Comments on Larimer County's Proposed Oil & Gas Regulations
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Background LARIMER ALLIANCE FOR HEALTH, SAFETY, AND THE ENVIRONMENT previously made the following two requests of the County:

1. A suspension of well permits until SB 19-181 Rulemaking completed.

2. To wait to create Larimer County O&G Regulations until the state's rulemaking is substantially completed, slated for June 30, 2020.

Both of these simple requests were denied by the County without adequate explanation.

LARIMER ALLIANCE FOR HEALTH SAFETY & THE ENVIRONMENT AND THE LEAGUE OF OIL AND GAS IMPACTED COLORADANS have made numerous oral and written public comments on the previous two drafts of Larimer County Oil and Gas Regulations, including two letters addressing draft one and draft two regulations. In addition, we submitted to the County two letters specifically addressing the legal definitions and implementation of waste and takings in regards to oil and gas extraction in current law. We made public comment at the Feb. 19, 2020 Planning Commission Hearing.

We now submit comments on the proposed Larimer County Oil and Gas Regulations. Included are comments on the February 19 Planning Commission Hearing and their recommendations.

Comments on the February 19 Planning Commission Hearing:

On February 19, the Larimer County Planning Commission held a public hearing on the proposed draft of Larimer County’s oil and gas regulations. The Larimer Alliance for Health, Safety and the Environment believe that the proposed regulations largely ignore the public comments staff had received on the first two drafts. Despite extensive comments from the Larimer Alliance, LOGIC, and numerous members of the public, this draft of the regulations is still extremely weak in protecting our county’s health, safety and environment; it fails to fully exercise the authority granted to the County by SB181.

The February 19th hearing began with a staff presentation of the draft, and then comments were accepted from members of the public. Each member of the public was given only 2 minutes to speak. Roughly 30 community members spoke. A substantial majority asked the Planning Commission to enact stronger regulations to protect public health and safety. Two oil and gas operators and their attorneys were present to support regulations that made oil and gas operations easier to conduct in the county.
Following public comment, the planning commissioners deliberated for nearly two hours. With few exceptions, these deliberations were obscure. While several of the Planning Commissioners asked concerned questions of the County staff, the responses they received were often unclear, confusing and omitted facts. A couple of the planning commissioners repeatedly stated they did not want to enact “arbitrary” regulations, particularly during the discussion of setbacks, which repeatedly derailed discussion of useful information.

The Larimer Alliance for Health, Safety and the Environment believes that a valuable opportunity for a more beneficial Planning Commission Hearing was lost. However we appreciate that several Planning Commission members persevered and voted on recommendations such as reinserting setbacks, increasing neighborhood notification, measuring baseline air quality as part of well pad applications, increasing signage, and reviewing Section 17 of Larimer County Oil and Gas Regulations for consistency and compliance with completed State of Colorado Oil and Gas Regulations.

Comments on the Proposed Regulations:

As they stand the Larimer County oil and gas regulations are far too weak, and are riddled with loopholes and prevaricating language. The draft regulations need extensive improvement to truly protect public health, safety, and welfare, the environment, and wildlife resources.

MAJOR ISSUES regarding Larimer County proposed oil and gas regulations:

1. Ability to deny applications: Current regulations do not assert right to deny or, reject applications outright, or to conditionally approve any permit applications in order to prioritize protection. (This is a continuation of the County's weak and outdated Waste and Takings legal stand.) Under SB181 Larimer County has the right to deny oil & gas well applications to protect public health and safety, the environment and wildlife. These regulations do not embrace that authority. Instead these regulations primarily look to "minimize" and "mitigate" impacts, by allowing further reduced setbacks, well pads within 100-year flood plains, and other exemptions if requested by the BOCC or an applicant. This nearly guarantees health impacts and environmental danger to waterways and aquifers. Denying applications that are not protective of public health and safety is clearly supported under state law. Larimer County should not fear the threat of takings claims from operators, as long as the regulations are clearly tied to protecting health and safety or the environment.

2. Comprehensive transparent public process. The Planning Commission recommended the inclusion of an amendment which would create a greatly improved public notice system: "Notification All O&GF applications shall have a minimum APO notification boundary of 1/2 mile (2,640 feet) for all neighbor referral, neighborhood meeting and public hearing notices, as outlined in Section 12.2.4. and Section 12.3. of this code." could be permanently inserted in the regulations. **We strongly urge the BOCC to adopt this recommendation.**

3. Setbacks were included in the 2nd draft, but were removed. The Planning Commissioners recommended 1000 foot setbacks for all habitable buildings be
inserted into the regulations. The Planning Commission's recommendation is an improvement over a complete lack of setbacks, but, this area is of significant concern and detailed comments can be found below.

4. **Water resource protections.** These proposed regulations allow oil and gas locations too close to water resources, and within floodplains, if no other viable locations are available. This does not comply with SB181 and does not protect public health and safety. If no viable locations are available, then regulations need to allow the county to deny the applications.

5. **Air Quality:** Proposed regulations are especially weak regarding air quality. Larimer County is categorized in "serious" nonattainment status by the EPA, yet these regulations only say that oil and gas facilities shall "avoid" or "mitigate" adverse impacts to air quality. The Planning Commission recommended well site baseline air quality testing in the operator's well application but did not recommend the type of air quality testing required.

6. **Applicability:** The proposed regulations say that these new rules only apply to new locations. In addition it does not address new gathering lines, existing well pads, etc... In addition, regulations that cover issues like noise pollution, dust, chemical handling, waste disposal, plugging and abandonment, leak detection and repair, must apply to all oil and gas facilities in the County.

7. **RECOMPLETIONS were taken out of the regulations** implying that existing wells can be re-engineered by hydraulic fracturing without complying with the regulations. These are in essence "new well pads" as unconventional wells differ in significant ways from existing wells. **We strongly urge that Recompletions of existing wells be subject to the same regulations as new wells.**

8. In addition, **regulations regarding noise were greatly weakened** between draft 2 and the proposed regulations, and the **chemical disclosure list was removed** after draft 1.

**Comments on Section 17.1 Intent & Purpose of the Larimer County Oil and Gas Regulations**

A. **Intent:** This paragraph does not prioritize Health, Safety, Welfare, the Environment and Wildlife as mandated by SB-181. Instead it says: "Regulatory framework... "acknowledges private property rights" and protects public health, safety, and general welfare, protects environment and wildlife, and minimizes adverse effects." This conflicts with the intent of SB181 and muddles the priority of protecting Public Health, Safety, Welfare, the Environment and Wildlife (PHSWEW).

C. **Purpose:** Provides for the managed development, installation, maintenance, modification, reclamation and removal “without unnecessarily discriminating against O&G developers, operators or mineral owners.” **In essence prioritizing protection of O&G industry -- prohibited by SB-181.**

6. This regulation says, "Encourages O&G to strategically locate where adverse effects from such operations can be avoided." "Encourages" is not a clear regulation; PHSWEW is the
priority when siting O&G Facilities, and if adverse effects cannot be avoided the permit application should be denied.

Comments on Specific Areas within the Proposed Regulations:

Setbacks: Setbacks offered in the 2nd draft included 2000 feet for high occupancy buildings and 1000 feet from homes. We were dismayed to see that setbacks were removed entirely from the proposed regulations. In the current draft per Planning Commission recommendations 1000 foot setbacks from habitable buildings are reinserted including this caveat: "or as required by the rules of the COGCC, whichever are greater."

- It is of concern, that the Planning Commission did not reinsert the 2000 foot setbacks from high occupancy buildings such as hospitals and schools. (Per the discussion at the Hearing, it appears that was Commissioners Wallace and True's intent, however, the discussion that ensued did not clarify what footage the 2nd draft setbacks had been for high occupancy buildings, homes or waterways.) CDPHE's recent study shows that living within 2,000 feet from oil and gas facilities is associated with adverse public health. The County needs to adopt at least a 2,000 foot setback for all homes, high occupancy buildings, and water resources, as well as an impact assessment process to require greater setbacks if necessary.

- Note: per another recommendation by Planning Commission, the County staff does not have to review for compliance with State Regulations until 120 days after the State regulations are completed. The major State Rulemaking for SB-181 will be completed by June 30. However, additional State Rulemaking is expected to continue until the end of 2020. Does this mean that the weak County regulations will continue to support well permits into 2021? Well permits, issued under lax regulations, for wells that may be grandfathered in and produce for 40 years?

- 17.3.B.3 says that the BOCC may, by appeal, allow a reduction of setbacks if operator demonstrates that setbacks prohibit access to mineral interests being sought. This is in direct conflict with current waste and takings legal application; Larimer County has the right to deny permits if they do not meet setback standards. Again, saying that Oil and Gas Company’s "right" to access the minerals is the priority-- in direct contradiction to SB-181 which instructs regulations to prioritize public health, safety, welfare, environment and wildlife-- and ignoring current "waste and takings" legal precedent.

- If the County feels that it absolutely must include a variance to the setback requirement, we strongly urge the BOCC to adopt a procedure that requires gaining the permission of all potentially impacted landowners, building owners, residents, and tenants, and require disclosure of the setback variance in any transfer of property within the normal setback boundary.

- Regulations also no longer specify that stronger standards will apply if other agencies' standards are more protective. We ask that the BOCC instruct that Planning Department restore the 2000 foot setback provision for high occupancy buildings. We ask that the 2000 foot setback apply to homes, as well, based on the CDPHE’s
recent findings, and the larger body of work showing the potential for adverse health impacts associated with proximity to oil and gas development.

**Air Quality:** The Planning Commission at the Feb. 19 Hearing recommended air quality baseline testing at each new well pad. The type of testing was not specified. **We ask that the BOCC approve this recommendation and specify the type of air quality baseline testing.**

- Proposed regulations are especially weak regarding air quality. Larimer County is categorized in "serious" nonattainment of surface ozone requirements set by the federal EPA, yet these regulations only say that oil and gas facilities shall "avoid" or "mitigate" adverse impacts to air quality.
- Flaring, a great detriment to air quality and a contributor to greenhouse gases, is allowed "during emergency or upset conditions" as defined by the operator. It is not acceptable to let operators determine which emergencies require flaring.
- **24/7 continuous air quality monitoring is needed to adequately assess the true quality of the air we are breathing.**
- There is no fee and penalty framework for operators violating Air Quality standards.
- And, specifically, "emissions controls for glycol dehydrators of 95%" were deleted from the regulations.
- Nowhere in the proposed regulations is there mentioned an attempt to get oil and gas operations in Larimer County to net-zero emissions.

**Leak Detection & Repair:**

- An expedient time frame for repair and inspections and report to Larimer County inspectors needs to be included in these regulations.
- The regulation requiring **verified leaks to be reported to the County** LDG (in 2020 that is Matt Lafferty) and the County Health Department within 24 hours was **removed entirely in these proposed regulations.**
- As written inspection and corrective action are only reported to the County upon request.
- There is no public notification of leaks and mishaps, and no public portal that allows citizens to be informed of leaks.
- There is no clear definition of what size leak or emission is considered an imminent safety risk to trigger mandatory reporting. Regulation 17.3.D.4 only says, "Equipment leaks that pose an imminent safety risk to persons, wildlife, or the environment shall undergo emergency shut down and not be allowed to operate until the operator has provided evidence that the leak has been repaired." Operators should not be allowed the position of determining what constitutes a safety risk.

**Odors:**

- The change that puts PHSWEW most at risk is that **the chemical list, printed in the first draft was removed from the regulations.**
- Another change that the "Larimer Alliance" takes issue with is that operators are given
choices of how to notify residents of well completion when chemicals will be used that can cause significant health impacts.

- Against prior LOGIC/LAHSE recommendations for PHSWEW, regulations now allow added odorants and increased additives during peak hours.
- Shale shakers to contain fumes from exposed mud, now are required only if "safe and feasible". Wording like "if feasible" is no longer acceptable per state regulations.

**Water:** The Planning Commission approved and recommended King Operating's requested change:

"The requirements of the Section 17.3.L.6 shall not prevent discharges or beneficial uses of water permitted by CDPHE Water Quality Control Division or another agency with jurisdiction".

- At the Planning Commission hearing, an operator described their practice of discharging produced water into Boxelder Creek. This is utterly unacceptable. **Before an operator is allowed to discharge any produced or other waste water into a surface water body, they must prove that the water has been treated to be consistent with the baseline quality of the surface water body.**
- Larimer County must require a description of where the operator will get water necessary for their operations, and how the produced water will be disposed of in advance.
- Larimer County must include a prohibition on the use of deep wastewater disposal wells
- Proposed regulations should specify that operators plan for testing, prevention of discharge, stormwater management, containment of pollutants and spill notification. None of those areas are covered in the proposed regulations.
- **Allowing O&G facilities to locate within 100 year floodplains if "no other location is feasible" is unconscionable.** These areas WILL flood at some point; our groundwater will be contaminated. Allowing such practices does not conform with the provisions of SB19-181.
- The regulations say they will "Avoid impacts to surface and groundwater", whereas to protect Public Health, Safety, Welfare and the Environment and Wildlife (PHSWEW), "No adverse effects" should be allowed.
- Does not require operators to post reports of water source testing nor post-closure assessments online for public access and transparency.

**Spills and Releases:**

- The 2nd draft said that "A Spill Prevention Control and Countermeasure Plan" must be submitted. Now only requiring a "Spill Prevention and Containment Plan". These regulations should require an operation to demonstrate the ability to control, contain and remediate all damage from leaks and spills.
- There is no notification to the public of spill reports, and no available public record of spills.
• Only "recommended" annual training for emergency service personnel.
• Operators should be required to provide topographical maps showing the location of the spill and measures for immediate mitigation. Site investigation should occur.
• Spills and releases impacting or threatening any waters of the state, residences or occupied structures, livestock, public byways should be verbally reported to the LDG and followed by a written report within 24 hours. This should be shared with the public.

Noise and Mitigation: The League of Oil and Gas Impacted Coloradans (LOGIC) and Larimer Alliance for Health Safety & the Environment (LAHSE) submitted significant recommendations to the County regarding Noise regulations that are an "imperative component...to protect" (PHSWEW).

• Regulations have no continuous monitoring required at 350, 500, 1000 feet from sound barrier, per LOGIC/LAHSE recommendation.
• Construction of O&GF's including drilling, well completions, recompletions, and pipeline installations can use maximum permissible noise at the "Industrial Standard" (80 db. daytime; 75 db. night). This allows INDUSTRIAL level noise in RESIDENTIAL neighborhoods. This is unacceptable; LOGIC and LAHSE recommended 65 db.
• No county complaint line offered for citizens to have ready access to register disturbances due to excess noise.

Vibration The County regulations insignificantly addressed vibration, which is a major concern for residences and any occupied buildings

• Should require instrumentation and reporting of all vibration within 500 feet of existing and 2000 feet of new facilities. Intensive vibrations should be restricted within 2000 feet of residential, commercial areas and waterways.
• Reports to the County and COGCC of seismic activity above 1.0 on the Richter Scale should be required. Any seismic activity above 2.0 on Richter Scale should require immediate cessation of operation.

Dust

• Dust suppression should be within 1000 feet of the high-water mark of any water body--not 300 feet, as in the proposed regulations. Oil and gas operations can cause "dust" that contaminates water bodies beyond 300 feet.

Well Plugging and Abandonment:

• The regulations do not require geo-mapping, which is now part of COGCC Flowline Rulemaking Regulations. Instead county regulations only require coordinates of locations for decommissioned wells and any associated gathering or flowlines. This does not meet state standards and thus is unacceptable.
• The current regulations say that locations of pipelines will be evaluated on a case-by-case basis. COGCC has specific regulations and more Alternative Siting
regulations upcoming this spring.

- Notice to the County LDG does not have a time requirement; we recommended 48 hours.
- Public access to this information is obscured and difficult, if not impossible, to find.

**Flowlines, Transfer Lines and Gathering Lines:**

- **State Rulemaking on gas lines is complete, with detailed requirements.** The County’s regulations should include the requirement that all such pipelines associated with oil and gas production follow state law.
- **The County should require an inventory of existing gathering lines.** Not knowing where existing and future lines lay is dangerous and concerning. Future leaks, explosions, and inadvertent accidents are a high risk. WHY would we not require an inventory?
- The County should develop a reverse setback from existing pipelines based on explosion hazards that would not allow new residential (or other) development in the zone of danger around existing transportation infrastructure.
- Josh Joswick provided a detailed slideshow about the public safety aspects of gathering lines at a BOCC meeting on January 14, 2020. This is extremely important because such lines fall into a “regulatory gap” that is not covered by other regulations at the state or federal level.

**Financial Protection for County Residents:** Financial protections are very weak in these regulations. There is only one source for Fees and Security for Reclamation and an unclear process for validating operator financial foundation and stability.

- O&G operators/companies should be required to provide current information about their financial condition, proof of financial strength and adequate liability insurance, and disclose records of past financial, operational, or employee-related citations or violations.
- Operators should be required to post financial security bonds of $100,000 per wellbore as insurance for future clean-up and capping costs in the event of default, bankruptcy, or other failure to properly clean up, cap, and remediate wells/sites. This $100,000 figure is vital as the state of Colorado estimates that it costs an average of $86,000 to reclaim a single well.
- Oil & gas production reports should be verified by independent qualified monitors, to ensure accuracy and prevent under- or false reporting.
- The county has not provided citizens with a revenue assessment relating to oil and gas production. This would include figures such as the operators’ forecast of royalties, property tax and application fees, along with the cost for independent monitoring of air and water quality, and costs to clean-up existing or future releases of poison. Citizens should not be responsible for these costs.
- Larimer County must also adopt a meaningful set of fees and fines for operators that are not complying with these requirements. In their current state, the draft regulations contain
no real compliance-enforcing mechanisms. Oil and gas operators across the state have made it clear that they do not deserve the level of trust that these draft regulations currently grant. 75% of operators in the state have failed to properly file even the simplest production reports with the state. This is not an industry that can be allowed to self-regulate and self-report. The regulations need clear enforcement mechanisms, and clear penalties for non-compliance.

**Drilling in or under Open Spaces**

- The proposed regulations open the door to oil and gas development in our Larimer County Open Spaces. These lands were preserved by tax dollars for the protection of the land and wildlife and the enjoyment of our residents. Most taxpayers are not aware and have not been consulted. **It is incumbent upon our County to protect our public lands.**

**Public Process for Leasing County Owned Minerals**

- Decisions around the management of county-owned minerals must be made in view of the public-- during public meetings, recorded for access, and publicized to inform the taxpayers who own this land. These are OUR mineral rights.

**Additional significant problems throughout the regulations that minimize and reduce protections:**

- **No geo-mapping requirements** -- which is required under new COGCC Flowline Rulemaking.
- Weak language: "avoids impacts to surface and groundwater", instead of "no adverse impacts"
- **Opens the door to exploratory drilling!!!**
- NO Public process of notification of permit application within one mile, however, the Planning Commission (Feb. 19 Hearing) recommended increased "Notification: All O&GF applications shall have a minimum APO notification boundary of 1/2 mile(2,640 feet) for all neighbor referral, neighborhood meeting and public hearing notices, as outlined in Section 12.2.4. and Section 12.3. of this code" We ask that the BOCC vote to be included in the final regulations.
- NO Public disclosure of all documents submitted to the County.
- NO Independent Risk Analysis (except for "complex technical issues")
- NO Public neighborhood meetings 30 days before well-pad hearing
- NO Detailed process of submission of materials by operators
- Standards no longer apply to ALL O&G Facilities; the word "all" was removed.

**Additional Recommendations made by Planning Commission at Feb. 19 Hearing:**

1. Recommendation to increase signage at proposed well sites to 1 sign per access way on the property is greatly appreciated and **we ask the BOCC to approve this recommendation.**
2. Upon condition of approval by the Planning Commission: Regulations will include a review of Section 17 of the Larimer County Land Use Code for consistency and compliance in comparison of state of Colorado Oil and Gas Regulations within 120 days of the State completing regulations. The bulk of the State Rulemaking will be completed by July 2020. However, additional Rulemaking is to continue through the end of the year. (The Planning Commission was told that the Rulemaking would be complete this summer.)

It is unacceptable that the County's regulations, if they are below the "basement" of the State regulations, would continue to be operational and that the County would not do a comparative review until 120 days after the State Rulemaking is completed. This could mean well permits could continue to be granted under County regulations that do not meet State Law for a significant number of months. **We ask that the review period be shortened to 30 days and that a specific date for review be added. (e.g. June 30, 2020 when the bulk of the State Rulemaking will be completed.)**

3. The Planning Commission made a recommendation that the Larimer County Oil & Gas Regulations be reviewed two years after adoption to revisit adding an administrative review process to the regulations. **The Larimer Alliance for Health, Safety & the Environment strongly objects to any form of "Administrative Review" which would allow and operator to avoid or bypass any aspect of due diligence with the well permitting process.**

4. Planning Commissioner Barnett asked for review of the section allowing well pads within 100-year floodplain if no other siting is possible. Barnett asked that county engineers review this section of regulations. The motion failed. **Well pads should not be placed in floodplains and waste and takings precedent gives the County full reign to deny permits in these cases.**

In summary, the Larimer Alliance for Health, Safety & the Environment appreciates the opportunity to submit our well-researched points to support compliance with Senate Bill 181 and the State's soon-to-be completed regulations. We hope that the County is sincere in its diligence to protect its people, land, natural resources and wildlife.

In all aspects of oil and gas regulations, Larimer Alliance for Health, Safety & the Environment maintains that the Board of County Commissioners for Larimer County and the County Planning Department work for and protect its citizens, rather than promote oil and gas development to the detriment of Larimer County residents. We have legal standing to demand that Larimer County prioritize Public Health, Safety, Welfare, the environment and wildlife.