TOPICS TO BE COVERED

- A review of the NTO
- Some considerations in directing your response to the NTO
- Questions answered by COGCC and questions remaining
- Audience and faculty Q&A
NTO REQUIREMENT OVERVIEW

- Flowlines = any conduit for gas, oil, condensate, or other liquid or gaseous hydrocarbons as defined in COGCC Rules
- Flowlines and pipelines are “active” until they have been properly abandoned
- No idle/inactive status
NTO REQUIREMENT OVERVIEW

- Systematic inspection and inventory of existing flowlines and pipelines
- Abandonment of flowlines to current standards
- Identification of active flowlines near homes and businesses
- Two-phase process
PHASE I – INSPECTION AND INVENTORY
COMPLETE BY MAY 30, 2017

- Inspect flowlines/pipelines within 1,000 feet of Building Unit
  - Identify beginning and termination point (Well API or Location ID)
- Provide flowline/pipeline riser inventory and location information
  - Well API Number
  - Riser GPS Coordinates at start point and status
  - Production Facility Location ID
  - Riser GPS Coordinates at end point and status
PHASE I – INSPECTION AND INVENTORY COMPLETE BY MAY 30, 2017

- Inspect all flowlines/pipelines regardless of distance to any Building Unit
- Verify existing “inactive” flowlines or pipelines are abandoned pursuant to Rule 1103
  - Regardless of when installed or taken out of service
- Any inactive riser must be clearly marked, valves removed and capped until it can be cut off and sealed below grade
- Applies to all well statuses
PHASE II – INTEGRITY AND ABANDONMENT
COMPLETE BY JUNE 30, 2017

- Verify and document that all flowlines within 1,000 feet of a Building Unit have integrity regardless of operating pressure
  - Rule 1101.e.(2) exemption for low pressure flowlines does not apply
  - Commission approved variances to Rule 1101.e. may still apply
- May use documented integrity test completed after November 1, 2016
PHASE II – INTEGRITY AND ABANDONMENT
COMPLETE BY JUNE 30, 2017

- Abandon all “inactive” flowlines or pipelines
  - Regardless of proximity to buildings or when installed/taken out of service
- Rule 1103 Abandonment Requirements:
  - Disconnect, purge, cut off below grade, and seal
  - Notify COGCC and Local Government
- Additional abandonment methods within 1,000 feet of a Building Unit:
  - Remove entire line – COGCC Recommended; or
  - Backfill line with at least 2 feet of sand or CDF
- Must avoid unintentional reactivation during abandonment
PHASE II – INTEGRITY AND ABANDONMENT

- Change a line’s status from inactive to active
  - Must be done prior to June 30, 2017 (to avoid abandonment obligation)

- Provide Phase I Inspection and Inventory information
  - Associated Well API Number
  - Production Facility Location ID Number
  - GPS Location Information

- Pressure testing the line required by Rule 1101.e.(1)
  - Regardless of the operating pressure
  - Rule 1101.e.(2) exemption for low pressure flowlines does not apply
DIRECTING A RESPONSE TO THE NTO

- Important to put corporate client in position to obtain legal advice on NTO, and protect related Attorney-Client Communications and Work Product
- In-house and outside counsel can direct response
- Likely involves outside technical consultants – how they are engaged matters
- Some important considerations and best practices
NTO REQUIRES INVESTIGATION

- Review information and inspect facilities, lines
- Determine existence and status of lines
- Take action required by Rule or NTO
- Report to COGCC
- Tight timeframes and large scope, requires careful coordination and communication
PROTECTING THE CORPORATE CLIENT

- Investigation will identify and gather factual information – generally not privileged
- Will also involve communications regarding legal requirements, potential liabilities, etc.
- Must take care to establish and maintain privileged & confidential communications
- May also involve Work Product (if litigation likely)
ATTORNEY-CLIENT PRIVILEGE & THE NTO

- To allow frank communications with clients in pursuit of legal advice
- Requires:
  - A communication
  - Made between privileged persons
  - For the purposes of acquiring legal advice
  - In confidence
CONTROL GROUPS UNDER UPJOHN

- Not everyone in company can know privileged information
- Upjohn case established control group test
- Members of control group:
  - Have a “need to know” the information, which is within the scope of their job duties
  - Are made aware they are involved so that counsel can give legal advice
  - Understand they may not share or discuss outside the control group
  - Clearly mark control group communications as Privileged & Confidential to protect against waiver
- Information shared outside control group = waiver of privilege
PRIVILEGED PERSONS

- Privileged persons:
  - Lawyer, client, non-lawyer consultants (third parties)
  - *Kovel* doctrine: third-party communication is privileged when
    - between lawyer and other professional, and
    - necessary to assist lawyer to understand facts and render legal advice
  - Best to have consultant engaged by counsel, at the outset, and clearly reflected in written engagement letter
  - Non-testifying status of consultant’s services important
CONFIDENTIALITY OF INFORMATION

- Information provided to COGCC in response to NTO is available to public under CORA
- Some of it may be trade secret or confidential business information (CBI)
- Must claim CBI status of information in the responses to COGCC to prevent CORA disclosure to the public
NTO QUESTIONS

- COGCC authority and industry cooperation
- Questions answered by COGCC
- Questions remaining
- Audience and faculty Q&A
CONTACTS FOR FOLLOW UP

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