

**BEFORE THE OIL & GAS CONSERVATION COMMISSION OF
THE STATE OF COLORADO**

**MOTION TO RECONSIDER OF THE COLORADO OIL & GAS
ASSOCIATION**

The Colorado Oil & Gas Association (“COGA”), by and through its undersigned attorney, moves the Commission to reconsider its action in revising COGCC Rule 802 – Noise Abatement. As a preliminary matter, COGA notes that the version of the revised rule posted on the Commission’s website (as of 12/16/05) is incorrect. In the table included under 802.c, there is a notation that “Effective January 1, 2007”, the allowable noise levels (day/night) in residential/agricultural/rural (“R/A/R”) zones are reduced by 5 db(A). The Commission’s decision on this noise level reduction was clearly specified to be applicable *only* to new oil and gas facilities whose construction is commenced in 2007 and thereafter. As shown, the reduced noise levels would be imposed on pre-existing oil and gas facilities.

COGA presumes that this is a rule drafting error and will be corrected. However, it is this very issue of reducing the allowable noise levels from new oil and gas facilities in R/A/R zones to which COGA objects and requests Commission reconsideration. As grounds therefor, COGA states:

1. As indicated in the un rebutted testimony of COGA’s expert witness, Mr. McGregor, a 5 decibel reduction translates into a noise pressure reduction of 56%. The Commission’s adoption of this reduced noise standard thus represents a radical departure from its current rule, from the Colorado noise statute, and from the proposed rule that came out of the stakeholder process and was noticed for hearing. If the noticed rule had contained this noise reduction, COGA would have requested that COGCC staff prepare a full cost/benefit study, pursuant to the Colorado Administrative Procedures Act. In addition, COGA would have exercised its right under CRS 24-4-101.5 to refer this rulemaking to the Department of Regulatory Affairs for a determination of the impact of the proposal on the state’s economic competitiveness. The Commission’s action to adopt this significant change to the noticed rule during deliberation deprived COGA of its opportunity to invoke these statutory protections.

2. The Commission's cursory finding that this radical departure from current law and the noticed rule will be "cost effective" is not supported by the evidence in the record. Mr. McGregor's un rebutted written testimony demonstrated that the construction cost of a 40X80 foot compressor building designed to achieve a 45 db(A) noise level (exclusive of heat exchanger silencers and other external equipment) is approximately \$500,000, as opposed to \$200,000 for a similar building designed to achieve a 50 db(A) noise level. Mr. Jacob testified that his company had already spent approximately \$1,000,000 to bring one of his compressor stations into compliance with a 50/55 db(A) standard and that it was planning to spend another \$480,000 to achieve an additional 2db(A) reduction. The Commission's noise expert, Ms. Hougland, testified that her quick estimate of the incremental cost for a 12X20 foot wellsite compressor building would be approximately 50%. The Commission made no reasoned finding that these levels of incremental cost will achieve commensurate public health benefits. Indeed, Ms. Hougland testified that it takes a 10 db(A) change in noise levels for the human ear to perceive a halving (or doubling) of sound.

3. Most significantly, the Commission took an *indoor, receptor-based* EPA noise standard* and applied it to an *outdoor, source-based* noise regulation. Asst. Attorney General Harmon informed the Commission that the only other state oil and gas commission noise standard she had found was from Michigan, where a 45 db(A) level is required at *1320 feet* – which translates into 56.5 db(A) at 350 feet. Mr. Jacob testified that the Alberta Energy and Utilities Board (EUB) noise approach is "receptor (residence) based and makes no attempt to protect adjacent, private property values." Unlike the Commission's proposed rule, the EUB 45 dbA standard applies only at a residence, not at a facility property line or on an adjacent property. Mr. Jacob further testified that "according to EUB Guide 38: 'although this is not a mandatory requirement, new facilities planned for remote areas should be designed to meet a target sound level of 40 dBA Leq at a distance of 1.5 km.' This is equivalent to ... 64 dBA at 306 feet. So the proposed standard of 50 dBA at 350 feet looks pretty strict ... in comparison to the EUB goal."

COGA asserts that the Commission's decision to amend the noticed rule in such a substantial fashion during its deliberations deprived COGA of due process, was not based on sound scientific and technical evidence, and did not include a fully-developed analysis of costs and benefits. Accordingly,

* Deputy Director Dillon reminded the Commission of this fact.

