommended order. A stay of an order means that the hearing officer's recommended order will not take effect until the Commission can review the recommended order and decide whether it should become a final order of the Commission. If the Commission does not stay the recommended order, and no party files an exception (that is an appeal) of the recommended order to the Commission, it becomes a final agency action **20 days** after service upon the parties. (Rule 532.b.).

B. Uncontested Applications.

If a hearing application is uncontested, meaning there is no protest or intervention, the hearing officer will proceed to evaluate the application. The hearing officer will consider the sworn written testimony, and prepare a written recommended order if the application is found to comply with Commission rules, the Act, and existing Commission orders. The hearing officer will prepare the recommended written order on or prior to the noticed hearing date. The Commission reviews each hearing officer's recommended order. Like a recommended written order in a contested hearing matter, the written recommended order will be made no sooner than **15 days** prior to the next regularly scheduled Commission hearing. (Rule 532.b.). Recommended orders in uncontested hearing matters will be placed on the Commission's consent agenda for approval if the recommended order has not become the final agency action pursuant to Rule 532.b.

VI. What If I Disagree With The Hearing Officer's Recommended Decision?

A party to a contested matter may file an exception to the written recommended order.² An exception is similar to an appeal of a civil court proceeding to an appellate court. A party who disagrees with a hearing officer's written recommended order has only **20 days** to file an exception with the Commission, telling the Commission that the party disagrees with the written recommended order and wants the Commission to review the order. § 34-60-108(9), C.R.S. When an exception is filed, the written recommended order will be stayed pending the Commission's review of the matter. Once an exception is filed, the other party(s) to the matter can file a response to the exception within **14 days** after they are served with the exception. (Rule 532.c.).

A hearing before the Commission on the exception will be scheduled. The Commission will review the same record that the hearing officer had before them when they made the written recommended order. This is

²At times, the hearing officer may issue non-dispositive orders that are not "recommended orders." These interim decisions are not subject to exceptions. (Rule 532.a.).

important, because it means that the Commission will not hear new evidence from the parties. The Commission will consider the same evidence that the hearing officer considered. However, the Commission will review whether the hearing officer properly interpreted and applied the law to the facts. The Commission will allow the parties to the exception to make oral argument to the Commission. No witness testimony will be made to the Commission, only oral argument.

VII. What If I Disagree With The Commission's Final Order?

All final orders of the Commission can be appealed to district court. § 34-60-111, C.R.S. Appeals of Commission orders are governed by the State Administrative Procedure Act. § 24-4-106, C.R.S. A party who wishes to appeal a Commission order should, at a minimum refer to the Administrative Procedure Act.

VIII. What If I Do Not Have A Lawyer Representing Me?

If you are a natural person and are appearing on your own behalf, you do not need a lawyer to represent you before the Commission in adjudicatory proceedings. (Rule 517.a.). However, the Commission encourages every person appearing before it to consult legal counsel to determine whether they may benefit from legal representation.

IX. Communications With Hearings and Technical Staff

A. Hearings Staff.

When an application is filed with the hearings unit, it becomes an adjudicatory proceeding, meaning that the hearing officer or the Commission is the impartial, neutral entity that will decide whether to grant or deny the application. Each party to an adjudicatory proceeding must copy all other parties (if applicable) on every communication with a hearing officer.

In contested hearing applications, if a party requests that a hearing officer take a certain action on an application, then that request should be made formally in a motion to the hearing officer. Informal email requests for status updates, decisions on pending motions etc. should not be communicated via email to the hearing officer in a contested hearing application. If a party has a question regarding the status of a case, please contact the Hearings Assistant at 303-894-2100, ext. 5139 or by email at cogcc.hearings_unit@state.co.us

B. Technical Staff.

If COGCC technical staff offer a technical review of a hearing application, communication of that review will be made in writing and made available to the applicant, the hearing officer, and any protestants or intervenors. Generally, COGCC technical staff are not parties to hearing applications. Accordingly, it is not necessary to serve technical staff with filings made in a docket, even if it is a contested application. Additionally, should an applicant have questions regarding technical staff's material comments, they should contact technical staff directly and not include the hearing officer on those communications.

X. Standard of Conduct Before the Commission

While the rules and process for appearing before an administrative agency like the Commission may be more relaxed than appearing before a civil or criminal court, every person appearing before the Commission must comply with standards of civil discourse. The same decorum used in a court should be used when appearing before the Commission. Parties are asked to be patient, dignified, and courteous to other parties, attorneys, and staff.

XI. Motions Practice

In contested hearing applications, parties frequently file motions in the course of the prehearing process. The following guidelines apply to all motions.

A. Page Limitations.

All motions, and responses will not exceed 15 pages double spaced. Replies shall not exceed 10 pages double spaced. These page limitations do not include the caption, signature block, certificate of service or attachments. The body of the text and all footnotes will be no smaller than 12-point type. Motions to exceed the page limitations will be granted only upon a showing of good cause. Such motion will indicate the number of pages of the proposed document and the reason why the additional pages are necessary.

B. Motions.

The Colorado Rules of Civil Procedure apply to Commission proceedings unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act, or as the hearing officer may otherwise direct on the record during prehearing proceedings.

Before filing a motion, the party filing a motion must confer with all other parties to determine what their position is on the motion. The motion

should state the position of all other parties. The movant should allow sufficient time for conferral, and make all such reasonable efforts to contact parties. Motions, responses and replies must be served on all parties to the docket. Failure to confer or properly serve a motion may result in the motion being denied without prejudice or stricken sua sponte.

XII. Who Can I Contact For More Information?

Hearings Assistant - 303-894-2100, ext. 5139 or by email at cogcc.hearings_unit@state.co.us