



## **Colorado Oil and Gas Conservation Commission**

### **Enforcement and Penalty Policy Review Under Executive Order No. D 2013-004**

**December 10, 2013**

## Introduction

Executive Order D 2013-004, issued by Governor John W. Hickenlooper on May 8, 2013, directs the Colorado Oil and Gas Conservation Commission (“Commission”) to undertake a review of its enforcement program, penalty structure, and imposition of fines. This Enforcement and Penalty Policy Review responds to the requirements of the Executive Order.

The Executive Order reinforces that it is Colorado’s priority to provide the most effective and advanced public and environmental safeguards as it develops its oil and gas natural resources. In this regard, the Executive Order instructs the Commission to “reevaluate its enforcement philosophy and approach and strive to structure fines and penalties to ensure that operators comply with rules and respond promptly and effectively to any impacts from such violations.” Appropriate penalties for violations of Commission Rules are one important tool to deter violations and encourage prompt and cooperative post-violation response and mitigation.

This *Enforcement and Penalty Policy Review* is a strategic review of the Commission’s enforcement and penalty assessment program. It is undertaken to foster the public’s trust that oil and gas operations in Colorado are conducted in a manner that protects public health, welfare, and the environment to the highest degree. This review underscores Colorado’s commitment to “hold the oil and gas industry to the highest operating standards in the nation.”

Under the Executive Order, the Commission must report to the Governor’s office annually, by December 10 of each year, all violations, any and all penalties imposed, and the rationale for the Commission’s calculation of final penalty assessments. This document together with the “2013 Commission Enforcement Orders Report,” and the “2013 Notice of Alleged Violation Report” included as Appendices 5 and 6 fulfill the Commission’s initial reporting requirement under the Executive Order.

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## I. Executive Summary

This *Enforcement and Penalty Policy Review* satisfies the Governor's directives to the Colorado Oil and Gas Conservation Commission in Executive Order No. D 2013-04 (May 8, 2013). It reexamines the Commission's enforcement philosophy and reevaluates the Commission's approach to penalties and other aspects of the Commission's enforcement of the Colorado Oil and Gas Conservation Act and Commission Rules.

The Commission recommends to the General Assembly several changes to the Colorado Oil and Gas Conservation Act. These statutory changes include:

- Increase the maximum daily penalty for a violation from \$1,000 to \$10,000;
- Eliminate the cap on the maximum total penalty for a violation, currently set in statute at \$10,000;
- Authorize the Commission to cease issuing new permits and to suspend an operator's ability to place its product into the marketplace while serious violations remain uncorrected; and
- Authorize the Commission to penalize a pattern of violation by suspending an operator's ability to place its product into the marketplace; a punishment to remain in force until the pattern of violation is corrected and compliance is assured.

The Commission also recommends changes to its enforcement and penalty Rules. These Rule revisions would be proposed and considered in future rulemakings by the Commission:

- Establish criteria by rule to decide the degree of actual or threatened adverse impact to public health or the environment resulting from a violation;
- Reduce the emphasis in current rules to rely upon informal procedures to resolve Notices of Alleged Violations;
- Require a full hearing before the Commission to resolve an alleged pattern of violation;
- Revise the Commission's Penalty Schedule and specified aggravating and mitigating factors to ensure penalties are appropriate to the nature of a violation;
- Reduce the time period in which a complainant must object to (i) a decision by the Director to decline to issue a Notice of Alleged Violation and (ii) an Administrative Order by Consent; and

- Conform the Commission’s Rules to the statutory recommendations described above.

Finally, the Commission suggests significant changes to its enforcement and penalty policies. These policy changes are described in draft policy documents appended to this *Enforcement and Penalty Policy Review*. These policy changes include:

- Develop a Penalty Matrix that establishes base penalties taking into account the seriousness of a violation and the degree of actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources;
- Limit the extent to which a penalty may be reduced for mitigating factors;
- Clarify in policy the criteria to be considered to determine the degree of actual or threatened adverse impact to the environment caused by a violation;
- Retain appropriate flexibility to consider ability to pay when setting a penalty;
- Allow appropriate penalty mitigation when large remediation costs have been incurred by a violator;
- Describe in written policy the criteria and factors used to eliminate and consolidate claims that are asserted initially in a Notice of Alleged Violation as written in the field; and
- Clarify in policy how a pattern of violation is to be determined.

## **II. The Requirements of Executive Order D 2013-004**

This enforcement and penalty policy review has been undertaken to implement Governor Hickenlooper’s Executive Order D 2013-004 (the “Executive Order”). The Executive Order is Appendix 1 to this policy review.

The Executive Order instructs the Commission to “reevaluate its enforcement philosophy and approach and strive to structure fines and penalties to ensure that operators comply with rules and respond promptly and effectively to any impacts from such violations.” To further these purposes, the Executive Order directs the Commission to revise its penalty Rules to accord with the following directives:

- 1) Only make downward adjustments to maximum fines when an alleged violator behaves in a fully cooperative manner and perform[s] any and all mitigation measures as directed and warranted;

- 2) Make the penalty Rules clear, understandable, and publicly available so that alleged violators and the public know what penalties to expect if and when a violation occurs;
- 3) As much as reasonably possible, assess penalties in a uniform and consistent manner;
- 4) Where applicable, the rules should allow for a reasonable amount of flexibility and discretion when assessing penalties;
- 5) Ensure that all penalties are appropriate for and proportionate to the gravity of a violation; and
- 6) Eliminate any economic incentives for noncompliance with the Act and its regulations.

The Executive Order further instructs the Commission to:

- a) Apply the statutory maximum penalty as necessary to protect public health, safety, welfare, and the environment;
- b) Establish minimum fine amounts in the case of a violation that involves an especially egregious or aggravating factor;
- c) Provide that certain violations or series of violations preclude the process for administrative orders by consent and must instead undergo the hearing process set forth in § 34-60-108, C.R.S.;
- d) Make clear the process for determining the date on which a violation occurs and thereby penalties begin to accrue;
- e) Post all violations and the basis for any penalty assessment . . . on the [Commission's] website.

The Executive Order also instructs the Commission to undertake any other necessary policy and rule changes consistent with the Order.

To accomplish these directives, the Commission proposes in this policy review: (i) amendments to Section 121 of the Colorado Oil and Gas Conservation Act (the "Act"), § 34-60-121, C.R.S. (see Section III.B of this policy review); (ii) changes to Commission Rules of Practice and Procedure, 2 CCR 404-1 ("Commission Rules" or "Rule") (Section IV.B); and (iii) adjustments to Commission penalty policies (Section V.B). Mark-ups showing the Commission's proposed revisions to Section 121 of the Act and to Commission Rules 522 and 523 are Appendices 2 and 3, respectively, to this policy review. Many of the changes proposed in this policy review are also

reflected in the Commission's December 2013 *Draft Enforcement Guidance and Penalty Policy*, Appendix 4.

### **III. The Commission's Statutory Enforcement and Penalty Authority**

#### **A. Current Enforcement and Penalty Authority under Section 121**

The Commission's authority to impose penalties for violations is conferred by Section 121 of the Act. The Commission may impose penalties for a violation of the Act, a violation of Commission Rules, or a violation of a Commission Order or permit. § 34-60-121(1), C.R.S.

The current maximum daily penalty authorized by the Act is \$1,000 "for each act of violation per day that such violation continues." *Id.* The Commission is required by the Act to promulgate rules that establish a penalty schedule "appropriate to the nature of the violation and that provide for the consideration of any aggravating or mitigating circumstances." § 34-60-121(1), C.R.S. Commission Rule 523.c. contains the Commission's Penalty Schedule, which establishes a base fine for a violation of a Rule. A total base fine is calculated by multiplying the days of violation by the daily penalty established by the Penalty Schedule for the Rule violated. Commission Rule 523.d. establishes specific aggravating and mitigating factors that allow for upward or downward adjustments to the base fine, as appropriate.

The maximum total penalty for any single violation is \$10,000. This statutory maximum penalty applies unless the violation results in: (i) significant waste of oil and gas resources; (ii) significant damage to correlative rights; or (iii) a significant adverse impact on public health, safety or welfare. § 34-60-121(1), C.R.S. There is no maximum total penalty for a violation that results in one of these specified impacts. Also, the Act does not prescribe a minimum penalty for any violation. If there are multiple violations, the base fines for all violations are added together to determine the total penalty.

The Commission must provide written notice, called a Notice of Alleged Violation ("NOAV") under Commission Rules, to an alleged violator when the Commission has reasonable cause to believe a violation has occurred. The notice must identify the provisions allegedly violated, the facts alleged to constitute the violation, and the required corrective action and abatement deadlines imposed by the Commission or Director. § 34-60-121(4), C.R.S.

The Commission may impose penalties only: (i) pursuant to an Administrative Order by Consent (AOC) negotiated between the alleged violator and the Director and then approved by the Commission, or (ii) after an adjudicatory hearing. § 34-60-121(1), C.R.S.

The Commission is also authorized by the Act to suspend, modify, or revoke a drilling permit, or “take other appropriate action” if an operator fails to take required action to correct a violation. § 34-60-121(6), C.R.S. A permit suspended pursuant to this provision is reinstated once the violation has been cured. *Id.* The Commission may cease issuing new permits to an operator found to be engaged in a “knowing and willful pattern of violation” of the Act, Commission Rules or Orders, or permit conditions. § 34-60-121(7), C.R.S. The Commission must vacate an Order to withhold new permits if the alleged violator demonstrates it has cured its violations and returned to compliance. *Id.*

### **B. Proposed Amendments to Section 121**

The Commission recommends the adoption of legislation during the General Assembly’s 2014 session to amend Section 121 of the Act. The following amendments would strengthen the Commission’s enforcement program:

- Increase the maximum daily penalty amount from \$1,000 to \$10,000.
- Eliminate the \$10,000 maximum total penalty.
- When a violation results in a significant actual adverse impact to the environment, significant waste, or significant harm to correlative rights, authorize the Commission, in its discretion, to: a) cease issuing new permits until the impact has been adequately addressed; b) suspend an operator’s Certification of Clearance (Form 10) until the impact has been adequately addressed; or c) both.
- When a violation or violations demonstrate a pattern of violations, authorize the Commission, in its discretion, to suspend an operator’s Certification of Clearance (Form 10) until the operator has returned to compliance and demonstrated its commitment to continuing compliance.

The Commission’s proposed statutory changes are included in Appendix 2. The Commission’s reasons for proposing these amendments are discussed below.

1. Increase the Maximum Daily Penalty and Eliminate the Total Maximum Penalty per Violation

The \$1,000 maximum daily penalty and the \$10,000 total maximum penalty per violation currently in the Act are too low. They are demonstrably low compared to other statutes that protect public health, safety, welfare, and the environment.

As a first example, the maximum daily fines for state environmental protection legislation, administered by the Colorado Department of Public Health and the Environment, are considerably greater than the Commission’s current maximum daily penalty of \$1,000:

Colorado Statute	Maximum Daily Fine	Statutory Provision
Clean Water Act	\$10,000	§ 25-8-608 (1), C.R.S.
Clean Air Act	\$15,000	§ 25-7-122 (1)(b), C.R.S.
Radiation Act	\$15,000	§ 25-11-107 (5)(a), C.R.S.
Hazardous Waste Act	\$10,000	§ 25-15-212 (1), C.R.S.

As a second example, federal environmental statutes – including the Toxic Substances Control Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, and Emergency Planning and Community Right-to-Know Act – all include a \$25,000 daily penalty limit that is adjusted periodically for inflation. Inflation-adjusted maximum daily penalties are now \$37,500, far in excess of the Commission’s statutory authorization. *See, e.g.*, 78 Fed. Reg. 66647 (Nov. 6, 2013) (U.S. EPA civil monetary penalty inflation adjustment rule).

As a third example, the Commission has examined the maximum daily penalties for oil and gas violations in several other states. Each day a violation continues constitutes a separate and distinct offense unless otherwise noted. They are:

Wyoming – \$5,000 maximum daily penalty; \$10,000 maximum daily penalty if violation is willful (Wyo. Stat. § 30-5-119(a) (2013)).

Utah – \$5,000 maximum daily penalty; \$10,000 maximum daily penalty if violation is willful (Utah Code Ann. § 40-6-11(4) (2013)).

New Mexico – \$1,000 maximum daily penalty (N.M. Stat. Ann. 1978 § 70-2-31.A. (2013)).

North Dakota – \$12,500 maximum daily penalty (N.D. Cent. Code § 38-08-16.1 (2013)).

Pennsylvania – For conventional oil and gas wells, the maximum civil penalty is \$25,000 plus \$1,000 per day of violation; for unconventional oil and gas wells, the maximum civil penalty is \$75,000 plus \$5,000 per day of violation (Pa. Cons. Stat. § 58-11-601.506 (2013)).

The Commission believes the Act’s \$1,000 maximum daily penalty coupled with the \$10,000 maximum total penalty per violation frequently results in penalties for violations that are too low given the circumstances. In the Commission’s view, such penalties are not “appropriate to the nature of the violation.” § 34-60-121(1), C.R.S. This is particularly true for violations of long duration, but other circumstances of violation also may result in a disproportionately low penalty. This result occurs because the penalty amount in the Act correlates solely to days of violation.

Increasing the maximum daily penalty and eliminating the total penalty cap are two important ways to achieve the Executive Order’s goals of deterring violations and encouraging prompt responses to violations. A higher initial penalty will help prevent violations from first occurring; eliminating the cap will decrease the incentive to allow violations to continue.

## 2. Expand the Commission’s Authority to Suspend an Operator’s Certification of Clearance

The Commission’s current authority allows it to withhold new permits from an operator engaged in a pattern of violation, but it does not have authority to withhold new permits when a violation results in significant adverse impacts to the environment. § 34-60-121(7), C.R.S. A Certification of Clearance (Form 10) allows an operator to place its oil and gas into the market. Without a Certification of Clearance, an operator loses its revenue stream. Suspending an operator’s Form 10 can be a more powerful incentive to encourage prompt, effective response to violations than withholding permits to drill new wells. This is because, in the Commission’s experience, operators do not always need new permits, but they always want to be able to sell their products.

Historically, the Commission has withheld permits only as a last resort, usually when an operator has not paid a penalty imposed or has failed to adhere to an agreed compliance schedule. The Commission anticipates that suspending an operator’s Certification of Clearance similarly would be used as a remedy of last

resort, when penalties or other measures have failed to induce an operator to remediate adverse environmental impacts and return to compliance.

The ability to impose this type of strict enforcement measure, when an operator does not take necessary measures to remediate significant adverse impacts to public health or the environment, furthers the important purpose of the Executive Order to encourage prompt response to environmental and public health issues associated with violations. Stronger penalties for patterns of violations are equally as important to fulfill the Executive Order's goal of deterring violations.

Therefore, the Commission's proposed amendment to the Act proposes including the explicit authority for the Commission *both* to withhold new permits and to suspend a Certification of Clearance for a violation resulting in significant adverse impact or demonstrating a pattern of violation.

## **IV. The Commission's Enforcement and Penalty Rules**

### **A. Current Enforcement and Penalty Rules**

The Commission's Rules implement its statutory penalty authority. Rule 522 contains procedures for issuing and resolving NOAVs. Rule 523 contains a penalty schedule for specific Commission Rule violations and specifies aggravating and mitigating circumstances to be considered in order to make the penalty appropriate to the nature of the violation. Key points of Rules 522 and 523 are discussed below.

#### **1. Rule 522: Notices of Alleged Violation**

If there is reasonable cause to believe an operator is in violation of the Act, a Commission Rule or Order, or any permit condition, the Director will either: (i) require the operator to remedy the violation voluntarily; or (ii) issue a NOAV. Rule 522.a.(3). Under Rule 522.b., "informal procedures to resolve issues raised by an NOAV . . . are encouraged."

A penalty may be imposed only pursuant to an order of the Commission following notice and a hearing. § 34-60-121(1), C.R.S. The Director also may negotiate an agreed settlement, including a penalty, with the operator. When the Director negotiates a settlement with an operator, the settlement must be memorialized in an AOC that is approved by the Commission. The Commission may approve an AOC through its Consent Agenda unless a person whose complaint led to issuance of the NOAV objects to the terms of the AOC and applies for a Commission hearing.

If the Director and operator do not negotiate a settlement contained in an AOC, the matter is heard by the Commission in a full adjudicatory hearing. This hearing is known as an Order Finding Violation hearing (“OFV hearing”). Rule 522.c.(3). At the conclusion of an OFV hearing, the Commission may find violations and impose penalties.

The Director may resolve a NOAV without Commission approval if no penalty is sought. Rule 522.b.(2). In these types of cases, the operator must agree to perform corrective actions pursuant to an abatement schedule. *Id.*

## 2. Rule 523: Procedures for Assessing Penalties

Base penalties for violations of specific Commission Rules are set forth in Rule 523.c. Currently, the base penalty for violations of most Rules is the statutory maximum: \$1,000 per day of violation. Ten Rules have a base penalty of \$500 per day.

All base penalties are subject to adjustment based upon consideration of aggravating and mitigating factors. 523.a.(2). Nine aggravating factors and seven mitigating factors are specified in Rule 523.d..

No upward adjustment for aggravating factors can be made when the base penalty starts at the statutory maximum, as it does currently for most violations. However, aggravating factors still may offset any applicable mitigating factors. The current Rules do not limit the amount by which a penalty may be reduced based on mitigating factors.

In lieu of, or to reduce the cash portion of a penalty, an operator may perform a “public project” that is beneficial to public health, safety and welfare, the environment or wildlife resources. Rule 523.e. The Commission encourages public projects. *Id.* The Commission believes in many circumstances that the environmental and other benefits of such public projects considerably outweigh the monetary gains to Colorado’s treasury from cash penalties. Moreover, public projects can be tailored to provide public benefits in communities directly affected by oil and gas operations.

## **B. Proposed Revisions to the Enforcement and Penalty Rules**

This section of the policy review describes changes to Rules 522 and 523 the Commission proposes to meet the directives of the Executive Order. The Commission’s proposed changes to Rules 522 and 523 are in Appendix 3. Many of these Rule changes will also require policy changes, which are described in

Section V of this policy review, and in more detail in the Commission's *Draft Enforcement Guidance and Penalty Policy*, Appendix 4.

1. Establish Criteria for Assessing the Degree of Adverse Impact to Public Health or the Environment

According to the Act, “the maximum penalty shall not exceed ten thousand dollars” when a violation “does not result in a significant adverse impact on public health, safety, or welfare.” § 34-60-121(1), C.R.S. The term “significant adverse impact” is not defined in the Act or Commission Rules. This means determining whether a violation has resulted in a significant adverse impact to the environment historically has proceeded on a case-by-case basis, with little to guide the Commission, the Director, the regulated community, or others as to the criteria and factors that should underlie the determination.

The Commission is proposing to eliminate the maximum penalty cap for violations that do not result in significant adverse impacts. At the same time, however, it is proposing that the degree of actual or threatened adverse impacts to public health, safety welfare, the environment, or wildlife resources be a key consideration in determining a base penalty for all violations. (These proposed revisions are discussed in greater detail in the *Draft Enforcement Guidance and Penalty Policy*, Appendix 4). Establishing criteria by which to assess the degree of actual or threatened adverse impacts, therefore, remains important to ensure such assessments are consistent and transparent.

The Commission believes that any determination of the magnitude of adverse impacts to public health, safety, welfare, the environment, or wildlife must be a finding made in light of all the facts and circumstances in each particular case. However, specific criteria and factors can form the primary bases for making this finding, and these can and should be articulated.

The Commission has tentatively identified the following criteria as appropriate to consider as it makes an adverse impact determination, particularly concerning injury to the environment:

- a) Whether and to what degree public health, safety and welfare are affected or threatened by the violation. This factor considers the existence, size, and proximity of the potentially impacted human population.
- b) Whether and to what degree the environment and wildlife resources are affected or threatened by the violation. This factor considers the

existence, size, and proximity of potentially impacted livestock, wildlife, fish, soil, water, and air, as well as all other environmental resources and values.

- c) Whether and to what degree Waters of the State, as defined in Rule 100, are affected or threatened by the violation.
- d) Whether and to what degree drinking water or potential drinking water resources are affected or threatened by the violation.
- e) Whether and to what degree surface property, on and around an oil and gas location, are affected or threatened by the violation.
- f) The quantity and character of any Exploration & Production Waste spilled or released or potentially spilled or released.
- g) The existence of any other fact or circumstance relevant to a determination of significance.

The Commission intends to propose to amend its Rules to incorporate these criteria as factors it will use to assess the degree to which a threatened or actual adverse impact to public health, safety, welfare, the environment, or wildlife has occurred in a particular circumstance.

## 2. Reduce the Current Emphasis on Informal Procedures to Resolve NOAVs

The Commission's existing penalty Rules strongly emphasize informal resolution of violations. The Commission continues to believe that it is usually appropriate to informally resolve minor violations that (i) do not cause or threaten adverse environmental impacts and (ii) can be quickly corrected by an operator. It remains appropriate that these types of minor violations do not automatically draw penalties.

Nevertheless, the Commission also believes that the current blanket statement in Rule 522.b. – that “informal procedures to resolve issues raised by an NOAV with the Director are encouraged” – is inconsistent with the Executive Order's directive to “hold the oil and gas industry to the highest operating standards in the nation.”

The Commission therefore intends to propose to modify current Rule 523.b.(1). The proposal will declare that informal procedures may be used only to resolve NOAVs that do not involve violations of a Class 3 Rule (the most serious violations) under the Commission's proposed revised Penalty Schedule. The proposal will remove the

existing language stating that informal resolution is encouraged in all circumstances.

3. Require Commission Hearings to Resolve NOAVs Involving Patterns of Violations

Under the current Rules, the Director may negotiate a settlement for any violations alleged in an NOAV. A settlement can be approved by the Commission without the need for an adjudicatory hearing.

The Commission proposes that an operator with a pattern of violations (a history of non-compliance, including multiple prior NOAVs for the same or similar Rule violations alleged in a current case) should lose the right to resolve the current violation and future violations without a full hearing before the Commission. Such “repeat offenders” are antithetical to the Executive Order’s directive and the shared Commission goal to “hold the oil and gas industry to the highest operating standards in the nation.”

The Commission intends to propose amending its Rules to require a Commission hearing whenever the Director or the Commission determines a violator is engaged in a pattern of violations. In most instances, the Director will make the initial determination of a pattern of violation.

This proposed Rule change is consistent with Section 121(7) of the Act, which allows the Commission or Director to compel an operator alleged to be engaged in a pattern of violation to appear before the Commission for a hearing. The intent of this change is to expand the Rule to include a Commission hearing to address the current violation and determine whether a pattern of violation exists, once the Director concludes such a pattern is emerging.

4. Shorten the Time for a Complainant to Seek a Hearing

A party who files a complaint has a right to object to a previous decision by the Director to decline to issue a NOAV. Rule 523.c.(2). If a NOAV is issued, a complainant may object to the terms of an AOC that resolves the NOAV. Rules 523.b.(4), 523.c.(3). In either case, a complainant currently has 45 days following notice of the Director’s decision in which to apply for an OFV hearing.

The Commission believes the 45-day waiting period can lead to unnecessary delays in the completion of enforcement actions. The Commission’s Penalty Policies, discussed below, will encourage the Director to keep a prospective complainant

informed of proposed AOC terms, as appropriate, throughout the Director's negotiations with the operator. For this reason, the Commission intends to propose a rule amendment that reduces from 45 days to 20 days the time in which a complainant must file an application objecting to an AOC or the Director's decision not to issue a NOAV.

#### 5. Conform Rules to Proposed Act Amendments

Conforming changes to the Commission's penalty Rules will be needed if the Act is amended as recommended by the Commission. Specifically, Rule 523.a.(1) refers to the statutory maximum daily penalty, and Rule 523.a.(3) refers to the statutory maximum total penalty for a violation that does not result in a significant adverse impact. Finally, Rule 523.c. lists base fines for violations of specific Rules ("Penalty Schedule"), subject to the current daily maximum fine of \$1,000. These Rules will be amended if the statutory changes recommended above are adopted.

### **V. The Commission's Enforcement and Penalty Policies**

#### **A. Current Enforcement and Penalty Policies**

Currently, the Commission does not have a written policy for assessing penalties, beyond the Rules discussed above. Despite the absence of a written penalty policy, however, the Commission generally has adhered to a consistent set of policies and practices to calculate appropriate penalties and when negotiating an AOC with an operator. These policies and practices are discussed in this section.

#### 1. Evaluation of Alleged Rule Violations

A single event, such as a spill, often results in alleged violations of multiple Commission Rules. Generally in this instance, the Commission asserts that each Rule violation is a separate and distinct violation if there are (i) important distinguishing elements between the Rules and (ii) the alleged violator has violated disparate purposes of different Rules.

Field inspectors and other staff who write NOAVs are encouraged by the Commission to identify all *possible* violations when writing an inspection report and when issuing a NOAV. At the next stage of the enforcement process, Commission enforcement staff independently evaluates the facts presented by the field staff's technical analysis. Enforcement staff determines whether all the elements of each alleged violation are fully supported. This two-step process is one way the Commission assures justice is accomplished in its prosecutorial function.

In some cases, the Commission’s enforcement staff eliminates alleged violations in an enforcement setting, or consolidates duplicative violations arising from the same events.<sup>1</sup> To some, reducing the number of violations for which penalties ultimately are sought may appear to be a lack of aggressive enforcement. However, the Commission believes exercising this type of “prosecutorial discretion” is an important step in the enforcement process currently and moving forward. Recognizing this aspect of enforcement proceedings, the Executive Order requires the Commission to allow “where applicable . . . a reasonable amount of flexibility and discretion” in its enforcement program.

It is desirable and appropriate for field staff to cite all potential violations based on observed conditions in the field. However, it is also the role of the Commission, its enforcement staff, and the Attorney General, acting as prosecutors, to determine whether the facts asserted by field staff satisfy the intent, purposes, and elements of particular statutory provisions or Rules. Circumstances exist where asserting a full penalty for all possible violations would result in a penalty disproportionately large in light of the actual or threatened impacts from the violations. Flexible discretion in the Commission’s enforcement program helps provide just, effective enforcement in Colorado.

In the final version of its *Enforcement Guidance and Penalty Policy*, the Commission will describe the criteria and factors it uses to eliminate and consolidate claims initially asserted in a field draft of a NOAV.

## 2. Duration of Violations

Determining when a violation began is oftentimes straight-forward: a violation commences, for example, on i) the day a required action, such as submitting a report to the Commission, did not occur, or ii) the day Commission staff observe in the field and document an act or condition that constitutes a violation. In other circumstances, such as the discovery of a subsurface release of oil, pinpointing when the release began, and hence the violation, may be much more complex. An investigation by Commission environmental staff or consulting experts may be necessary, and determining an exact start date may not be practically possible.

Similarly, in most cases a violation ends on the day the violation is remedied – the required report is submitted or the required corrective action is completed. Again,

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<sup>1</sup> Operators frequently question whether a separate violation for each similar Rule is justified. The Commission is not aware of an instance in which an operator has pursued a judicial challenge of imposition of separate fines of this type.

though, some circumstances can make determining the end date of a violation more difficult. For example, if a spill results in groundwater contamination, the spill may be stopped and measures to remediate impacted groundwater implemented, but the contamination may persist for months or years.

Nevertheless, the Commission's experience is that it is uncommon to encounter instances in which the starting and ending dates of a violation are very difficult to determine in the enforcement context. The Commission does not believe that determining the duration of violations has been so common, difficult, or controversial that a new Rule or policy is needed at this time.

### 3. Adjustments for Mitigating Factors

The Director and Commission are required by statute to consider aggravating and mitigating circumstances and to impose penalties "appropriate to the nature of the violation." § 34-60-121(1), C.R.S. Currently, aggravating factors are almost never applied because the base penalty for violations of nearly all Rules is set at the statutory maximum. In some cases, aggravating factors are applied to offset potential reductions in the penalty based on mitigating factors.

The Commission Rules do not limit the amount by which a penalty can be reduced for mitigating factors and, until recently, the Commission has not had a clear policy concerning such reductions. In practice, significant reductions in the penalty amount have been commonplace when several mitigating factors apply.

The Commission must have flexibility to ensure that the penalties it levies are just and appropriate to a violation under the circumstances. At the same time, the Executive Order directs the Commission to hold Colorado's oil and gas industry to the highest standards. The Executive Order also directs the Commission to apply statutory maximum penalties to protect public health and the environment.

Since early 2013 the Director and enforcement staff have, as a policy matter, generally limited reductions for mitigating factors in enforcement actions to a maximum of 25% of the base fine amount. All enforcement matters are unique, and this policy is not meant to be applied mechanically. However, setting a reasonable expectation on the maximum reduction that will be allowed for mitigating factors is consistent with the directives in the Executive Order.

### 4. Ability to Pay

The Commission considers "ability to pay," the effect a large fine might have upon the violator's financial well-being and ongoing operations, when determining

appropriate penalties. If a large penalty would jeopardize the operator's ability to continue operating and, therefore, its ability to conduct necessary environmental remediation, the Commission typically considers structuring a settlement that includes a compliance schedule for performing remediation. In that circumstance, the Commission may suspend a portion of the penalty until the operator completes the required remediation. If the remediation is performed properly, the suspended portion of the penalty is waived.

The Commission believes the flexibility to structure such agreements remains important and should not be altered. If an operator cannot meet its penalty obligation, or elects to declare bankruptcy instead of paying a penalty and continuing operations, significant consequences may result for Colorado. In addition to the obvious economic impacts to the citizens of the State, in some circumstances the State might inherit the practical (as opposed to legal) responsibility for environmental remediation. This practical obligation might also extend to plugging, abandoning, and reclaiming the oil and gas facilities of that operator.

#### 5. Remediation Costs Incurred

The Commission requires operators to take all reasonable measures to remediate the adverse public health or environmental impacts that result from operations that violate the Act, Commission Rules, Orders, or permits. Environmental and public health remediation can be very expensive.

The Commission sometimes has considered a violator's cost to conduct remediation as a mitigating factor in assessing a penalty when the remediation costs have run into the hundreds of thousands of dollars. Reducing a penalty based on remediation costs incurred has been limited to cases in which the operator has "demonstrated prompt, effective, and prudent response to the violation," and the cost to conduct remediation has exceeded any economic benefit to the operator. *See* Rule 523.d.

The Commission believes it important that it retain the flexibility and discretion to mitigate a penalty to an appropriate degree when remediation costs are substantial.

#### 6. Significant Adverse Impacts

As described above, and significantly for the Commission's enforcement program, under the Act, a penalty for a violation that results in a "significant adverse impact to public health, safety, or welfare," is not constrained to a statutory maximum. § 34-60-121(1), C.R.S. (statutory maximum penalty also waived in circumstances of

significant waste of oil or gas resources or harm to correlative rights). The term “significant adverse impact” is not defined either in the Act or current Commission Rules.

The Commission has not previously developed written guidance for a “significant adverse impact” finding. As a result, in the past the analysis to determine whether a violation resulted in a significant adverse impact proceeded on an ad hoc, case-by-case basis. Historically, the Commission considered and deliberated upon all the facts and circumstances before it in order to make such findings.

As a practical matter, in recent years, this “significant adverse impact” provision has been invoked only for environmental impacts. Since 2010, the Commission has imposed penalties for significant adverse environmental impacts in eleven cases. Each of these cases involved adverse impacts to ground water, surface water, or both.

Ten of these cases were resolved through negotiated AOCs and the remaining case was settled. The maximum penalty negotiated and approved by the Commission was \$423,300. In that case, a person had ingested contaminated surface water. The average penalty amount in these eleven cases was \$173,350. The lowest penalty in these cases was \$10,000. This was an instance when the duration of the violations alleged was 6 days for one violation and 2 days for another. The single case that went to an OFV hearing settled after the hearing concluded, but before the Commission deliberated and issued its Order. After the hearing, the Director and operator agreed to a \$150,000 penalty, which the Commission approved.

As part of this review of its enforcement and penalty policies and practices, the Commission has developed written criteria to consider as it assesses the degree of actual or threatened harm to the environment under the Penalty Matrix, including whether a violation has resulted in a “significant adverse impact” to the environment. These criteria embody the Commission’s experience investigating and remediating environmental impacts associated with oil and gas operations. These are nonexclusive criteria, and they are listed above at page 14 of this policy review, in Section IV, Part B.1.

#### 7. Pattern of Violation

The Act includes a provision containing a practical and important penalty – the denial of new permits – for an operator who willfully and knowingly is “responsible for a pattern of violation.” § 34-60-121(7), C.R.S. This statutory provision is rarely invoked, and there is currently neither Rules nor policy for determining what

constitutes a “pattern of violation.” This determination will only become more important, however, if the Commission’s proposed amendment is implemented to allow the Commission or Director to suspend an operator’s Certification of Clearance when there is a pattern of violation.

The Commission believes operators which exhibit a pattern of violation should be subject to significantly larger penalties for repeat violations. The number of NOAVs an operator receives over a particular span of time is one important indicator of recidivism. However, the Commission also recognizes that a large operator which operates hundreds of wells is more likely to receive a greater total number of NOAVs than a small operator which exhibits a worse pattern of non-compliance. Other criteria, such as the number of NOAVs per wells operated, whether the operator is frequently in violation of the same or similar Rules, and the overall percentage of “Corrective Action Required” inspections an operator receives should also be considered as factors in this type of finding.

#### 8. Settlement Adjustments

Commission Rules encourage informal procedures to resolve a NOAV and allow the Director to negotiate a proposed penalty with the alleged violator. A negotiated settlement agreement is, as required by statute, memorialized in an AOC.

A proposed AOC must be approved by the Commission. The Commission may approve a proposed AOC through its Consent Agenda, a summary process that does not include a hearing, unless a complainant objects to the proposed AOC.

Alternatively, if a settlement is not reached and an AOC is not proposed, the Director applies to the Commission for an Order Finding Violation and a consequent hearing. This application by the Director results in a full adjudicatory hearing before the Commission.

Avoiding a full adjudicatory hearing is a strong incentive for the Commission and an alleged violator to negotiate a settlement agreement. Preparing for an adjudicatory hearing is time-consuming and very expensive. The outcome is uncertain for all parties involved. For the Commission, preparing for an adjudicatory hearing – particularly one that requires expert testimony on technical or environmental issues – places a severe strain upon staff and other resources. In such circumstances, progress often suffers in other enforcement matters and other day-to-day projects of the involved technical staff. Finally, conducting a full adjudicatory hearing can delay the resolution of a NOAV by many months as compared to a resolution under a negotiated settlement.

The Commission's willingness to resolve NOAVs through negotiated settlement, rather than using an adjudicatory hearing, can and should remain under the directives of the Executive Order. A fair and reasonable settlement of a NOAV is an effective enforcement method.

## **B. Proposed Changes to Enforcement and Penalty Policies**

To fulfill the requirements of the Executive Order, the Commission has developed a *Draft Enforcement Guidance and Penalty Policy*, Appendix 4 to this report. The *Draft Enforcement Guidance and Penalty Policy* describes procedures for evaluating and resolving alleged violations. It incorporates many of the previously unwritten policies and practices described above. Policies in the *Draft Enforcement Guidance and Penalty Policy* also have been modified as appropriate to meet the guidance and directives in the Executive Order.

In addition, the Commission has developed a new method for calculating penalties. It will use a "Penalty Matrix," which is described in detail in the *Draft Enforcement Guidance and Penalty Policy*. The Penalty Matrix assigns and mandates base penalties according to these factors: i) the seriousness of the violation assigned in the Penalty Schedule (Class 1, Class 2, and Class 3), and ii) the degree to which the violations resulted in an actual or threatened adverse impact to the environment or public health.

The *Draft Enforcement Guidance and Penalty Policy* is currently in draft form, because the Commission has not yet engaged in stakeholder outreach and some of the proposed policy changes depend on proposed amendments to Commission Rules. The Commission will continue to refine and modify its *Draft Enforcement Guidance and Penalty Policy*, following stakeholder outreach. It will modify that draft policy as necessary to comport with any duly adopted statutory or Rule changes.

## **VI. Implementation**

In this *Enforcement and Penalty Policy Review*, the Commission is recommending ambitious, but fair and important revisions to Section 121 of the Act, Commission Rules 522 and 523, and the Commission's enforcement policies and practices. To a substantial extent, these proposed changes must proceed seriatim, beginning with the proposed amendments to the Act.

To implement the changes it has recommended, the Commission will:

- Work with the Department of Natural Resources' Executive Director's Office to find a legislative sponsor for the proposed amendment to Section 121 of the Act and support the proposed legislation through the 2014 Legislative Session.
- Continue to refine the December 2013 *Draft Enforcement Guidance and Penalty Policy* internally in advance of commencing a stakeholder process concerning proposed amendments to Rules 522 and 523.
- Assuming Section 121 is amended, commence a stakeholder process no later than the close of the 2014 Legislative Session concerning proposed amendments to Commission Rules 522 and 523 and key proposed enforcement policy changes.
- Schedule rulemaking for proposed revisions to Rules 522 and 523, including the Penalty Schedule, in the third quarter 2014, following the conclusion of the stakeholder process.
- Immediately implement proposed revisions to the Commission's enforcement practices and policies that are not dependent on amendments to either the Act or Commission Rules.

By pursuing these action items, and assuming key statutory amendments are enacted, the Commission's enforcement program will be substantially updated and fully poised to meet the intent and purpose of Executive Order D 2013-004 prior to the Commission's 2014 report to the Governor.



## Appendix 1

**Executive Order No. D 2013-004**

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

136 State Capitol Building  
Denver, Colorado 80203  
Phone (303) 866 - 2471  
Fax (303) 866 - 2003



John W. Hickenlooper  
Governor

**D 2013-004**

## EXECUTIVE ORDER

### **Directing the Colorado Oil and Gas Conservation Commission to Review, Propose Regulations, and Adopt Guidance Regarding Its Enforcement and Penalty-Assessment Procedures**

Pursuant to Article IV, Section 2 of the Colorado Constitution and the authority vested in the Office of the Governor, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order directing the Colorado Oil and Gas Conservation Commission to undertake a review of its enforcement program, penalty structure, and imposition of fines.

#### **I. Background and Purpose**

As we move forward in developing energy, we ought to insist on the strictest and most effective environmental safeguards. The Colorado Oil and Gas Conservation Commission (Commission) should reevaluate its enforcement philosophy and approach and strive to structure fines and penalties to ensure that operators comply with rules and respond promptly and effectively to any impacts from such violation. Appropriate penalties for violations of rules on those developing oil and gas constitute one tool available to the Commission. Penalties are designed to discourage violations and encourage prompt response in environmental or public health and safety concerns in the event that violations occur. For these reasons, Colorado requires strong and clear enforcement of the rules and assessment of fines and penalties accordingly.

The Commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of the Colorado Oil and Gas Conservation Act (Act), to make and enforce rules, regulations, and orders pursuant to the Act, and to do whatever may reasonably be necessary to carry out the provisions of the Act. *See* C.R.S. § 34-60-105(1).

In order to carry out the provisions of and fulfill its responsibilities under the Act, and to foster public trust that oil and gas operations in Colorado are conducted in a manner that is protective of public health, safety, and welfare, the Commission must enforce its rules and assess

penalties so as to strongly deter violations and encourage cooperative compliance response if and when violations occur. To that end, the Commission's penalty rules should, (1) only make downward adjustments to maximum fines when an alleged violator behaves in a fully cooperative manner and perform any and all mitigation measures as directed and warranted, (2) be clear and understandable and publicly available so that alleged violators and the public can know what to expect by way of any penalties if and when a violation occurs, (3) as much as reasonably possible, be assessed in a uniform and consistent manner, (4) where applicable, allowing for a reasonable amount of flexibility and discretion, (5) ensure that penalties assessed are appropriate for the gravity of violations of its rules or the Act, and (6) make certain that any economic incentives for noncompliance with the Act and its regulations are eliminated.

## **II. Directive and Scope**

The Commission is hereby directed to undertake a strategic review of its violation and penalty assessment program used to enforce its rules and the Act. This review should include its rules regarding the notice of violations and procedures for issuing notices of violations, the penalty schedule and its policies, calculating or adjusting penalties, and imposing and collecting fines.

The Commission is also directed to evaluate its rules, consistent with its statutory authority, regarding the adjustment of fines based on aggravating and mitigating factors so as to strongly deter violations and, equally strongly, encourage prompt and cooperative post-violation response and mitigation. The Commission must structure these adjustments so as to hold the oil and gas industry to the highest operating standards in the nation for protection of public health, safety, and welfare, including the environment and wildlife resources. In doing so, the Commission is directed to:

- a) apply the statutory maximum as necessary to protect public health, safety, welfare, and environment;
- b) establish minimum fine amounts in the case of a violation that involves an especially egregious or aggravating factor;
- c) provide that certain violations or series of violations preclude the process for administrative orders on consent and must instead undergo the hearing process set forth in C.R.S. § 34-60-108;
- d) make clear the process for determining the date on which a violation occurs and thereby penalties begin to accrue; and
- e) post all violations and the basis for penalty assessment is made publicly available on the website.

The Commission is directed to undertake any other necessary policy and rule changes consistent with this order and will detail its compliance with this order in a report to the Governor's Office no later than December 10, 2013. In addition, the Commission is directed to report to the Governor's Office each year by December 10th on all violations, any and all penalties imposed regarding violations, and the rationale for the calculation of final penalty assessments, including fines. Finally, the Commission is directed to develop and adopt an "enforcement guidance" setting forth procedures for processing violations, including the issuance of notices of violations, calculating or adjusting penalties, and imposing and collecting fines. Such guidance shall be published on the Commission's website.

### **III. Staffing and Resources**

The Commission staff shall use existing funding, if at all, in undertaking the reviews, proposing the regulations, and developing the guidance called for in this Executive Order. Members of the Commission shall be reimbursed for any expenses incurred in undertaking official duties called for in this Executive Order, consistent with C.R.S. § 34-60-104(2)(b).

### **IV. Duration**

This Executive Order shall remain in full force and effect until modified or rescinded by future Executive Order of the Governor.



GIVEN under my hand  
and the Executive Seal of  
the State of Colorado this  
eighth day of May, 2013.

A handwritten signature in blue ink, which appears to read "John W. Hickenlooper". The signature is fluid and cursive, written over the printed name and title.

John W. Hickenlooper  
Governor



## Appendix 2

### **Proposed Amendments to the Colorado Oil & Gas Conservation Act, § 34-60-121, C.R.S.**

*C.R.S. 34-60-121*

**COLORADO REVISED STATUTES**

**\*\*\* This document reflects changes current through all laws passed at the  
First Regular Session  
of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\***

**TITLE 34. MINERAL RESOURCES  
OIL AND NATURAL GAS  
ARTICLE 60.OIL AND GAS CONSERVATION**

**C.R.S. 34-60-121 (2013)**

**34-60-121. Violations - penalties**

(1) Any operator who violates any provision of this article, any rule or order of the commission, or any permit shall will be subject to a penalty of not more than ~~one ten~~ thousand dollars for each act of violation per day that such violation continues. Any such penalty shall will be imposed by order of the commission, after a hearing in accordance with section 34-60-108, or by an administrative order by consent entered into by the commission and an operator. ~~For a violation that does not result in significant waste of oil and gas resources or damage to correlative rights or does not result in a significant adverse impact on public health, safety, or welfare, the maximum penalty shall not exceed ten thousand dollars.~~ The commission shall will promulgate rules that establish a penalty schedule appropriate to the nature of the violation and that provide for the consideration of any aggravating or mitigating circumstances. An operator subject to a penalty order shall will pay the amount due within thirty days after its imposition, unless such operator files a judicial appeal. The penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the commission in the second judicial district. Moneys collected through the imposition of penalties shall will be credited first to any legal costs and attorney fees incurred by the attorney general in such a recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund, created in section 34-60-122.

(2) If any person, for the purpose of evading this article or any rule, regulation, or order of the commission, makes or causes to be made any false entry or statement in a report required by this article or by any such rule, regulation, or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this article or by any such rule, regulation, or order, or omits or causes to be omitted from any such record, account, or memorandum full, true, and correct entries as required by this article or by any such rule, regulation, or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record,

account, or memorandum, such person is guilty of a misdemeanor and, upon conviction thereof, shallwill be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of this article or any rule, regulation, or order of the commission shallwill be subject to the same penalty as that prescribed by this article for the violation by such other person.

(4) Whenever the commission or the director has reasonable cause to believe a violation of any provision of this article, any rule, regulation, or order of the commission, or any permit has occurred, written notice shallwill be given to the operator whose act or omission allegedly resulted in such violation. The notice shallwill be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shallwill state the provision alleged to have been violated, the facts alleged to constitute the violation, and any corrective action and abatement deadlines the commission or director elects to require of the operator.

(5) (a) If an operator fails to take corrective action required pursuant to subsection (4) of this section, or whenever the commission or the director has evidence that a violation of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit has occurred, under circumstances deemed to constitute an emergency situation, the commission or the director may issue a cease-and-desist order to the operator whose act or omission allegedly resulted in such violation. Such cease-and-desist order shallwill require such action by the operator as the commission or director deems appropriate. The order shallwill be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shallwill state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the commission or the director elects to require of the operator.

(b) The commission or the director may require an operator to appear for a hearing before the commission no sooner than fifteen days after the issuance of a cease-and-desist order; except that the operator may request an earlier hearing. At any hearing concerning a cease-and-desist order, the commission shallwill permit all interested parties and any complaining parties to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts.

(c) In the event an operator fails to comply with a cease-and-desist order, the commission may request the attorney general to bring suit pursuant to section 34-60-109.

(6) If the commission determines, after a hearing conducted in accordance with section 34-60-108, that an operator has failed to perform any corrective action imposed under subsection (4) of this section or failed to comply with a cease-and-desist order issued under subsection (5) of this section with regard to a violation of a permit provision, the commission may issue an order suspending, modifying, or revoking such permit or may take other appropriate action. An operator subject to an order that suspends, modifies, or revokes a permit ~~shall will~~ continue the affected operations only for the purpose of bringing them into compliance with the permit or modified permit and ~~shall will~~ do so under the supervision of the commission. Once the affected operations are in compliance to the satisfaction of the commission and any penalty not subject to judicial review or appeal has been paid, the commission ~~shall will~~ reinstate the permit.

(7) The commission will promulgate rules that establish criteria for determining what constitutes a pattern of violation of this article, or of any rule, regulation, or order of the commission, or of any permit. Whenever the commission or the director has evidence that an operator is responsible for a pattern of violation ~~of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit~~, the commission or the director ~~shall will~~ issue an order to such operator to appear for a hearing before the commission in accordance with section 34-60-108. If the commission finds, after such hearing, that a knowing and willful pattern of violation exists, it may: (a) issue an order which shall prohibiting the issuance of any new permits to such operator; (b) suspending the operator's Certification of Clearance for all producing oil and gas wells or underground injection control wells owned or operated by the operator; or (c) both (a) and (b). When such operator demonstrates to the satisfaction of the commission that it has brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, such order denying new permits or suspending the operator's Certification of Clearance, or both, shall will be vacated.

(8) The Commission will promulgate rules that establish criteria for determining the degree of actual or threatened adverse impact to public health, safety, welfare, the environment or wildlife resources resulting from a violation of this article, any rule or order of the commission, or any permit. Whenever the commission or the director finds a violation has resulted in an actual significant adverse impact to public health, safety, welfare, the environment, or wildlife resources, the commission or the director may (a) suspend issuance of any new permits to such operator; (b) revoke the operator's Certification of Clearance for all producing oil and gas wells or underground injection control wells owned or operated by the operator; or (c) both (a) and (b). When such operator demonstrates to the satisfaction of the commission or director that it has brought the violation into compliance and instituted all remediation measures required by the commission or

director to address the adverse impacts, the suspension on issuing new permits or of the Certification of Clearance, or both, will be lifted.



## **Appendix 3**

### **Proposed Changes to Commission Rules of Practice and Procedure, 2 CCR 404-1, Rules 522 and 523**

## **522. PROCEDURE TO BE FOLLOWED REGARDING ALLEGED VIOLATIONS**

### **a. Notice of Alleged Violation.**

(1) A complaint requesting that the Director issue a Notice of Alleged Violation (NOAV) may be made by the mineral owner, surface owner or tenant of the lands upon which the alleged violation took place, by other state agencies, by the local government within whose boundaries the lands are located upon which the alleged violation took place, or by any other person who may be directly and adversely affected or aggrieved as a result of the alleged violation.

(2) Oral complaints shall be confirmed in writing. Persons making a complaint are encouraged to submit a Complaint Form, Form 18.

(3) If the Director, on the Director's own initiative or based on a complaint, has reasonable cause to believe that a violation of the Act, or of any rule, regulation, or order of the Commission, or of any permit issued by the Director, has occurred, the Director shall cause the operator to voluntarily remedy the violation, or shall issue an NOAV to the operator. Reasonable cause requires, at least, physical evidence of the alleged violation, as verified by the Director.

(4) If the Director, after investigating a complaint made in accordance with this Rule 522.a.(1), decides not to issue an NOAV, the complainant may file an application to the Commission pursuant to Rule 503.b.(4), requesting the Commission enter an Order Finding Violation (OFV) in accordance with this rule.

### **(5) NOAV process.**

- A. An NOAV issued by the Director shall be served on the operator or the operator's designated agent by personal delivery or by certified mail, return receipt requested.
- B. The NOAV does not constitute final agency action for purposes of judicial appeal.
- C. The NOAV shall identify the statute, rule, regulation, order, permit or permit condition subject to Commission jurisdiction allegedly violated and the facts alleged to constitute the violation. The NOAV may propose appropriate corrective action and an abatement schedule if any, that the Director elects to require. The NOAV shall also describe

the penalty, if any, which the Director may propose, to be recommended in accordance with Rule 523.

**b. Resolution of a Notice of Alleged Violation.**

(1) The Director may resolve an alleged violation of a Commission Rule listed as Class 1 or 2 on the Commission's Rule 523.c. Penalty Schedule through informal procedures. Informal procedures to resolve issues raised by an NOAV with the Director are encouraged. Such procedures may include, but are not limited to, meetings, phone conferences and the exchange of information. If, as a result of such procedures, the Director determines that no violation has occurred, the Director shall revoke the NOAV in writing and shall provide a copy of the written notification to the complainant, if any. The Director may not resolve an alleged violation of a Commission Rule listed as Class 3 on the Commission's Rule 523.c. Penalty Schedule through informal procedures, unless the Director determines no actual Class 3 violation occurred.

(2) NOAVs may be resolved by written agreement of the operator and the Director as to the appropriate corrective action and abatement schedule, a copy of which shall be provided by the Director to the complainant, if any. Such agreements do not require Commission approval and shall not be placed on the Commission docket, except at the request of the operator.

(3) NOAVs which are not resolved by written agreement for correction and abatement or which recommend the imposition of a penalty may be provisionally resolved by negotiation between the operator and the Director, unless the Director finds the operator in violation has multiple similar past violations or an overall history of noncompliance. a pattern of violation. If such negotiations result in a proposed agreement, an Administrative Order By Consent (AOC) containing such agreement shall be prepared and noticed for review and approval by the Commission. The Director may propose the terms for an AOC directly to the alleged violator. Upon Commission approval, the AOC shall become a final order, and the agreed penalty imposed. The AOC shall be placed on the consent agenda and Commission approval may be granted without hearing, unless an objection thereto is filed by the complainant. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.

(4) If the Director finds an operator alleged to be in violation of the Act, Commission Rules, an order or a permit has multiple and similar past violations or an overall history of non-compliance, the Director will apply to the Commission for

an Order Finding Violation to: (a) resolve the current alleged violation(s); and (b) determine whether the operator is engaged in a pattern of violation.

(54) The Director shall advise the complainant of any informal procedures used to facilitate resolution of the NOAV. A complainant may object to the proposed resolution by an AOC. At the Director's discretion the AOC may be reviewed and modified based on the complainant's concerns, with the consent of the operator. If the complainant objects to the Director's final decision to revoke or settle the NOAV, the complainant shall have the right to file with the Commission an application for an Order Finding Violation (OFV). Such application shall be filed pursuant to Rule 503 within ~~forty fivetwenty~~ (2045) days of the receipt of the Director's written determination. For purposes of this rule, the Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

**c. Order Finding Violation.**

(1) If the operator contests the NOAV, as to the existence of the violation, the appropriate corrective action and abatement schedule, or any proposed penalty, the Director shall make application to the Commission for an OFV and shall place the matter on the next available Commission docket, providing that at least twenty (20) days' notice of such application is provided to the operator.

(2) If the Director decides not to issue an NOAV, the Commission may conduct a hearing to consider whether to issue an OFV upon twenty (20) days' notice to the affected operator under the following circumstances:

A. On the Commission's own initiative if it believes that the Director has failed to enforce a provision of statute, rule, regulation, order, permit or permit condition subject to Commission jurisdiction.

B. On the application of a complainant pursuant to Rule 503.b.(4), provided that such complainant has first made a written request to the Director to issue an NOAV and the Director has determined in writing not to do so. An application for hearing by a complainant shall be filed within ~~forty fivetwenty~~ (4520) days of the receipt of the Director's written determination. For purposes of this rule, the Director's written determination shall be deemed to be received three (3) business days

after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

(3) Upon an operator's request, a settlement conference shall be held with the Director no less than five (5) days before the hearing on an OFV. If an agreement is reached, an AOC containing such agreement shall be prepared and noticed for review and approval by the Commission, at its discretion. Upon such approval, the AOC shall become a final order and the agreed penalty shall be imposed. Such approval may be granted without hearing, unless an objection is filed by a complainant. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation. If the complainant objects to settlement of the matter by an AOC, the complainant shall have the right to file with the Commission an application for an OFV. Such application shall be filed pursuant to Rule 503.b.(4) within ~~forty-fivetwenty~~ (4520) days of the receipt of the Director's written determination. For purposes of this rule, the Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

(4) A hearing to consider whether to issue an OFV shall be a de novo proceeding, unless the parties stipulate as to the facts, or as to the appropriate corrective action and abatement schedule, in which case the hearing may be accordingly limited.

(5) The Director is always a necessary party to a hearing on an OFV. The operator against which an OFV is sought is always a necessary party but need not present a case. Any person, which is not the applicant for an OFV, but whose complaint initiated the enforcement proceeding, shall be granted intervener status if so requested, pursuant to Rule 509., except that the filing fee shall be waived.

**d. Cease and Desist Orders.**

(1) The Commission or the Director may issue a cease and desist order whenever an operator fails to take corrective action required by final AOC or OFV.

(2) Whenever the Commission has evidence that a violation of any provision of the Act, any rule, permit, or order of the Commission has occurred under circumstances deemed to constitute an emergency situation, the Commission or the Director may issue a cease and desist order. If the order is entered by the Director it

shall be immediately reported to the Commission for review and approval. Except as provided in subsection (3) below, such order shall be considered a final order for purposes of judicial review.

(3) The order shall be served by personal delivery or by certified mail, return receipt requested, or by confirmed electronic or facsimile copy followed by a copy provided by certified mail, return receipt requested, on the operator or the operator's designated agent and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the Commission or the Director elects to require of the operator. Any protest by an operator to a cease and desist order issued by the Director shall automatically stay the effective date of the order, in which case the order shall not be considered final for purposes of judicial review until such protest is heard.

(4) In the event an operator fails to comply with a cease and desist order, the Commission may request the attorney general to bring suit pursuant to §34-60-109, C.R.S.

## 523. PROCEDURE FOR ASSESSING ~~FINES~~PENALTIES

a. ~~Fines~~Penalties. An operator who violates any provision of the Act or any rule, permit, or order issued by the Commission shall be subject to a ~~fine~~penalty which shall be imposed only by order of the Commission, after hearing, or by an AOC approved by the Commission. All ~~fin~~penalties shall be calculated using the base ~~fine~~penalty amount for the particular violation as set forth in the ~~fine~~Penalty Matrix schedule in subparagraph c. of this Rule 523. subject to the following:

(1) The Commission may in its discretion find that each day a violation exists constitutes a separate violation; however, no ~~fine~~penalty for any single violation shall exceed ~~one~~ten thousand dollars (\$~~10~~,000) per day.

(2) All ~~fin~~penalties shall be subject to adjustment based upon the factors listed in subparagraph d. of this Rule 523.

~~(3) For a violation which does not result in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety or welfare, including the environment or wildlife resources, the maximum penalty for any single violation shall not exceed ten thousand dollars (\$10,000) regardless of the number of days of such violation.~~

~~(4)~~—(3) Fines-Penalties for violations for which no base fine-penalty is listed shall be determined by the Commission at its discretion subject to subparagraphs (1), (2), and (3) of this Rule 523.a.

**b. Voluntary disclosure.** Any operator who conducts a voluntary self-evaluation as defined in the 100 Series of the rules and makes a voluntary disclosure to the Director of a significant adverse impact on the environment or of a failure to obtain or comply with any necessary permits, shall enjoy a rebuttable presumption against the imposition of a fine-penalty for any violation relating to such impact or failure, under the following conditions:

- (1) The disclosure is made promptly after the operator learns of the violation as a result of the voluntary self-evaluation;
- (2) The operator making the disclosure cooperates with the Director regarding investigation of the issue identified in the disclosure; and
- (3) The operator making the disclosure has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

The Commission shall deny the presumption against the imposition of fines penalties only if, after hearing, it finds that any of the preceding conditions have not been met, or that the use of this process was engaged in for fraudulent purposes.

**c. ~~Base fine Penalty Scheduleschedule.~~ The following Penalty Schedule classifies Commission Rules as Class 1, Class 2, or Class 3 based on severity of a violation of the Rule. Violations of Class 1 Rules are the least severe; violations of Class 3 Rules are the most severe. The presumptive penalty for a violation of each Rule classification is as follows:**

Class 1: \$500 per day of violation

Class 2: \$1,500 per day of violation

Class 3: \$3,500 per day of violation.

These penalty amounts are one of two criteria used in the Commission's Penalty Matrix to determine the Base Penalty for a given violation. The other criterion is the degree of actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources. The degree of actual or threatened adverse impact is assessed as "minor," "moderate," or "major" pursuant to subparagraph 523.d., below.

Pursuant to the Penalty Matrix in subparagraph 523.e., below, the presumptive penalty in the Penalty Schedule is increased if violation of a Rule results either in moderate or major actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources. The penalties set forth in the Penalty Matrix constitute the “Base Penalty” for a particular violation.

**d. Degree of Actual or Threatened Adverse Impact to Public Health, Safety, Welfare, the Environment, or Wildlife Resources.** The degree of actual or threatened adverse impact to public health, safety, welfare, the environment or wildlife, including a finding of significant adverse, shall be made in the Commission’s discretion with guidance from the following non-exclusive list of factors:

(1) Whether and to what degree public health, safety and welfare were affected or threatened by the violation. This factor considers the existence, size, and proximity of the potentially impacted human population.

(2) Whether and to what degree environment and wildlife resources were affected or threatened by the violation. This factor considers the existence, size, and proximity of potentially impacted livestock, wildlife, fish, soil, water, air, and all other environmental resources.

(3) Whether and to what degree Waters of the State, as defined in Rule 100, were affected or threatened by the violation.

(4) Whether and to what degree drinking water was affected or threatened by the violation.

(5) Whether and to what degree surface and adjacent property around the oil and gas location, including the property values, were affected or threatened by the violation.

(6) The quantity and character of any E & P waste, or non-E & P waste, spilled, released, or potentially released.

(7) The existence of any other fact relevant to a determination of significance.

**e. Penalty Matrix.** The following ~~Penalty Matrix table~~ sets forth the ~~Base fine~~ Penalty for violations based upon: (i) of the the Commission’s Penalty Schedule; and (ii) the degree of actual or threatened adverse impact to public health, safety,

welfare, the environment, or wildlife as determined pursuant to subparagraph 523.d., above, rules listed.

		<u><i>Penalty Schedule Classification</i></u>		
		<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>
<u><i>Degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife</i></u>	<u>Major:</u> <u>Actual significant adverse impacts</u>	<u>\$3,500</u>	<u>\$6,500</u>	<u>\$10,000</u>
	<u>Moderate:</u> <u>Threat of significant adverse impacts, or moderate actual adverse impacts</u>	<u>\$1,500</u>	<u>\$3,500</u>	<u>\$6,500</u>
	<u>Minor:</u> <u>No actual adverse impact and little or no threat of adverse impacts</u>	<u>\$500</u>	<u>\$1,500</u>	<u>\$3,500</u>

f. **Adjustment.** The fine-Base Penalty may be increased (if Base fine-Penalty is less than \$10,000) or decreased by application of the aggravating and mitigating factors set forth below.

Aggravating factors.

- (1) The violation was intentional or reckless.
- ~~(2) The violation had a significant negative impact, or threat of significant negative impact, on the environment or on public health, safety, or welfare.~~
- ~~(23)~~ (23) The violation resulted in significant waste of oil and gas resources.
- ~~(34)~~ (34) The violation had a significant negative impact on correlative rights of other parties.
- ~~(45)~~ (45) The violation resulted in or threatened to result in significant loss or damage to public or private property.
- ~~(56)~~ (56) The violation involved recalcitrance or recidivism upon the part of the violator.
- ~~(67)~~ (67) The violation involved intentional false reporting or recordkeeping.

(78) The violation resulted in economic benefit to the violator, including the economic benefit associated with noncompliance with the applicable rule, in which case the amount of such benefit may be taken into consideration.

(9) The violation results in significant, avoidable loss of wildlife or wildlife resources, including the ability of the land to produce vegetation supportive of wildlife.

Mitigating factors.

(1) The violator self-reported the violation.

(2) The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

(3) The violator cooperated with the Commission, or other agencies with respect to the violation.

(4) The cause(s) of the violation was (were) outside of the violator's reasonable control and responsibility, or is (are) customarily considered to be force majeure.

(5) The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

(6) The cost of correcting the violation reduced or eliminated any economic benefit to the violator.

(7) The violator has demonstrated a history of compliance with Commission rules, regulations and orders.

**g. Public projects.** In lieu of or in reduction of ~~fine~~penalty amounts, an AOC may provide for the initiation of or participation in operator projects which are beneficial to public health, safety and welfare, including the environment and wildlife resources, and the Commission encourages AOCs which so provide.

**h. Payment of ~~fine~~penalties.** An operator against whom the Commission enters an order to pay a ~~fine~~penalty must pay the amount due within thirty (30) days of the effective date of the order, unless the Commission grants a longer period or unless the operator files for judicial appeal, in which event payment of the penalty shall be stayed pending resolution of such appeal. An operator's obligations to comply with the provisions of a Commission order requiring compliance with the Act, a permit condition, or these rules and regulations shall not be stayed pending resolution of an appeal unless the stay is ordered by the court.



## **Appendix 4**

# **Colorado Oil and Gas Conservation Commission Draft Enforcement Guidance and Penalty Policy December 2013**



**COLORADO OIL AND GAS CONSERVATION COMMISSION**

**ENFORCEMENT GUIDANCE AND PENALTY POLICY  
DRAFT**

**December 2013**

## INTRODUCTION

The mission of the Colorado Oil and Gas Conservation Commission (“Commission”) is to foster the responsible development of Colorado’s oil and gas natural resources. In Colorado, this means that the development of these natural resources must be consistent with protection of public health, safety, and welfare, including the environment and wildlife resources, at all times.

A strong enforcement program plays an important part in assuring the responsible development of oil and gas natural resources across Colorado. The guidance and policies contained in this document describe the Commission’s enforcement policies. These policies are presented in this written form to provide all those interested in and affected by the development of oil and gas natural resources with a clear roadmap as to how and when the Commission will enforce the statute and the rules that guide oil and gas development.

Substantial and appropriate penalties, levied in appropriate circumstances, are a part of any strong enforcement program. This document describes the rules that govern Colorado’s oil and gas penalty program. It explains how the Commission will propose and assess penalties. It lays out a penalty program that deters violations, as well as encourages compliance and good conduct. It was also prepared to align with the Commission’s proposed statutory amendments and Rule changes, described in the *Enforcement and Penalty Policy Review* under Executive Order No. D 2013-004, as if they are adopted substantially as proposed.

Part A of this *Draft Enforcement Guidance and Penalty Policy* describes the Commission’s policies, practices and procedures for issuing and resolving warning letters, “corrective action required” inspection reports, and NOAVs. Part B describes the Commission’s policies, practices, and procedures for determining penalty amounts.

## **A. COGCC ENFORCEMENT GUIDANCE**

### **I. Introduction**

The Colorado Oil and Gas Conservation Act, §§ 34-60-101 to 130, C.R.S. (2013) (the “Act”) (available at [http://cogcc.state.co.us/RR\\_Docs\\_new/rules/AppendixV.pdf](http://cogcc.state.co.us/RR_Docs_new/rules/AppendixV.pdf)), authorizes the Commission to enforce the Act, the Commission’s Rules of Practice and Procedure, 2 CCR 404-1 (“Rule”), a Commission Order, or a permit issued by the Commission. § 34-60-121, C.R.S. The enforcement guidance in this section explains how the Commission will exercise these enforcement powers.

When the Commission initiates enforcement action in which it seeks penalties, it issues a Notice of Alleged Violation (“NOAV”). The NOAV identifies the statutory and regulatory provisions allegedly violated as well as the facts alleged to constitute the violation. Penalties may be imposed only by an Order of the Commission, following a hearing, or by Commission approval of an administrative order by consent agreed to by the operator and Director.

In the event a violation is significantly less serious, the Director *may* elect to issue a warning letter or a “corrective action required” inspection report. Less serious violations include only violations that do not pose significant actual or threatened injury to public health or the environment, do not cause waste, do not damage correlative rights, and are not part of a pattern of violations by the operator.

A warning letter or corrective action required field inspection report requires an operator to correct a less serious violation within a specified time. If the operator complies within the prescribed time, the Director *may* close the matter without issuing a NOAV and without seeking a penalty. If the operator does not timely correct the violation, the Director will issue a NOAV and seek a penalty.

### **II. Commission Options for Resolving Alleged Violations**

When the Director has reasonable cause to believe that a violation of the Act, Commission Rule, Order or permit has occurred, the Director will require the operator in violation to remedy the violation, or will issue a NOAV to the operator.

Reasonable cause to believe that a violation has occurred may arise upon the Director’s own investigation and initiative, upon a third-party complaint, or as a result of any other source of information available to the Director. Reasonable cause requires physical evidence of the alleged violation that is verified by the Director. Rule 522.a.(3).

The Director will respond to an alleged violation by issuing a warning letter or corrective action required inspection report, or by issuing a NOAV and assessing a penalty. The principal difference between these approaches is that, in the instance

of a warning letter or a corrective action required field inspection report, a penalty usually will not be sought by the Commission or the Director. In the event a NOAV issues, a penalty usually will be sought.

The circumstances underlying the issuance of these documents are described below.

### **A. Warning Letter or Corrective Action Required Inspection Report**

The Commission or the Director may issue a warning letter or a corrective action required field inspection report when an operator is in violation of Commission Rules or statutes *and* when:

- The violation does not result in significant threatened or actual adverse impact to the environment, significant waste of resources, or significant harm to correlative rights; and
- Rapid corrective action can bring the operator into compliance quickly.

A warning letter or corrective action required inspection report describes the corrective action required and the deadline by which the operator must complete the corrective action *and* provide notification, with evidence of completion, to the Director.

Absent unusual circumstances, the Director will not pursue penalties or further enforcement when an operator timely completes the required corrective action and notification of completion. The existence of unusual circumstances, for this purpose, lies wholly within the discretion of the Commission and the Director. In the event a penalty or further enforcement is pursued, the Director will describe why in a written document.

When an operator fails to complete corrective action and notification of completion by the deadline given, the Director will issue a NOAV and seek penalties as well as corrective actions to resolve the violation.

In general, a warning letter or corrective action required inspection report is appropriate for an alleged violation of Class 1 Rules on the Commission's *Penalty Schedule* (Appendix A) if the Commission determines all of the following factors exist:

- The operator has a good compliance history generally;
- The violation is not part of a pattern of violation by the operator;
- The operator has not received a recent warning for a similar violation under similar circumstances; and
- The alleged violation can be cured rapidly through corrective action.

A warning letter or corrective action required inspection report may be appropriate for a violation of a Class 2 Rule only if the Commission or Director believe:

- The operator has a good compliance history generally;
- The violation is not part of a pattern of violation by the operator;
- The operator has not received a recent warning for a similar violation under similar circumstances;
- The alleged violation can be cured rapidly through corrective action; and
- The violation did not and will not result in an actual or threatened adverse impact to public health, welfare, safety, the environment, or wildlife resources.

A warning letter or corrective action required inspection report will not be used for alleged violations of Class 3 Rules listed on the Commission's Penalty Schedule. Also, a warning letter or corrective action required inspection report will not be used when, in the Commission's view, an alleged violation results in significant threatened or actual adverse public health or environmental impact, significant waste, or significant harm to correlative rights.

The Director will issue a NOAV and assess a penalty – rather than issuing a warning letter or corrective action required inspection report – when the Director concludes that an operator previously has been warned about the same or materially similar violations. Similarly, the Director will not issue a warning letter or corrective action required inspection report when an operator has demonstrated a pattern of violation, as described in more detail in Part B, Section V.E, below.

A warning letter or corrective action required inspection report may be resolved through informal procedures with the Director. Rule 522.b.(1). In most cases, a written agreement by the operator to conduct corrective action within a prescribed time will be required. Rule 522.b.(2). The Director will provide a copy of such an agreement to a complainant, if any. *Id.* Such an agreement does not require Commission approval and will not be placed on the Commission docket, except at the request of the operator. *Id.*

## **B. Notice of Alleged Violation**

The Director will issue a NOAV and seek penalties for a violation of a Class 3 Rule. The Director also will issue a NOAV and seek penalties for any violation that the Director believes meets one or more of the following circumstances:

- The violation results in a significant threatened or actual adverse public health or environmental impact;

- The violation results in significant waste or significant harm to correlative rights
- The violation is committed by an operator which previously has been warned by the Director about a similar violation;
- A violation that occurs when an operator receives a warning letter or corrective action required inspection report but does not complete required corrective action and provide evidence of completion within the prescribed time;
- The operator exhibits a pattern of violation; or
- The Director concludes, based on the Director's evaluation of the circumstances of the violation, that a warning letter or corrective action required inspection report is inappropriate.

The circumstances described above are illustrative only. They are not an exclusive list of the circumstances in which a NOAV and penalty assessment, rather than a warning letter or corrective action required inspection report, will issue for a violation. The Director retains full discretion, in all circumstances, to choose to issue a NOAV and assess a penalty for any violation.

### **C. NOAV Procedures**

#### **1. Initiation of a NOAV**

The Commission or Director initiates NOAV enforcement actions by issuing a NOAV to an operator. The NOAV is a written document that alleges that an operator or other person or entity is in violation of the Act, one or more Commission Rules, one or more Orders, or one or more permits. A Commission staff member with enforcement responsibility ordinarily completes the text of a NOAV.

A NOAV will, in virtually all circumstances, be accompanied by an assessment of a penalty. The penalty will be calculated using the Commission's Penalty Policy. The Commission's Penalty Policy is set forth in Part B of this document.

In practical terms, most operational field violations (including violations of most 300 Series, 600 Series, 800 Series, 900 Series, 1000 Series, 1100 Series and 1200 Series Rules) are found by staff in COGCC's Field Inspection Unit, Engineering Unit, or Environmental Unit. Other types of violations, including paperwork or reporting violations, ordinarily are pursued by any staff unit responsible for implementation of a program area, including staff in COGCC's Financial Assurance, Production Reporting, and Permitting sections.

Staff may issue a NOAV based upon its own inspection or investigation, in response to a citizen complaint (Form 18) pursuant to Rule 336, or upon other information provided to the Commission.

In the event staff investigates a complaint and concludes there is no violation, and does not issue a NOAV, a complainant may nevertheless apply to the Commission for an Order Finding Violation (“OFV”) hearing pursuant to Rule 522.a.(4). An OFV hearing proceeds like an enforcement action, but the complainant bears the burden of proof. The Commission may enforce the Act and its Rules, Orders, or permits, and impose penalties or corrective action, based on the evidence presented in an OFV hearing.

## 2. Contents and Service of a NOAV

To meet the notice requirements of the Act, a NOAV must identify each provision of the Act, Commission Rule, Order, or permit allegedly violated as well as the facts alleged to constitute the violation. § 34-60-121(4), C.R.S. The NOAV also must describe the penalty, if any, which the Director may assert. Rule 522.a.(5)(C). The NOAV may include required corrective actions and a schedule for completing those actions. § 34-60-121(4), C.R.S.; Rule 522.a.(5)(C).

When compiling an initial, draft NOAV, Commission staff ordinarily cite all potential violations created by facts and circumstances presented to the staff member.

A NOAV must be served in person or by certified mail. § 34-60-121(4), C.R.S.; Rule 522.a.(5).

## III. Resolution of a NOAV

A NOAV may be resolved provisionally through an agreement negotiated between the operator and the Director. Such a negotiated agreement is known as a draft Administrative Order by Consent (“AOC”). AOCs are subject to final approval by the Commission. § 34-60-121(1), C.R.S.; Rule 522.b.(3).

When the Director and an operator do not reach agreement about the circumstances of a violation, appropriate corrective action and an abatement schedule, the penalty to be paid, or any other matter, the enforcement case will be scheduled for an OFV hearing before the Commission. Rule 522.c. The Director initiates an OFV hearing by applying to the Commission to place the matter on the next available Commission docket, provided the operator has at least twenty (20) days notice prior to the hearing. *Id.*

A more detailed discussion of policies and procedures for AOCs and OFVs follows.

### A. Administrative Orders by Consent

As noted, the Director and the operator may provisionally resolve a NOAV through a negotiated settlement. The settlement is memorialized in an AOC, and the AOC

is subject to the Commission's final approval. 34-60-121(1), C.R.S.; Rule 522.b.(3). The majority of NOAVs are resolved through negotiated AOCs.

The key elements to be negotiated in most AOCs are (1) the corrective actions the operator will be required to take to return to compliance and remedy any adverse impacts arising from the violations, and (2) the amount of the penalty to be paid by the operator.

#### 1. Corrective Action

Corrective actions are case and location specific. In all cases, the Commission will require corrective measures that remedy violations as expeditiously as practical under the circumstances. Any adverse impacts to public health, safety, welfare, the environment, or wildlife arising from the violations must be corrected and remediated as soon as possible.

In most cases, the required corrective action and an abatement schedule will be set forth in the text of a NOAV. In the circumstance that a NOAV issues because an operator fails to timely conduct corrective actions in response to a warning letter or corrective action required inspection report, a NOAV will state that the time for corrective action has passed.

In many cases, the corrective action needed for an operator to return to compliance is obvious. For example, an operator will be required to submit a required report, or to remove non-oil and gas equipment from the well pad. In such a case, negotiations between the operator and the Director are relatively straightforward.

In other cases, where returning to compliance or remediating adverse impacts is more complicated, or could be achieved through alternative means, a more thorough and detailed discussion is often appropriate. In many such cases, as an investigation of site conditions proceeds, it is often necessary to require other corrective actions, in addition to those initially identified in a NOAV. Technical practicality and economic feasibility are relevant when considering possible alternative corrective action and remediation measures.

In cases in which a NOAV issues as a result of the third-party complaint, it is appropriate for the Director to discuss with the complainant proposed corrective actions and the timing for implementing these actions. The Director retains final authority as to the appropriate corrective action and any penalty amount assessed in all circumstances. But the complainant may object to a proposed AOC and may seek an OFV hearing. Rule 522.b.(4).

## 2. Penalty Amount in a NOAV

The penalty amount assessed in a NOAV is set using the Penalty Policy that is part of this Guidance.

In general, a “base penalty” is determined for every violation in a NOAV. A duration – the number days of violation – is determined for each violation. Each base penalty is multiplied by the duration for each violation, and all such penalties are summed. The resulting amount is then adjusted up or down in accord with a determination of aggravating and mitigating factors. The resulting amount is the penalty assessed in the NOAV.

The base penalty is found using the Commission’s Penalty Matrix, set forth in Part B, Section III, below. The Penalty Matrix considers (1) the severity of the Rule violated, based on the Commission’s Penalty Schedule (Appendix A), and (2) the degree of threatened or actual adverse impact to public health, safety, welfare, the environment, or wildlife resulting from the violation.

In general, each day a violation continues is a separate violation. A base penalty may be adjusted based upon aggravating and mitigating factors listed in Rule 523.d. and other factors discussed in Part B, Section V of this document.

In less complex cases, such as failure to conduct a required test or to submit a required report, the Director may propose an AOC with corrective action and a proposed penalty at the same time the NOAV is issued. In these less complex cases, the operator will have a brief period of time – typically 30-45 days – in which to: (1) accept the proposed corrective action, penalty amount, and other settlement terms; (2) suggest modifications; or (3) elect to proceed with an OFV hearing.

In the settlement of these less complex cases, and absent an operator’s *bona fide* dispute as to the existence or severity of the alleged violation, modifications to the recommended corrective actions or penalty amount will be considered only when the operator identifies substantial material circumstances previously unknown to the Director.

In matters involving more complex violations or violations resulting in adverse environmental impacts, the Director may take more time to assess all relevant facts before making a penalty proposal. Enforcement and technical staff will engage actively with the operator after the NOAV is issued in order to monitor corrective actions and oversee environmental remediation as necessary.

The Commission expects that staff and the operator will have substantial ongoing communication regarding details and deadlines for the required remediation in more complex cases. The Director may request that the operator provide written

updates, environmental remediation reports, sampling data, or other information necessary to resolve the matter.

Especially in these more complex cases, the penalty calculation may involve more detailed consideration of aggravating or mitigating factors in Rule 523.d., as well as other relevant considerations discussed in the Penalty Policy described in Part B, Section V of this document.

### 3. A Public Project Performed to Resolve a Violation in Whole or Part

Rule 523.e. describes how an operator may perform a public project that benefits public health, safety and welfare, including the environment or wildlife, to satisfy some or all of a penalty amount.

The nature and scope of such a public project must be approved by the Director in advance, and may also require approval by local government representatives. To the extent possible, a public project should be designed to benefit those most directly affected by the operator's oil and gas operations. The extent to which the cost of performing a public project offsets a penalty amount is a matter to be negotiated.

The Director will require follow-up reports regarding the status and completion a public project. If a public project is not completed appropriately, the operator will be required to pay the full penalty with no offset for the public project.

### 4. Final Approval of an AOC

If the parties reach agreement to resolve a NOAV, the Director will draft an AOC to resolve the enforcement matter. The draft AOC will describe relevant facts and circumstances, violations asserted, corrective and remedial actions, the penalty amount, and other relevant terms and provisions.

This draft AOC will be negotiated as a final matter among the parties to the agreement. The draft AOC will then be presented to the Commission for final approval as described below.

If the NOAV issued as a result of a third-party complaint, a copy of the final AOC will be provided to the complainant as soon as possible after the Director and operator have finalized and executed the AOC. If the complainant is dissatisfied with the final AOC, the complainant may object and file an application for an OFV hearing. The complainant must object and file his or her application within 20 days after receiving the AOC from the Director. At such an OFV hearing, the complainant has the burden of proof to persuade the Commission that the AOC should not be approved and a different remedy should be imposed. Rule 522.b.(4).

Once the AOC is fully executed and the complainant, if any, has expressed approval of the AOC or failed to object in time, the matter will be placed on the Commission's hearing docket for final approval. AOCs ordinarily are docketed on the Commission's Consent Agenda, and not as contested hearings.

Because an AOC is a negotiated agreement, any changes the Commission might wish to make to an AOC must also be agreed to by the operator before the AOC is final. Consequently, in its hearing the Commission ordinarily either approves the AOC as written or denies the AOC. An approved AOC becomes a final, enforceable Order of the Commission. If the Commission denies the AOC, the operator and Director may renegotiate terms to satisfy the Commission's concerns. If the violator objects to the modifications required by the Commission, the matter is set for an OFV hearing.

## **B. Order Finding Violation**

When the Director and the violator cannot reach a proposed settlement, or if the Director asserts that the operator has engaged in a pattern of violation, a NOAV will be scheduled for an OFV hearing before the Commission.

An OFV hearing is an adjudicative administrative hearing. It is governed by the Colorado Administrative Procedure Act ("APA"), the Colorado Rules of Civil Procedure ("CRCP"), the Colorado Rules of Evidence, and Commission Rule 528. The Commission has discretion to relax procedural requirements of the CRCP, and to admit evidence that would not be admissible under the Colorado Rules of Evidence.

An OFV hearing is a *de novo* proceeding. This means the Commission determines in the first instance all matters of fact and law concerning the violation. This determination is based upon the evidence and argument presented at the hearing. Absent a stipulation or other arrangement, neither the operator nor the Commission is bound by terms, conditions, or penalty amounts offered or discussed prior to the hearing. Commission staff often seeks the highest penalty amount allowed under the Act and Commission Rules when a NOAV proceeds to OFV hearing.

Preparation required for contested OFV hearings can be extensive. Parties may conduct discovery under the CRCP. This discovery can include depositions, interrogatories, and requests for admissions.

OFV hearings typically include opening statements, presentation of cases-in-chief, including lay and expert witness testimony, questioning by Commissioners, cross-examination, Rule 510 statements by non-parties, rebuttal testimony, and closing arguments. Colorado's APA permits parties to submit all or part of their evidence

in writing without the need for oral testimony, but most parties proceed with oral and documentary evidence and argument.

After due consideration of written and oral statements, the testimony and arguments presented at hearing, and all other evidence and argument, the Commission determines its findings and issues its decision. The Commission's decision is recorded in the hearing minutes and in a final Order.

The final Order is prepared by the Commission's Hearings Unit staff and is issued by the Secretary of the Commission. The final Order may be based on proposed orders offered by the parties prior to hearing pursuant to Rule 527.1.

The Commission's final Order may be appealed to the District Court pursuant to the Act, § 34-60-111, C.R.S., and the APA, § 24-4-106, C.R.S.

## **IV. Hearing Procedures**

### **A. Notice of Hearing**

The Director initiates the Commission's formal enforcement process and the Commission asserts jurisdiction by issuing a notice of the OFV hearing.

This notice is served upon the operator, as required by the Act and the Colorado Rules of Civil Procedure. This notice is also published once in a Denver newspaper and in a newspaper in general circulation in the county in which the property involved is located.

Upon issuance of the notice of the OFV hearing, the enforcement matter is docketed for hearing before the Commission.

The content of the Commission's Notice of Hearing is governed by several sources. These include, most notably, the APA, the Colorado Rules of Civil Procedure, and the Colorado Oil and Gas Conservation Act.

The APA requires that the Notice of Hearing contain the following:

- Notice of the time, place, and nature of the hearing;
- Legal authority and jurisdiction under which it is to be held; and
- Matters of fact and law asserted.

The Act requires the Notice of Hearing to:

- Issue in the name of the State;
- Be signed by the Commission or the Secretary of the Commission;
- Specify the style and number of the proceeding;
- Specify the time, date and place of hearing;
- Specify the date by which protests must be filed; and
- Specify the purpose of the hearing.

### **B. Prehearing Procedures**

The Commission encourages the parties to use prehearing conferences. The prehearing conference is a place to facilitate settlement, narrow issues, identify stipulated facts, resolve other pertinent issues, and reduce hearing time before the Commission.

A Notice of Hearing generally includes a cover letter that requests the operator to contact the Commission's enforcement officer to schedule a prehearing conference. If a violator fails to communicate with the enforcement officer, the matter proceeds to hearing on the date specified in the Notice of Hearing.

Prehearing conferences are governed by Rule 527, the APA, and the Colorado Rules of Civil Procedure. The Director, a hearing officer, or a hearing Commissioner will preside over the prehearing conference and rule on preliminary matters.

The prehearing conference is held on the record (recorded in permanent form). Parties must be prepared to discuss all procedural and substantive issues, and parties must have authorization to make binding commitments on all procedural matters. Rule 527.d. The Hearing Officer may require the parties file a prehearing statement.

The parties to a prehearing conference may consider:

- Offers of settlement;
- Designation of issues;
- Simplification of and establishment of a list or summary of the issues;
- Bifurcation of issues for hearing purposes;

- Admissions as to, or stipulations, of facts not remaining in dispute or the authenticity of documents;
- Limitation of the number of fact and expert witnesses;
- Limitation on methods and extent of discovery, and a discovery schedule;
- Disposition of procedural motions; and
- Other matters raised by the parties, the Commission, or the Hearing Officer.

At a prehearing conference, the parties and the hearing officer will also identify legal and factual issues in dispute, schedule discovery procedures (where necessary), schedule prehearing statements and exchange of exhibits, and allocate amounts of hearing time before the Commission.

If the parties identify potentially dispositive legal issues in dispute, the hearing officer may establish a schedule for briefing and arguing those issues before the Commission. Cases may be bifurcated such that the Commission will only hear oral arguments on the briefs at the first hearing, and will not hear the factual aspects of the matter until the legal issues have been resolved. At a prehearing conference, the Hearing Officer may require the exchange and acceptance of service of proposed exhibits, the establishment of a list of exhibits and witnesses, and a timetable for the completion of discovery.

Settlement conferences may be conducted on or off the record for purposes of negotiation. Technical staff is frequently involved, as many of the discussion topics deal with performance of corrective actions, remediation requirements, and other technical issues. The parties will draft any agreements reached, or orders issued at a prehearing conference, and file them with the hearing officer. The hearing officer will approve the drafts, disapprove them, or recommend modification.

In cases where there is no response by the violator, the case ordinarily is heard by the Commission as a staff request for default judgment. Occasionally, an operator will appear at the noticed hearing but without contacting the enforcement officer in advance. The Commission has discretion in that instance to continue the matter, to proceed with the hearing, or to fashion some other remedy appropriate in the circumstances.

### **C. Enforcement Hearing Procedures**

Commission enforcement hearings are conducted pursuant to Rule 528.c. The Director, a complainant, if any, and the operator present evidence and argument and conduct direct and cross examination.

Witness testimony is given under oath. Witnesses are subject to cross-examination.

Enforcement matters are heard *de novo* by the Commission. This means the Commission's decisions of fact and law are not based upon the findings or conclusions of any other tribunal. The Commission's decisions of fact and law are based upon the evidence and other materials presented to it at the hearing.

An operator against whom the Commission enters an Order imposing a penalty ordinarily must pay the penalty amount due within thirty (30) days of the effective date of the Order. The Commission may grant a longer period of time for payment.

Under the Act, generally the violator's obligation to pay a penalty is stayed automatically pending resolution of an appeal to a court. § 34-60-121(1), C.R.S. Nevertheless, the violator's obligation to comply with a Commission Order requiring compliance with the Act, a permit condition, or the Rules is not stayed unless the court specifically orders a stay of any such requirement.

## **B. COGCC PENALTY POLICY**

### **I. Introduction**

This section sets forth the Commission's policies, procedures, interpretations, and guidelines for determining appropriate penalties for violations of the Act, Commission Rules, Orders, or permits. This Penalty Policy is intended to ensure that penalties discourage violations from occurring in the first place. It is also intended to encourage prompt, cooperative, and complete response to environmental or public health and safety impacts and concerns when violations do occur.

Further, this Penalty Policy is intended to ensure penalties:

- Are assessed equitably and consistently while allowing reasonable flexibility and discretion to the Commission;
- Are appropriate in view of the gravity or seriousness of the violation;
- Eliminate any economic benefit of noncompliance; and
- Are administered to encourage a rapid return to compliance.

#### **A. Preliminary Matters**

It will be a highly unusual and rare occasion when the Commission or the Director varies from this Penalty Policy. Nevertheless, the Commission retains the discretion to vary penalty assessments from the guidance contained in this Penalty Policy when appropriate circumstances dictate that result.

The Commission acknowledges that an assessment of no penalty, or an assessment of a penalty less than that called for under this Penalty Policy, may be the just and appropriate enforcement response in the circumstances of a particular violation. Similarly, the Commission acknowledges that other circumstances may dictate a penalty greater than the penalty calculated under this Penalty Policy.

As described in detail elsewhere in this *Enforcement Guidance and Penalty Policy*, the Commission retains its discretion to resolve certain less-than-significant violations by requiring corrective actions pursuant to an abatement schedule. In these instances, the Commission generally will not impose a penalty.

The policies and procedures set out in this Penalty Policy are for guidance only. This document does not contain rules or binding procedures. Similarly, nothing in this Penalty Policy creates any substantive or procedural right in any person or entity. Finally, the Commission may change this Penalty Policy as it sees fit.

## **B. Documentation of Penalty Assessment**

Enforcement staff will prepare a written explanation of how a proposed penalty is determined and calculated. Documentation will include information sufficient to demonstrate that a penalty is consistent with the Act, Commission Rules, and this Penalty Policy. If a proposed penalty varies from this Penalty Policy, the written explanation will explain the rationale for the variance.

The administrative record for the determination of a final administrative penalty by the Commission or Director is a generally a public record. This record is available for public review pursuant to the Colorado Open Records Act.

## **II. A Brief Overview of the Calculation of a Penalty**

This section describes the calculation of a penalty amount for a hypothetical NOAV. Each of the steps set forth in this section is described in more detail in the text below.

1. The first step in the penalty assessment process is to list each violation described in the NOAV.
2. Next, a base penalty amount is calculated for each separate violation using the Penalty Matrix. The base penalties in the Penalty Matrix are based upon the nature of the Rule violated and the degree of threatened or actual harm to public health, safety, welfare, the environment, or wildlife caused by the violation.
3. The third step in the penalty assessment process considers the duration of each violation. Each base penalty amount is multiplied by the number of days of duration of the underlying violation. Additional procedures that reduce penalty amounts based upon duration may be applied for violations of long duration.
4. A base penalty amount for each violation, including duration considerations, is then listed. These amounts are added together to reach a cumulative amount for all violations in the NOAV.
5. The penalty assessment then considers and applies aggravating and mitigating factors to this cumulative amount. Other considerations may also be applied to adjust a penalty on a case-by-case basis. This adjusted cumulative amount is the penalty the Director will seek for the NOAV.

## **III. Calculating the Amount of a Base Penalty**

To ensure that a penalty is appropriate to the nature of a violation and that penalties are applied uniformly over time, the Commission has established a Penalty Matrix.

The Commission’s Penalty Matrix is based upon: (1) the Commission’s Penalty Schedule, which lists penalties for Commission Rules based on the nature of the violation; and (2) the degree of threatened or actual adverse impact to public health, safety, welfare, the environment, or wildlife caused by the violation. These factors form the vertical and horizontal axes of the Penalty Matrix.

The penalty amounts in the cells in the Penalty Matrix are based on a statutory maximum penalty of \$10,000 per violation per day. The Commission determines a base penalty amount by selecting which cell in its Penalty Matrix best fits the violation at issue.

***Penalty Matrix***

		<b><i>Penalty Schedule Classification</i></b>		
		Class 1	Class 2	Class 3
<b><i>Degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife</i></b>	<u>Major:</u> Actual significant adverse impacts	\$3,500	\$6,500	\$10,000
	<u>Moderate:</u> Threat of significant adverse impacts, or moderate actual adverse impacts	\$1,500	\$3,500	\$6,500
	<u>Minor:</u> No actual adverse impact and little or no threat of adverse impacts	\$500	\$1,500	\$3,500

**A. The Penalty Schedule**

The first part of the Penalty Matrix is based upon the Penalty Schedule classification for each Commission Rule. The Commission is required to establish a Penalty Schedule appropriate to the nature of a violation. § 34-60-121(1), C.R.S. The Penalty Schedule is established by Commission Rule 523, and is Appendix A to this document.

The Penalty Schedule classifies each substantive Commission Rule using a three-tiered approach. Rules of a more ministerial and less significant nature (from a

threat perspective) are Class 1 Rules. Rules that directly govern protection of public health or the environment, including wildlife, are Class 3 Rules. All remaining Rules are Class 2 Rules. The Rule classification consideration is shown in the vertical columns of the Penalty Matrix.

As a first example, Rule 705 requires submittal of a Notice of Intent to Conduct Seismic Operations, and is a Class 2 Rule. The minimum penalty for violating a Class 2 Rule, as shown in the Penalty Matrix, is \$1,500 per day of violation. A second example is Rule 324A., which requires operators to take precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources. It is a Class 3 Rule. The minimum penalty for violating a Class 3 Rule, as shown in the Penalty Matrix, is \$3,500 per day.

### **B. The Degree of the Actual or Threatened Impact to Public Health, Safety, Welfare, the Environment, or Wildlife**

The degree to which a violation results in an actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife is the second factor that determines the base penalty for a given Rule violation. This factor is shown in the horizontal rows of the Penalty Matrix.

The degree of threatened or actual adverse impact to the environment will be determined through consideration of all the circumstances of a violation. The Penalty Matrix contains three gradations for this consideration: minor, moderate, and major, as described below.

The Commission has established the following, non-exclusive list of criteria as factors for consideration when assessing the extent of adverse impacts, if any, resulting from a violation:

- a) Whether and to what degree public health, safety and welfare are affected or threatened by the violation. This factor considers the existence, size and proximity of the potentially impacted human population.
- b) Whether and to what degree environment and wildlife resources are affected or threatened by the violation. This factor considers the existence, size and proximity of potentially impacted livestock, wildlife, fish, soil, water, and air, as well as all other environmental resources and values.
- c) Whether and to what degree “waters of the state”, as defined in Rule 100, are affected or threatened by the violation.
- d) Whether and to what degree drinking water or potential drinking water resources are affected or threatened by the violation.

- e) Whether and to what degree surface property on and around an oil and gas location, is affected or threatened by the violation.
- f) The quantity and character of any Exploration & Production Waste spilled or released or potentially spilled or released.

This list is not exclusive. The Commission retains discretion to consider and weigh other facts or circumstances relevant to its determination of significance.

Based upon the circumstances of a particular violation, the Commission will evaluate and rate the magnitude of the impact or threat as follows:

- a) A "major" violation occurs when there is an *actual significant adverse impact* to the environment or public health.
- b) A "moderate" violation occurs when there is a *threat of a significant adverse impact or a moderate actual adverse impact* to the environment or public health.
- c) A "minor" violation occurs when there is a *little or no threat of adverse impact, and no actual adverse impact* to the environment or public health.

### **C. The Duration of the Violation**

The total base penalty – for each violation – is calculated by multiplying the base penalty in the Penalty Matrix by the number of days of violation. Under Section 121 of the Act and Rule 523, each day a violation persists ordinarily constitutes a separate act of violation. Each day of violation is subject to a separate statutory penalty. § 34-60-121(1), C.R.S.

The Commission recognizes that in circumstances in which a violation persists for a long time, a straight per-day-of-violation calculation can result in an extremely large penalty amount. In some cases, such a large penalty can be disproportionate and unjust under the circumstances of the violation. In such cases, the Commission may adjust the duration aspect of the total penalty in order to fit the particular violation in a way that is more just.

As a guide to determining appropriate penalties for long-duration violations, the Commission may use the following Violation Duration Matrix. The Violation Duration Matrix reduces the percentage of the base penalty to be applied during different time intervals of a continuing violation. The calculations for each time interval are then added together to determine the total base penalty.

*Violation Duration Matrix*

		<b>Days of Continuing Violation</b> <b>(Columns represent parts of the complete duration of the violation)</b>					
		1-10	11-30	31-60	61-120	121-365	366+
<b>Type of Violation</b> <b>(refer to the axes of Penalty Matrix)</b>	Class 3/Major	100.00%	50.00%	25.00%	10.00%	5.00%	2.00%
	Class 3/Moderate	100.00%	45.00%	22.50%	9.00%	4.50%	1.80%
	Class 3/Minor	100.00%	40.00%	20.00%	8.00%	4.00%	1.60%
	Class 2/Major	100.00%	35.00%	17.50%	7.00%	3.50%	1.40%
	Class 2/Moderate	100.00%	30.00%	15.00%	6.00%	3.00%	1.20%
	Class 2/Minor	100.00%	20.00%	10.00%	4.00%	2.00%	0.80%
	Class 1/Major	100.00%	18.30%	9.20%	3.70 %	1.80%	0.70%
	Class 1/Moderate	100.00%	16.70%	8.30%	3.30%	1.70%	0.70%
Class 1/Minor	100.00%	15.00%	7.50%	3.00%	1.50%	0.60%	

Example Calculation

For illustration, consider a violation of a Class 3 Rule (the right column of the Penalty Matrix) that resulted in a moderate degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife (the middle row of the Penalty Matrix). The base penalty for the violation, using the correct cell in the Penalty Matrix, is \$6,500 per day of violation.

Assume the violation persists for 82 days. A straight per-day-of-violation calculation would result in a penalty of \$533,000.

Applying the Violation Duration Matrix, the penalty would be calculated using the “Class 3/moderate” row of the matrix. The calculation would be:

Days 1-10	(\$6,500)X(10 days)(100%)	\$65,000
Days 11-30	(\$6,500)X(20 days)(45%)	\$58,500
Days 31-60	(\$6,500)X(30 days)(22.50%)	\$43,875
Days 61-82	(\$6,500)X(22 days)(9.00%)	plus \$12,870
Total Penalty		\$180,245

Using the Duration Matrix reduces the total base penalty for this long duration violation by \$352,755, or approximately 66%.

The Violation Duration Matrix is a guide only. The Commission retains the discretion to propose penalties greater or smaller than those calculated using the Duration Matrix.

*A Comparison of Penalty Assessment Approaches* that compares three examples of penalties assessed in past Commission enforcement matters to penalties that potentially could be assessed using the Penalty Matrix and Violation Duration Matrix is included as Appendix B.

#### **IV. Adjustments to the Total Penalty for Aggravating and Mitigating Factors**

The Commission or Director may adjust the total base penalty for a NOAV based upon consideration of the aggravating and mitigating factors in Rule 523.d. The Commission or Director is under no obligation to adjust a penalty based upon its consideration of these factors. If the Commission or Director determines an adjustment based on aggravating or mitigating factors is appropriate, absent exceptional circumstances a base penalty will not be increased or decreased by more than 25%. Typically, adjustments based upon aggravating or mitigating factors will be adjustments made to the total base penalty amount, not adjustments to individual violations in a NOAV.

Adjustments for aggravating and mitigating factors often offset each other.

Aggravating and mitigating factors are listed and explained in the next subsections.

##### **A. Aggravating Factors**

1. The violation was intentional or reckless.

An *intentional* violation is a violation undertaken with purpose or intention to violate. Intention is the act of predetermining and deliberating upon some action or result.

A *reckless* violation is one in which a violator acts with disregard or indifference to consequences involving danger to life or the safety of others. It is not necessary that harm is intended.

While assessing whether a violation is intentional or reckless, the Commission will ordinarily consider the following factors. It may consider other factors as appropriate in a specific case:

- Whether the violator had control over the events constituting the violation, and to what degree;
- Whether the events constituting the violation were foreseeable;

- Whether the violator took or could have taken reasonable precautions against the events constituting the violation;
- Whether the violator knew or should have known of the hazards associated with the events constituting the violation; and
- Whether the violator proceeded with actions constituting the violation with specific knowledge, or whether the violator knew or should have known of the legal requirement that was violated.

Lack of knowledge of a legal requirement is not a basis upon which to reduce a penalty.

~~2. The violation has a significant adverse impact, or threat of significant adverse impact, on the environment or on public health, safety, or welfare.~~

[**Note to draft penalty policy guidance:** This factor is now considered in calculating the base penalty and should not also be considered an aggravating factor. The Commission intends to propose to change Rule 523.d. to eliminate this aggravating factor.]

3. The violation results in significant waste of oil and gas resources.

[No commentary]

4. The violation has a significant negative impact on correlative rights of other parties.

[No commentary]

5. The violation results in or threatened to result in significant loss or damage to public or private property.

[No commentary]

6. The violation involves a pattern of violation on the part of the violator.

The Commission will evaluate a violator’s compliance history to evaluate whether the violator is engaged in a pattern of violation. If the Director finds a violation is part of a pattern of violation, the Director must apply to the Commission for an OFV hearing and may not resolve the matter through the AOC process.

In addition to applicable penalties, the Director or Commission may seek to suspend an operator’s Certification of Clearance or withhold new Applications for Permits to Drill (“APD”), or both, if the Director or Commission find an operator has been

engaged in a pattern of violation.

The factors the Commission or Director will consider to assess a pattern of violation are discussed further in Section V.E, below.

7. The violation involves intentional false reporting or recordkeeping.

[No commentary]

8. The violation results in economic benefit to the violator.

The Commission will seek penalties that eliminate economic incentives for noncompliance. Regulatory requirements for which violations are likely to present significant economic benefits include, but are not limited to, failure to perform mechanical integrity tests (Rule 326), failure to remediate spills or releases of Exploration and Production Waste (Rule 906), and failure to dispose of Exploration and Production Waste legally (Rule 907).

9. The violation results in significant, avoidable loss of wildlife or wildlife resources, including the ability of the land to produce vegetation supportive of wildlife.

## **B. Mitigating Factors**

1. The violator self-reports its violation.

Self-reporting means the operator disclosed the existence of a violation to the Director as soon as practicable and was not otherwise under a legal obligation to report the violation.

2. The violator demonstrates prompt, effective and prudent response to the violation, including assistance to any impacted parties.

[No commentary]

3. The violator cooperates with the Commission and all other agencies with respect to the violation.

[No commentary]

4. The cause of the violation is outside the violator's control and responsibility, or is a force majeure.

[No commentary]

5. The violator makes a good faith effort to comply with applicable requirements.

[No commentary]

6. The cost of correcting the violation reduces or eliminates economic benefit to the violator.

[No commentary]

7. The violator demonstrates a history of compliance with Commission Rules, regulations and Orders.

[No commentary]

## **V. Other Penalty Adjustment Considerations**

### **A. Consolidation of Violations**

Often, a single activity or event will result in violations of multiple Commission Rules. Typically, the Commission will seek a separate penalty for each individual Rule violation that is substantially distinguishable from other violations caused by the same activity.

In general, violations are substantially distinguishable when: 1) each Rule violated has at least one distinct legal or factual element; or 2) the purpose of each Rule violated is separate and distinct.

Circumstances exist in which asserting a full penalty for all possible violations arising from a single activity or event would result in a penalty disproportionately large. In these circumstances, flexibility and discretion in the Commission's enforcement program will be used to provide just and effective enforcement and penalties.

When separate violations are not substantially distinguishable, the Director or Commission may exercise discretion to consolidate or eliminate duplicative violations.

### **B. Adjustments in Settlement Negotiations**

Many NOAVs are resolved through a negotiated settlement agreement by the Director and the violator, and then memorialized in a draft AOC.

Preparing for an adjudicatory hearing is usually very time-consuming and expensive. The outcome of any hearing is uncertain. Conducting a hearing also can delay the resolution of a NOAV by many months.

In light of the avoided costs and burdens reached through settlement, and the inherent uncertainty associated with going to hearing, the Director may reduce a penalty as an inducement to settle. It is not possible to define an appropriate

formulaic reduction for settlement. However, as a general guide, the Director will not reduce a proposed penalty by more than 30 percent as an inducement to settle a NOAV.

### **C. The Violator's Ability to Pay**

The Commission may consider the violator's "ability to pay" when setting a penalty. "Ability to pay" means the effect a fine might have upon a violator's financial well being and upon the violators ongoing operations in Colorado.

If a large penalty would jeopardize a violator's ability to conduct necessary environmental remediation, the Commission may also consider structuring a settlement that suspends a portion of its total penalty contingent on completion of remediation under a compliance schedule. If the remediation is performed properly, the suspended portion of the penalty is typically waived.

A violator which wishes to discuss its ability to pay must first document its financial condition to the satisfaction of the Director or Commission. This type of adjustment will not be considered otherwise.

### **D. Remediation Costs**

The Commission understands that environmental remediation can be very expensive and resource intensive. In order to encourage violators to remediate adverse impacts fully, the Commission may choose to consider remediation costs as a penalty adjustment factor.

The Commission will consider remediation costs only when the cost of environmental remediation exceeds calculated total penalty and only when the violator has demonstrated prompt, effective, and prudent response to its violation.

## **VI. Pattern of Violation**

A "pattern of violation" is a history of repeated abuse of the Act or the Commission's Rules. A pattern of violation is also a habitual disregard for violations of the Act or the Commission's Rules.

When the Director finds a pattern of violation in a NOAV, the Director will explain in the NOAV or a subsequent written communication to the operator why the Director has reached that conclusion.

If the Director finds that a violation is a part of a pattern of violation, the Director must apply to the Commission for an OFV hearing. A pattern of violation NOAV cannot be resolved through the AOC process. The Commission will impose *significantly* larger fines upon a violator that exhibits a pattern of violation.

Moreover, and in addition to a large penalty, the Director or Commission may suspend a violator's Certification of Clearance, withhold new drilling or oil and gas location permits for the violator, or both. § 34-60-121(7), C.R.S.

Such a violator's Certification of Clearance will be restored, and it may obtain new drilling or oil and gas location permits, once the violator demonstrates – to the satisfaction of the Director and the Commission – that it has brought each of its violations into compliance and that any penalty assessed (not subject to judicial review) has been paid. *Id.*

Criteria that will be used by the Commission and the Director to evaluate a pattern of violation include, without limitation:

- The number of NOAVs an operator receives as a percentage of the number of wells it operates;
- Frequent violation of the same or similar Rules;
- The overall number of warning letters or corrective action required inspections an operator receives within a span of years.

### **Guidance Disclaimer**

The policies and procedures set out in this document are intended solely as guidance. This document does not contain rules or otherwise binding requirements. Nothing in this document creates any substantive or procedural right enforceable by or in favor of any person or entity. The Commission reserves the right to vary its activities from this *Enforcement Guidance and Penalty Policy* at any time and in its discretion. The Commission may change this *Enforcement Guidance and Penalty Policy* from time to time.

## Appendix A: Penalty Schedule

Rule Numbers	Rule Titles	Class
<b>Scoring</b>		
0	A rule not typically enforceable	
1	Minor (typically paperwork)	
2	Material (without actual or threat of adverse environmental impact)	
3	Major (with potential to harm public health, safety, welfare, environment or wildlife)	
<b>DEFINITIONS (100 Series)</b>		0
<b>GENERAL RULE (200 Series)</b>		
201	Effective Scope of Rules and Regulations	0
201A	Effective Date of Amendments	0
202	Office and Duties of Director	0
203	Office and Duties of Secretary	0
204	General Functions of Director	0
205	Access to Records	1
205A	Hydraulic Fracturing Chemical Disclosure	1
206	Reports	1
207	Tests and Surveys	2
208	Corrective Action	0
209	Protection of Coal Seams and Water-Bearing Formations	2
210	Signs and Markers	2
211	Naming of Fields	0
212	Safety	0
213	Forms Upon Request	0
214	Local Governmental Designee	0
215	Global Positioning Systems	1
216	Comprehensive Drilling Plans	0
<b>DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)</b>		
301	Records, Reports, Notices - General	1
302	OGCC Form 1. Registration for Oil and Gas Operations	2
303	OGCC Form 2. Requirements for Form 2, Application for Permit-to-Drill, Deepen, Re-enter, or Recomplete and Operate; Form 2A, Oil and Gas Location Assessment	2

304	Financial Assurance Requirements	0
305	Notice, Comment, Approval	2
306	Consultation	2
306.a	Consultation with Surface Owner	2
307	OGCC Form 4. Sundry Notices and Reports on Wells	1
308A	OGCC Form 5. Drilling Completion Report	2
308B	OGCC Form 5A. Completed Interval Report	2
308C	Confidentiality	0
309	OGCC Form 7. Operator's Monthly Production Report	1
310	OGCC Form 8. Mill Levy	1
311	OGCC Form 6. Well Abandonment Report	1
312	OGCC Form 10. Certificate of Clearance and/or Change of Operator	1
313	OGCC Form 11. Monthly Report of Gasoline or Other Extraction Plants	1
314	OGCC Form 17. Bradenhead Test Report	1
315	Report of Reservoir Pressure Test	1
316A	OGCC Form 14. Monthly Report of Fluids Injected	1
316B	OGCC Form 21. Mechanical Integrity Test	1
316C	Notice of Intent to Conduct Hydraulic Fracturing Treatment	2
317	General Drilling Rules	2
317A	Special Drilling Rules - D-J Basin Fox Hills Protection Area	2
317B	Public Water System Protection	2
318	Location of Wells	1
318A	Greater Wattenberg Area Special Well Location, Spacing and Unit Designation Rule	1
318B	Yuma/Phillips County Special Well Location Rule	1
319	Abandonment	1
319.a	Plugging	2
319.b	Temporary Abandonment	1
320	Liability	2
321	Directional Drilling	1
322	Commingling	1
323	Open Pit Storage of Oil or Hydrocarbon Substances	3
324A	Pollution	3
324B	Exempt Aquifers	0
324C	Quality Assurance for Chemical Analysis	1

324D	Criteria to Establish Points of Compliance	0
325	Underground Disposal of Water	3
326	Mechanical Integrity Testing	2
327	Loss of Well Control	3
328	Measurement of Oil	1
329	Measurement of Gas	1
330	Measurement of Produced and Injected Water	2
331	Vacuum Pumps on Wells	2
332	Use of Gas for Artificial Gas Lifting	2
333	Seismic Operations	2
334	Public Highways and Roads	0
335	OGCC Form 15. Pit Construction Report/Permit	0
336	OCCC Form 18. Complaint Form	0
337	OGCC Form 19. Spill/Release Report	0
338	OGCC Form 24. Soil Analysis Report	0
339	OGCC Form 25 Water Analysis Report	0
340	OGCC Form 27 Site Investigation and Remediation Workplan	0
341	Bradenhead Monitoring During Well Stimulation Operations	3
<b>UNIT OPERATIONS, ENHANCED RECOVERY PROJECTS, AND STORAGE OF LIQUID HYDROCARBONS (400 Series)</b>		
401	Authorization	2
402	Notice and Date of Hearing	0
403	Additional Notice	1
404	Casing and Cementing of Injection Wells	3
405	Notice of Commencement and Discontinuance of Injection Operations	2
<b>RULES OF PRACTICE AND PROCEDURE (500 Series)</b>		
501	Applicability of Rules of Practice and Procedure	0
502	Proceedings Not Requiring the Filing of an Application	0
503	All Other Proceedings Commenced by Filing an Application	0
504	Docket Number of Proceedings	0
505	Requirement of Public Hearing	0
506	Hearing Date/Continuance	0
507	Notice for Hearing	0
508	Local Public Forums, Hearings on Applications for Increased Well Density and Public Issues Hearings	0

509	Protests/Interventions/Participation in Adjudicatory Proceedings	0
510	Statements at Hearing	0
511	Uncontested Hearing Applications	0
512	Commission Members Required for Hearings and/or Decisions	0
513	Geographic Area Plans	0
514	RESERVED	0
515	Ex Parte Communications	0
516	Standards of Conduct	0
517	Representation at Administrative and Commission Hearings	0
518	Subpoenas	0
519	Applicability of Colorado Court Rules and Administrative Notice	0
520	Time of Hearings and Hearing/Consent Agenda	0
521	RESERVED	0
522	Procedure to be Followed Regarding Alleged Violations	0
523	Procedure for Assessing Fines	0
524	Determination of Responsible Party	0
525	Permit-Related Penalties	0
526	Administrative Hearings in Uncontested Matters	0
527	Prehearing Procedures for Contested Adjudicatory Proceedings Before the Commission	0
528	Conduct of Adjudicatory Hearings	0
529	Procedures for Rulemaking Proceedings	0
530	Involuntary Pooling Proceedings	0
<b>SAFETY REGULATIONS (600 Series)</b>		
601	Introduction	0
602	General	2
603	Statewide Location Requirements For Oil & Gas Operations	2
604	Setback and Mitigation Measures	2
605	Oil & Gas Facilities	2
606A	Fire Prevention and Protection	2
606B	Air and Gas Drilling	2
607	Hydrogen Sulfide Gas	3
608	Coalbed Methane Wells	2

609	Statewide Groundwater Baseline Sampling and Monitoring	2
<b>FINANCIAL ASSURANCE AND OIL AND GAS CONSERVATION AND ENVIRONMENTAL RESPONSE FUND (700 Series)</b>		
701	Scope	0
702	General	0
703	Surface Owner Protection	2
704	Centralized E&P Waste Management Facilities	2
705	Seismic Operations	2
706	Soil Protection & Plugging and Abandonment	2
707	Inactive Wells	2
708	General Liability Insurance	2
709	Financial Assurance	2
710	Oil and Gas Conservation and Environmental Response Fund	0
711	Natural Gas Gathering, Natural Gas Processing and Underground Natural Gas Storage Facilities	2
712	Surface facilities and structures appurtenant to Class II Commercial Underground Injection Control Wells	2
<b>AESTHETIC AND NOISE CONTROL REGULATIONS (800 Series)</b>		
801	Introduction	0
802	Noise Abatement	2
803	Lighting	2
804	Visual Impact Mitigation	2
805	Odors and Dust	2
<b>E&amp;P WASTE MANAGEMENT (900 Series)</b>		
901	Introduction	3
902	Pits - General and Special Rules	3
903	Pit Permitting/Reporting Requirements	3
904	Pit Lining Requirements and Specifications	3
905	Closure of Pits, and Buried or Partially Buried Produced Water Vessels	3
906	Spills and Releases	3
906.a.	Spills and Releases - General	3
906.b	Spill Reporting	2
906.c	Surface owner Notice/Consultation	2
906.d	Spill Remediation	3
906.e	Spill Prevention	3
907	Management of E&P Waste	3

907A	Management of Non-E&P Waste	3
908	Centralized E&P Waste Management Facilities	3
909	Site Investigation, Remediation and Closure	2
910	Concentrations and Sampling for Soil and Ground Water	2
911	Pit, Buried or Partially Buried Produced Water Vessel, Blowdown Pit, and Basic Sediment/Tank Bottom Pit Management Requirements Prior to December 30, 1997	2
912	Venting or Flaring Natural Gas	3
<b>RECLAMATION REGULATIONS (1000 Series)</b>		
1001	Introduction	0
1002	Site Preparation and Stabilization	3
1003	Interim Reclamation	3
1004	Final Reclamation of Well Sites and Associated Production Facilities	3
<b>PIPELINE REGULATIONS (1100 Series)</b>		
1101	Installation and Reclamation	2
1102	Operations, Maintenance, and Repair	2
1103	Abandonment	3
<b>PROTECTION OF WILDLIFE RESOURCES (1200 Series)</b>		
1201	Identification of Wildlife Species and Habitats	0
1202	Consultation	2
1203	General Operating Requirements in Sensitive Wildlife Habitat and Restricted Surface Occupancy Areas	3
1204	Other General Operating Requirements	3
1205	Requirements in Restricted Surface Occupancy Areas	3

## Appendix B

### Comparison of Penalty Assessment Approaches Past COGCC Penalties Compared to the COGCC *Draft Enforcement Guidance and Penalty Policy*

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The Colorado Oil and Gas Conservation Commission has a new *Draft Enforcement Guidance and Penalty Policy*. This draft guidance, if implemented, will make the enforcement program at COGCC more strict. It will increase penalties assessed against violators compared to the Commission's current enforcement and penalty practices.

To illustrate the effect of the *Draft Enforcement Guidance and Penalty Policy*, this document examines three recent examples of actual Commission enforcement actions. The penalties collected in these actual cases are compared to potential penalties under the new draft guidance.

#### EXAMPLES

##### Example 1

**Facts.** The violator failed to obtain a permit before it disposed of waste fluid by injection into a well. The violation lasted for 11 days. At the end of that period, COGCC issued the violator a permit that allowed it to inject its waste.

**Actual case.** The penalty paid by the violator was \$10,000.

(This is the *Mull* matter, settled by administrative order by consent on July 29, 2013. It is Order No. 1V-416.)

**Application of new penalty policy.** The application of the new penalty policy would proceed as follows.

COGCC would first determine that the operator violated Commission Rule 325.a. This is a "class 3" rule in the COGCC penalty schedule, meaning the rule is a high priority for COGCC enforcement.

COGCC would next determine that this violation is "moderate" under the "degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife" criterion. This is because there was no actual harm to the environment, but the failure to have COGCC review injection operations (in a permit review)

before the injection operations begin poses a threat of environmental harm. Absent a permit review, there is no assurance that the underground injection materials would be contained properly in the injection well.

As a result, the base penalty for this violation, using the new *Penalty Matrix*, would be \$6,500.

The duration of the violation is 11 days. Applying the *Violation Duration Matrix* to this duration of violation, the penalty assessed would be calculated as follow:

Days 1-10	(\$6,500)X(10 days)(100%)	\$65,000
Day 11-30	(\$6,500)X(1 day)(45%)	plus \$ 2,925
Total Penalty		\$67,925

There are no aggravating or mitigating circumstances.

The penalty assessed under the new guidance, in this instance, would be \$67,925.

Actual penalty: \$10,000

Penalty under the new guidance: \$67,925

### **Example 2**

**Facts.** An unlined pit contained produced water and leaked. The release contaminated groundwater and a spring used as a drinking water supply. A person drank water that was contaminated with benzene from the release.

There were five violations:

1. The violator did not have a permit for the pit under Commission Rule 903.a.
2. The violator failed to operate its pit safely and without environmental leaks. Commission Rule 902.a.
3. The violator failed to protect waters of the state from exploration and production waste. Commission Rule 907.a.(2).
4. The violator broke the rule preventing pollution. Commission Rule 324A.a.
5. The violator broke the rule protecting water quality standards. Commission Rule 324A.b.

The leak continued for 122 days before it was remedied. The lack-of-a-permit violation lasted for 375 days.

**Penalty in the actual case.** The violator settled the matter through an administrative order by consent. The penalty was \$423,000.

(This is the *Williams* matter, settled by administrative order on consent on August 12, 2010. It is Order No. 1V-350.)

***Application of the new penalty policy.*** The penalty calculation would proceed in the same way for each of the four violations in paragraphs 2 through 5 in the list just above.

First, for each separate violation the Commission would determine the classification of each rule involved, using the Commission’s *Penalty Schedule*. Each rule is a “class 3 rule” in that schedule – meaning each rule is classified as most important in COGCC’s enforcement priorities.

Second, for each separate violation in paragraphs 2 through 5 the Commission would determine the ranking of the violation against the “degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife” criterion in the guidance. In this instance, each violation is assigned to the “major” category. This is because significant actual environmental and public health harm resulted from each violation.

Using both determinations in the *Penalty Matrix*, the base penalty for each violation is separately set at \$10,000.

Next, each base penalty for four separate violations is analyzed using the *Violation Duration Matrix* – in order to calculate a total base penalty for each violation. In this instance the four violations lead to the same calculation, with each using a violation duration of 122 days. The total base penalty for each of the four separate violations is \$336,000.

The fifth violation, the permit violation under Commission Rule 903.a. (paragraph 1 in the list above), presents a different duration.

First, the analysis of the permit violation rule and the circumstances leads to the conclusion that the base penalty for this violation is \$10,000. This is because it is a “class 3 rule” and the “degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife” criterion falls in the “major” category on the *Penalty Matrix*.

The duration of the permit violation is 375 days. Using the *Violation Duration Matrix*, the total base penalty for the permit violation is \$459,500.

Adding the five separate total base penalties together, the penalty assessed in this

case under the new guidance is \$1,803,500.

Actual Penalty: \$423,000

Penalty under the new guidance: \$1,803,500

### **Example 3**

***Facts.*** Two violations were at issue.

The first was a failure to perform a mechanical integrity test under Commission Rule 326.b.(1). The mechanical integrity test was supposed to be performed on June 1, 2009, but the operator did not actually perform the test until September 10, 2013. The duration of this violation was a very long time – 1562 days.

The second violation was a failure to file a temporary abandonment notice for the well involved, as required in Commission Rules 319.b.(1) and (3). The duration of this violation was 14 days.

Neither violation led to actual environmental damage.

***Penalty in the actual case:*** The violator paid a penalty of \$10,000.

The total penalty assessed was \$20,000, but \$10,000 of this penalty was suspended and eventually waived by COGCC when the operator performed the test and notification required.

(This is the *Dunning* matter, settled by an Administrative Order by Consent on October 28, 2013. It is Order No. 1V-434.)

***Application of the new penalty policy.*** The penalty calculation under the new penalty policy would proceed as follows.

For the first violation, the failure to perform the mechanical integrity test, COGCC would first note that the associated rule is a “Class 2 rule” on COGCC’s penalty schedule.

COGCC would next assign a “degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife” to this violation. It would place this violation in the “moderate” category. This is because (i) there is no actual environmental impact from the violation, but (ii) failure to assure the mechanical integrity of a well results in a threat that environmental harm could occur.

Applying these two conclusions to the *Penalty Matrix* in the new guidance, COGCC would determine a base penalty for the violation of \$3,500.

The duration of this violation is 1562 days. Applying the *Violation Duration Matrix* in the new guidance, the penalty assessed for this violation would be \$160,349.

For the second violation, the failure to file notification of temporary abandonment, COGCC would first note that the rule involved, Commission Rule 319.b., is a “Class 1 rule” in COGCC’s penalty schedule.

For this second violation, COGCC would choose “minor” as the category for the “degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife.” This is because there was no actual environmental impact from the violation and the threat of an environmental impact from the violation is “little or none.”

Applying these two determinations to the *Penalty Matrix* in the new guidance, COGCC would determine the base penalty for the second violation to be \$500.

The duration of the second violation is 14 days. Applying the *Violation Duration Matrix* results in a penalty for the second violation of \$5,300.

There are no aggravating or mitigating circumstances in this example.

As a result, the penalty levied under the new guidance in this example would be \$165,649, the sum of the separate penalties for the two individual violations.

Actual penalty: \$10,000

Penalty under the new guidance: \$165,649

[Note: These examples use a Violation Duration Matrix under consideration at the time it is drafted. The Violation Duration Matrix finally adopted may differ from the one used in these examples.]



## Appendix 5

### 2013 Commission Enforcement Orders Report

## 2013 Commission Enforcement Orders Report Summary

This Report lists all Commission Enforcement Orders issued in 2013, through October 28, the date of the most recent Commission Hearing preceding the preparation of this Report. Commission Enforcement Orders issued in 2013 may have resolved Notices of Alleged Violation issued in previous years.

This Report includes details concerning the violations alleged in each NOAV that was resolved in 2013, including the penalties imposed for those violations, and how the Commission arrived at the penalties for each Order.

The table below summarizes the Enforcement Orders issued in 2013; the details for each Order are contained in the following pages.

### 2013 COGCC Enforcement Order Summary

(Through October 28, 2013)

<b>Total Orders</b>			<b>36</b>
	<b>AOC's</b>	<b>35</b>	
	<b>OFV's</b>	<b>1</b>	
Total No. of NOAV's Resolved by Orders			52
Total No. of Cited Violations Resolved			277
Orders with Penalties			34
	Total Penalties		\$1,160,000
	Maximum Penalty		\$220,000
	Minimum Penalty		\$1,000
	Average Penalty		\$34,118
	Median Penalty		\$13,500
Orders without Penalties			2

## 2013 Commission Enforcement Orders Report

1	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-439	10/28/13	AOC	Bill Barrett Corp.	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	205A. (12 sites)	205A. (12 sites)	X	12	X	X	\$1,000	\$12,000
<b>Total in Order</b>	12	12	NONE	12	NONE	NONE		\$12,000
							<b>Hard Fine</b>	\$12,000

2	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-438	10/28/13	AOC	Maralex Resources, Inc	9

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	319.b.(1) (2 sites)	319 (2 sites)	X	10	X	X	\$1,000	\$10,000
	319.b.(3) (2 sites)	X	Under the facts presented, the alleged violations premised on individual subparts of Rule 319 were not sufficiently distinct to warrant prosecuting separately.					
	208 (1 site)	X	Rule 208 is subsumed by the Rule 319 and 326 violations.					
	326.b.(1) (9 sites)	326 (8 sites)	One site removed - Operator completed the MIT at that site within the requested time frame.	40	X	X	\$1,000	\$40,000
<b>Total in Order</b>	14	10	319.b.(3) (2 sites), 208 (1 site), 326.b.(1) (1 site)	50	NONE	NONE		\$50,000
							<b>Hard Fine</b>	\$50,000

## 2013 Commission Enforcement Orders Report

<b>3</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-436	10/28/13	AOC	Hillcorp	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	305.d.	305.d.	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	1	1	NONE	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	\$10,000

<b>4</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-437	10/28/13	AOC	Thomas L Spring, L.L.C.	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	324A.a.	324A.a.	X	10	X	X	\$1,000	\$10,000
	1003.b.	X	Rule 1003 had statute of limitations infirmity.					
	1003.e.(2)	X						
	1004.a.	1004.a.		10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	4	2	1003.b., 1003.e.(2)	20	NONE	NONE		\$20,000
							<b>Hard Fine</b>	\$2,000
							<b>Suspended</b>	\$18,000

## 2013 Commission Enforcement Orders Report

5	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-435	10/28/13	AOC	Beren Corporation	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	324A.a.,b.	324A.a	Consolidation, individual subparts were not distinct enough to prosecute separately.	10	X	X	\$1,000	\$10,000
	901.e.,f.	901		10	X	X	\$1,000	\$10,000
	902.a.,b.,d.,g.	902		10	X	X	\$1,000	\$10,000
	904.a.(4)	904.a.(4)	X	10	X	X	\$1,000	\$10,000
	906.a.,b.,c.	906	Consolidation, individual subparts were not distinct enough to prosecute separately.	10	X	X	\$1,000	\$10,000
	907.a.(1), c.(2), .e.	907		10	X	X	\$1,000	\$10,000
	909	909	X	10	X	X	\$1,000	\$10,000
	910	910	X	10	X	X	\$1,000	\$10,000
	1002.e., f.	1002	Consolidation, individual subparts were not distinct enough to prosecute separately.	10	X	X	\$1,000	\$10,000
	1003.f.	1003	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	20	10	904.a.(4) and Consolidation	100	NONE	NONE		\$100,000
							<b>Hard Fine</b>	\$50,000
							<b>Suspended</b>	\$50,000

## 2013 Commission Enforcement Orders Report

<b>6</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-434	10/28/13	AOC	Charles P. Dunning, LLC	2

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	319.b.(1) (2 sites)	319.b. (1 site)	1 site - One of wells was never completed.	10	X	X	\$1,000	\$10,000
	319.b.(3) (2 sites)	X	Rule 319.b.(1) and 319.b.(3) were not materially distinct enough to charge as separate violations.					
	326.b.(1) (2 sites)	326.b.(1) (1 site)	1 site - One of wells was never completed.	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	6	2	319.b.(3), 1 site each for 319.b.(1) and 326.b.(1)	20	NONE	NONE		\$20,000
							<b>Hard Fine</b>	\$10,000
							<b>Suspended</b>	\$10,000

## 2013 Commission Enforcement Orders Report

7	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-432	10/28/13	AOC	LoneStar Geophysical Surveys	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	302.a.	302.a.	X	1	a,b,c	X	\$833	\$833
	705	705	X	1	a,b,c	X	\$833	\$833
	33 (site 1)	33 (site 1)	X	5	a,b,c	X	\$833	\$4,167
	33 (site 2)	33 (site 2)	X	3	a,b,c	X	\$833	\$2,500
	33 (site 3)	33 (site 3)	X	3	a,b,c	X	\$833	\$2,500
	33 (site 4)	33 (site 4)	X	5	a,b,c	X	\$833	\$4,167
	33 (site 5)	33 (site 5)	X	6	a,b,c	X	\$833	\$5,000
<b>Total in Order</b>	7	7	NONE	24	a,b,c	NONE		\$20,000
							<b>Hard Fine</b>	<b>\$20,000</b>

8	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-431	10/28/13	AOC	Gunnison Energy Corporation	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	205A.	205A.	X	1	X	X	\$1,000	\$1,000
<b>Total in Order</b>	1	1	NONE	1	NONE	NONE		\$1,000
							<b>Hard Fine</b>	<b>\$1,000</b>

## 2013 Commission Enforcement Orders Report

<b>9</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-429	10/28/13	AOC	Synergy Resources Corporation	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	205A. (5 sites)	205A. (5 sites)	X	5	X	X	\$1,000	\$5,000
<b>Total in Order</b>	5	5	NONE	5	NONE	NONE		\$5,000
							<b>Hard Fine</b>	<b>\$5,000</b>

<b>10</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-428	10/28/13	AOC	Orr Energy LLC	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	205A. (4 sites)	205A. (4 sites)	X	4	X	X	\$1,000	\$4,000
<b>Total in Order</b>	4	4	NONE	4	NONE	NONE		\$4,000
							<b>Hard Fine</b>	<b>\$4,000</b>

## 2013 Commission Enforcement Orders Report

11	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-427	10/28/13	AOC	Conoco Phillips Company	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	205A.	205A.	X	1	X	X	\$1,000	\$1,000
<b>Total in Order</b>	1	1	NONE	1	NONE	NONE		\$1,000
							<b>Hard Fine</b>	\$1,000

12	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-426	10/28/13	AOC	Kerr-McGee Oil & Gas Onshore LP	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	205A. (3 sites)	205A. (3 sites)	X	3	X	X	\$1,000	\$3,000
<b>Total in Order</b>	3	3	NONE	3	NONE	NONE		\$3,000
							<b>Hard Fine</b>	\$3,000

## 2013 Commission Enforcement Orders Report

13	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-423	10/28/13	AOC	Laramie Energy II, LLC	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>	
<b>Individual Violations</b>	205A.	205A.	X	1	X	X	\$1,000	\$1,000	
<b>Total in Order</b>	1	1	NONE	1	NONE	NONE		\$1,000	
								<b>Hard Fine</b>	\$1,000

14	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-422	10/28/13	AOC	Noble Energy, Inc.	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>	
<b>Individual Violations</b>	205A. (3 sites)	205A. (3 sites)	X	3	X	X	\$1,000	\$3,000	
<b>Total in Order</b>	3	3	NONE	3	NONE	NONE		\$3,000	
								<b>Hard Fine</b>	\$3,000

## 2013 Commission Enforcement Orders Report

15	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-421	09/16/13	AOC	Benchmark Energy LLC	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	308B.	Rule 308B was resolved when Form 5A (Completed Interval Report) was submitted upon request.						
	309	Rule 309 was resolved when the missing production reports were submitted as requested.						
	324.A.a.	Rule 324.A.a was resolved when operator properly closed pit and monitoring data showed no environmental damage.						
	907.b.	Rule 907 was resolved when operator properly closed pit and monitoring data showed no environmental damage.						
	907.e.	Rule 907 was resolved when operator properly closed pit and monitoring data showed no environmental damage.						
	1002.f.	Subsumed by Rule 1004 violations.						
	1004.c. 1004.e.	1004	Consolidation	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	8	1	308B., 309, 324A.a., 907.b., 907.e., 1002.f.	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	\$10,000

## 2013 Commission Enforcement Orders Report

16	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-420	10/28/13	AOC	Caerus WASHCO LLC	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	324A.a.	324A.a.	X	10	X	X	\$1,000	\$10,000
	210.d.	X	Minor and corrected without delay.					
	603.j.	603.j.	X	10	X	X	\$1,000	\$10,000
	604.a(4), .d	604	Consolidation, individual subparts were not distinct enough to prosecute separately.	10	X	X	\$1,000	\$10,000
	902.a.,b.,d.	902		10	X	X	\$1,000	\$10,000
	906.a.,b,c, e(1)	906		10	X	X	\$1,000	\$10,000
	907.a(1), .e.	907		10	X	X	\$1,000	\$10,000
	1002.a(3), .c, .f, f(3)	1002		10	X	X	\$1,000	\$10,000
	1004	X		10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	19	7	210.d., 1004, and Consolidation	70	NONE	NONE		\$70,000
							<b>Hard Fine</b>	\$70,000

## 2013 Commission Enforcement Orders Report

17	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-419	09/16/13	AOC	Axia Energy LLC	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	C.R.S. 34-60-121(1)	X	Facts did not support the statutory provision regarding violation of conditions of permit approval.					
	303.d.	X	Facts did not support the statutory provision regarding violation of conditions of permit approval.					
	324A.a.	X	Citation was based on presumed stormwater impact, which was not supported by the facts.					
	1002.f	X	Citation was based on presumed stormwater impact, which was not supported by the facts.					
	604.d.	X						
	902.d.	902.d.	X	10	X	X	\$1,000	\$10,000
	906.a.	906	X	10	X	X	\$1,000	\$10,000
	902.a.,b,c,,e,h	902.c.	Consolidation, individual subparts were not distinct enough to prosecute separately.	10	X	X	\$1,000	\$10,000
	903	903		10	X	X	\$1,000	\$10,000
	907.a.(1), .b.(1), .b.(2), .c.(1)	907		10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	17	5	C.R.S. 34-60-121(1), 303.d., 324A.a, 604.d., 1002.f, and Consolidation	50	NONE	NONE		\$50,000
							<b>Hard Fine</b>	\$50,000

## 2013 Commission Enforcement Orders Report

18	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-418	07/29/13	AOC	Andrikopoulos Resources, Inc.	2

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	319.b.(1) (2 sites)	X	Rule 319 and 326 violations did not apply because the operator had actually performed the required MITs, but had failed to submit the required follow-up paperwork (violation of Rule 311).					
	319.b.(3) (2 sites)	X						
	326.b.(1) (2 sites)	X						
	X	311 (Site 1)	X	10	X	X	\$1,000	\$10,000
	X	311 (Site 2)	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	6	2	319, 326	20	NONE	NONE		\$20,000
							<b>Hard Fine</b>	\$20,000

## 2013 Commission Enforcement Orders Report

<b>19</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-417	07/29/13	AOC	Kerr-McGee Oil & Gas Onshore LP	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	907.a.(1)	907.a.(1)	X	2 (Negotiated fine beyond statutory authority).	X	X	\$1,000	\$42,500
<b>Total in Order</b>	1	1	NONE	2	NONE	NONE		\$42,500
							<b>Hard Fine</b>	<b>\$42,500</b>

<b>20</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-416	07/29/13	AOC	Mull Drilling Company	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	325.a.	325.a.	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	1	1	NONE	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	<b>\$10,000</b>

## 2013 Commission Enforcement Orders Report

21	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-415	06/17/13	AOC	PDC Energy Inc.	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	907.a.	907.a.	X	2 (Negotiated Fine beyond Statutory Authority)	X	X	\$1,000	\$35,000
<b>Total in Order</b>	1	1	NONE	2	NONE	NONE		\$35,000
							<b>Hard Fine</b>	\$35,000
							<b>Public Project</b>	\$6,600

## 2013 Commission Enforcement Orders Report

22	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-414	10/28/13	AOC	Kinder Morgan	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	603 (2 sites)	604 (2 sites)	X	10 * 2 sites (20)	b, c, f	X	\$894	\$17,886
	902 (4 sites)	903 (4 sites)	X	10 * 4 sites (40)	b, c, f	X	\$894	\$35,772
	904 (3 sites)	X	Violation of Rule 904 pit lining requirements was not supported by the facts at all 3 sites.					
	906 (4 sites)	907 (4 sites)	X	10 * 4 sites (40)	b, c, f	X	\$894	\$35,772
	907 (4 sites)	908 (4 sites)	X	10 * 4 sites (40)	b, c, f	X	\$894	\$35,772
	1002 (4 sites)	1002 (4 sites)	X	10 * 4 sites (40)	b, c, f	X	\$894	\$35,772
	1003	1003	X	10	b, c, f	X	\$894	\$8,943
	11 Violations of COA's (34-60-121(1) C.R.S.	5 Violations of COA's (34-60-121(1) C.R.S.	X	50	b, c, f	X	\$894	\$44,715
		6 Violations of COA's (34-60-121(1) C.R.S.	X	6	b, c, f	X	\$894	\$5,366
<b>Total in Order</b>	33	30	904	246	b, c, f	NONE		\$220,000
							<b>Hard Fine</b>	\$140,000
							<b>Public Project</b>	\$80,000

## 2013 Commission Enforcement Orders Report

23	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-413	05/06/13	AOC	Lone Pine Gas, Inc.	0

\* Stipulated Order making AOC Binding on CM Production

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	N/A	This order made the corrective action dates of Order No. IV-412 binding on the party buying the site from the violating operator.						
<b>Total in Order</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
							<b>Hard Fine</b>	No Fine

24	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-412	05/06/13	AOC	Lone Pine Gas, Inc. - Fine	2

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day per Site	Total Fine (x Days x Sites)
<b>Individual Violations</b>	210.d.	210.d.	X	10	X	X	\$500	\$5,000
	324A.a, A.b	324A.a	324A.b. - Distinctions between the subparts of the same Rule were not sufficiently distinct to charge separately.	40	X	X	\$1,000	\$40,000
	326.b.(1)	326.b.(1)	X	5	X	X	\$1,000	\$5,000
	902	902	X	30	X	X	\$1,000	\$30,000
	906.a.	906.a.	X	30	X	X	\$1,000	\$30,000

## 2013 Commission Enforcement Orders Report

	907.c., .c(1)	907.c.	907.c. - Distinctions between the subparts of the same Rule were not sufficiently distinct to charge separately.	30	X	X	\$1,000	\$30,000
	912.b.	912.b.	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	9	7	907.c., 324A.b. (Consolidation)	246	NONE	NONE		\$150,000
							<b>Suspended</b>	\$150,000

<b>25</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-411	05/06/13	AOC	Antero Resources Piceance LLC	1

\*Order stayed pending resolution of protest.

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	209	X	Rule 209 as cited in error. It does not apply and was dismissed.					
	324A.a, A.b	324	X	150	X	b	\$1,000	\$150,000
	906.e.(2)	X	Operator complied with Rule 906.e.(2), so that violation was dismissed.					
	901.f	X	All the remaining violations were related to the same cause - a leak from a produced water pipeline. All violations were consolidated into a single violation with significant adverse impact. This violation was not limited to the 10-day or \$10,000 limit.					
907.a.(1), .a.(2)	X							
<b>Total in Order</b>	6	1	209, 906.e.(2), 901.f, 907.a.(1), (2)	150	NONE	NONE		\$150,000
							<b>Hard Fine</b>	\$150,000

## 2013 Commission Enforcement Orders Report

<b>26</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-410	05/06/13	AOC	Texas Tea of Colorado	0

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>	
<b>Individual Violations</b>	34-60-121(1), C.R.S.	34-60-121(1), C.R.S.	X	This was a proceeding to revoke an operator's authorization to conduct oil and gas operations in the state based on non-compliance with a previous order. It did not involve a new NOAV, only the statutory provision.					
<b>Total in Order</b>	1	1	N/A	N/A	N/A	N/A	N/A	N/A	
								<b>Hard Fine</b>	N/A

<b>27</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-409	05/06/13	AOC	Magpie Operating Inc.	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>	
<b>Individual Violations</b>	707	707	X	10	X	X	\$1,000	\$10,000	
<b>Total in Order</b>	1	1	NONE	10	NONE	NONE		\$10,000	
								<b>Hard Fine</b>	\$10,000

## 2013 Commission Enforcement Orders Report

28	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-408	05/06/13	AOC	Benchmark Energy LLC	5

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	309 (4 sites)	X	The operator submitted the required production reports shortly after being notified the reports were delinquent.					
	319.b (4 sites)	X	The Rule 319 violations were consolidated with the Rule 326 violations when the operator performed all required MIT's prior to the hearing date.					
	326.b.(1) (4 sites)	326.b.(1) (4 sites)	X	3 * 4 sites (12)	b, c, f	X	\$1,000	\$12,000
	326.d (1 sites)	326.d (1 site)	X	3	b, c, f	X	\$1,000	\$3,000
<b>Total in Order</b>	13	5	309 (4 sites), 319.b (4 sites)	15	b, c, f	NONE		\$15,000
							<b>Hard Fine</b>	\$15,000

## 2013 Commission Enforcement Orders Report

29	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-407	03/25/13	AOC	Top Operating Company	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	210.d.	210.d.	X	5	c	X	\$500	\$2,500
	301	301	X	2.5	c	X	\$1,000	\$2,500
	308A	308A	X	2.5	c	X	\$1,000	\$2,500
	308B	308B	X	2.5	c	X	\$1,000	\$2,500
	309	309	X	2.5	c	X	\$1,000	\$2,500
	522.a.	522.a.	X	2.5	c	X	\$1,000	\$2,500
	603	603	X	2.5	c	X	\$1,000	\$2,500
	604.a.	604.a.	X	2.5	c	X	\$1,000	\$2,500
	604.d.	604.d.	X	2.5	c	X	\$1,000	\$2,500
906.a.	906.a.	X	2.5	c	X	\$1,000	\$2,500	
<b>Total in Order</b>	10	10	NONE	27.5	c	NONE		\$25,000
							<b>Hard Fine</b>	\$25,000

## 2013 Commission Enforcement Orders Report

<b>30</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-406	03/25/13	AOC	Coral Production Corporation	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>	
<b>Individual Violations</b>	210.b, .d	210.b, .d	X	2	X	X	\$500	\$1,000	
	324A.a.	324A.a.	X	5	X	X	\$1,000	\$5,000	
	603.j.	603.j.	X	1	X	X	\$1,000	\$1,000	
	604.a.(4), .d.	604.a.(4), .d.	X	1	X	X	\$1,000	\$1,000	
	902.a.,d.,.g.	X	The parties disputed the validity of Rule 902 and 904 citations. The case was settled without having to resolve these legal issues. The operator agreed to perform the remediation necessary to resolve these violations.						
	904	X							
	906	906.a	X	1	X	X	\$1,000	\$1,000	
907.c.(2)E, .e., .f.	907.e, .f.	907.c.(2)E - Subsumed by the 907.e. and 907.f. violations.	6	X	X	\$1,000	\$6,000		
<b>Total in Order</b>	14	9	902, 904, 907.c.(2)E	16	NONE	NONE		\$15,000	

The Order recognizes the operator had already spent \$530,000 in remediation costs and had agreed to complete remediation with significant cost exposure.

<b>Hard Fine</b>	\$15,000 + \$30,000 (costs) = \$45000
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## 2013 Commission Enforcement Orders Report

31	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-405	02/11/13	AOC	Booco's Contract Services, Inc.	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	319.b.	The Rule 319, 326, and 603 violations were consolidated for the purposes of settlement.						
	326.b.	326.b.	X	10	X	X	\$1,000	\$10,000
	603.j.	The Rule 319, 326, and 603 violations were consolidated for the purposes of settlement.						
<b>Total in Order</b>	3	1	NONE	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	\$5,000
							<b>Suspended</b>	\$5,000

32	Order No.	Order Date	AOC/OFV	Operator	# of NOAVs
	1V-404	02/11/13	AOC	Lone Star LLC	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day per Site	Total Fine (x Days x Sites)	
<b>Individual Violations</b>	302	302	X	10	c	X	\$667	\$6,670	
	325.c.(7), .c.(5), .c.(7)	325	The three 325.c. violations were not sufficiently distinct to justify separate penalties.		10	c	X	\$667	\$6,670
	309/316A	309/316A	X	10	c	X	\$667	\$6,670	
<b>Total in Order</b>	5	3	2/3 of 325.c. violations	30	c	NONE		\$20,000	
							<b>Hard Fine</b>	\$20,000	

## 2013 Commission Enforcement Orders Report

33	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-403	01/07/13	AOC	Alamosa Drilling, Inc.	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	603.a(2)	603.a(2)	X	10	X	X	\$1,000	\$10,000
	305.e.(1)A, .e.(1)B	X	The Rule 305.e. and 306.a. citations were not supported by the facts.					
	306.a	X						
<b>Total in Order</b>	4	1	305.e. and 306.a.	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	X
							<b>Suspended</b>	\$10,000

34	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-402	01/07/13	AOC	Grynberg Petroleum Company	1

	<b>Cited in NOAVs</b>	<b>Included in Fine</b>	<b>Not Included In Fine</b>	<b>Days of Violation</b>	<b>Mitigating Factors</b>	<b>Aggravating Factors</b>	<b>Penalty per Day</b>	<b>Total Fine (x Days x Sites)</b>
<b>Individual Violations</b>	905	905	X	5	X	X	\$1,000	\$5,000
	907	X	The Rule 907 violation raised a contested legal jurisdictional issue that was not necessary to fight in resolving the NOAV.					
<b>Total in Order</b>	2	1	907	5	NONE	NONE		\$5,000
							<b>Hard Fine</b>	\$5,000

## 2013 Commission Enforcement Orders Report

<b>35</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-401	01/07/13	AOC	Grynberg Petroleum Company	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	326	326	X	7.5	X	X	\$1,000	\$7,500
<b>Total in Order</b>	1	1	NONE	7.5	NONE	NONE		\$7,500
							<b>Hard Fine</b>	\$7,500

<b>36</b>	<b>Order No.</b>	<b>Order Date</b>	<b>AOC/OFV</b>	<b>Operator</b>	<b># of NOAVs</b>
	1V-400	01/07/13	AOC	Geokinetics USA Inc.	1

	Cited in NOAVs	Included in Fine	Not Included In Fine	Days of Violation	Mitigating Factors	Aggravating Factors	Penalty per Day	Total Fine (x Days x Sites)
<b>Individual Violations</b>	333	333	X	10	X	X	\$1,000	\$10,000
<b>Total in Order</b>	1	1	NONE	10	NONE	NONE		\$10,000
							<b>Hard Fine</b>	\$10,000

# 2013 Commission Enforcement Orders Report

## Mitigating Factors

- a. The violator self-reported the violation.
- b. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.
- c. The violator cooperated with the Commission, or other agencies with respect to the violation.
- d. The cause(s) of the violation was (were) outside of the violator's reasonable control and responsibility.
- e. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.
- f. The cost of correcting the violation reduced or eliminated any economic benefit to the violator.
- g. The violator has demonstrated a history of compliance with Commission rules, regulations and orders.

## Aggravating Factors

- a. The violation was intentional or reckless.
- b. The violation had a significant negative impact, or threat of significant negative impact, on the environment or on public health, safety, or welfare.
- c. The violation resulted in significant waste of oil and gas resources.
- d. The violation had a significant negative impact on correlative rights of other parties.
- e. The violation resulted in or threatened to result in significant loss or damage to public or private property.
- f. The violation involved recalcitrance or recidivism upon the part of the violator.



## **Appendix 6**

### **2013 Notice of Alleged Violation Report**

## 2013 Notice of Alleged Violations Report Summary

This Report lists all Notice of Alleged Violations (“NOAV”) the Commission issued in 2013, through November 30. The Report indicates whether a NOAV has been resolved (“closed”) or is still pending (“open”). For each closed NOAV, the Report indicates whether a penalty was imposed and, if so, the penalty amount.

The table below summarizes the status of the NOAVs issued in 2013; the details for each NOAV are contained in the pages that follow.

<b>Total NOAVs Issued</b> (1/1/2013 to 11/30/2013)	<b>167</b>	
<b>Total Open</b>	<b>68</b>	<b>41%</b>
<b>Total Resolved</b>	<b>99</b>	<b>59%</b>
		<b>% Of Total Resolved</b>
Resolved by Order and Penalty	29	29%
Resolved by Order Without Penalty	2	2%
Resolved by Corrective Actions Without Penalties	58	59%
Dismissed by Hearings Unit	7	7%
Withdrawn by Staff	3	3%
Total Penalties Assessed	\$675,101	
Maximum Penalty Assessed	\$100,000	
Minimum Penalty Assessed	\$1,000	
Average Penalty Assessed	\$23,279	
Median Penalty Assessed	\$10,000	

# 2013 Notice of Alleged Violation Report

Through November 30, 2013

NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200372549	WPX ENERGY RYAN GULCH LLC	1/3/2013	Federal	Closed	No
200372528	NICHOLS * ORVILLE B	1/3/2013	STATE OF COLORADO	Closed	No
200372525	LAMAR OIL & GAS EXPLORATION	1/3/2013	WINDMILL	Open	
200372574	NIGHTHAWK PRODUCTION LLC	1/4/2013	CRAIG	Closed	No
200372618	SCHNEIDER ENERGY SERVICES INC	1/8/2013	PATTERSON	Closed	No
200372642	SCHNEIDER ENERGY SERVICES INC	1/8/2013	VEEMAN	Closed	No
200372614	SCHNEIDER ENERGY SERVICES INC	1/8/2013	WELD COUNTY	Open	
200372615	SCHNEIDER ENERGY SERVICES INC	1/8/2013	SMITH	Open	
200372617	SCHNEIDER ENERGY SERVICES INC	1/8/2013	LISLE	Open	
200372731	UNIT PETROLEUM COMPANY	1/9/2013	YELLOW JACKET	Closed	No
200372814	ANDRIKOPOULOS RESOURCES* A G	1/10/2013	JAMES ET AL	Closed - Order No. 1V-418	Yes (\$10,000)
200372817	ANDRIKOPOULOS RESOURCES* A G	1/10/2013	ELK SPRINGS UNIT	Closed - Order No. 1V-418	Yes (\$10,000)
200373611	SCHNEIDER ENERGY SERVICES INC	1/25/2013	LONGSTRETH	Closed	No

# 2013 Notice of Alleged Violation Report

Through November 30, 2013

NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200373606	SCHNEIDER ENERGY SERVICES INC	1/25/2013	STATE	Open	
200373610	SCHNEIDER ENERGY SERVICES INC	1/25/2013	MCGAHEY OIL, LLC STATE	Open	
200374896	KINDER MORGAN CO2 CO LP	2/11/2013	YG	Closed by Order 1V-414	Yes (\$58,667)
1772343	BERENERGY CORP	2/13/2013	ELLIFF	Closed	No
200375003	KINDER MORGAN CO2 CO LP	2/14/2013	YA	Closed by Order 1V-414	Yes (\$66,000)
2369024	KINDER MORGAN CO2 CO LP	2/18/2013	HA	Closed by Order 1V-414	Yes (\$58,667)
200375242	QUICKSILVER RESOURCES INC	2/21/2013	ALPHA-STATE	Closed	No
200375243	QUICKSILVER RESOURCES INC	2/21/2013	GRASSY CREEK STATE	Closed	No
200375253	EOG RESOURCES INC	2/21/2013	JUDY	Closed	No
200375268	MAGPIE OPERATING, INC	2/22/2013	GILL - TRINDLE	Closed	No
2482225	KERR-MCGEE OIL & GAS ONSHORE LP	2/26/2013	PIONEER	Closed	No
2482227	KERR-MCGEE OIL & GAS ONSHORE LP	2/26/2013	HSR-BELL	Closed	No
2482228	KERR-MCGEE OIL & GAS ONSHORE LP	2/26/2013	HSR-CREASON	Closed	No

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
2482226	ENCANA OIL & GAS (USA) INC	2/26/2013	MELBON RANCH	Closed	No
2482229	ENCANA OIL & GAS (USA) INC	2/26/2013	GRATTAN	Closed	No
2482230	ENCANA OIL & GAS (USA) INC	2/26/2013	GRATTAN	Closed	No
200375865	AXIA ENERGY LLC	3/1/2013	Bulldog5-31H-790Completion Pit	Closed - Order No. 1V-419	Yes (\$50,000)
200375902	DUNNING* CHARLES P	3/5/2013	SHOEMAKER	Closed - Order No. 1V-434	Yes (\$20,000; \$10,000 Suspended)
200375903	DUNNING* CHARLES P	3/5/2013	SHOEMAKER	Closed - Order No. 1V-434	No (dismissed in AOC)
200376194	BARRETT CORPORATION* BILL	3/6/2013	BOX ELDER G	Closed	No
200376195	BARRETT CORPORATION* BILL	3/6/2013	BOX ELDER G	Closed	No
200376199	BARRETT CORPORATION* BILL	3/6/2013	LOVELY	Open	
2369006	KINDER MORGAN CO2 CO LP	3/7/2013	DOE CANYON	Closed by Order 1V-414	Yes (\$36,667)
2482249	K P KAUFFMAN COMPANY INC	3/7/2013	BARNES	Closed	No
200376280	BP AMERICA PRODUCTION COMPANY	3/8/2013	Southern Ute 24, 33-10 Compressor	Open	
200376557	WESTERN OPERATING COMPANY	3/13/2013	PECK	Closed	No

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200376462	K P KAUFFMAN COMPANY INC	3/13/2013	KNUDSEN	Closed	No
200376494	K P KAUFFMAN COMPANY INC	3/13/2013	MONFORT	Closed	No
200376518	K P KAUFFMAN COMPANY INC	3/13/2013	MONFORT	Closed	No
200376569	BENCHMARK ENERGY LLC	3/14/2013	LOGAN J SAND UNIT	Closed - Order No. 1V-421	Yes (\$10,000)
200376857	BARGATH LLC	3/19/2013	WELLS D #1	Closed -Dismissed by Hearings Unit	No (Dismissed Jurisdiction)
200376873	WPX ENERGY ROCKY MOUNTAIN LLC	3/20/2013	UNOCAL	Closed -Dismissed by Hearings Unit	no ( Dismissed on Jurisdiction)
200376867	BARGATH LLC (WILLIAMS)	3/20/2013	PARACHUTE CREEK GAS PLANT	Closed -Dismissed by Hearings Unit	No (Dismissed Jurisdiction)
200377507	QEP ENERGY COMPANY	4/1/2013	ISLAND BUTTE II UNIT	Open	
200377725	CHEMCO INC	4/5/2013	LINCOLN	Closed	No
200378031	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378032	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	FEDERAL	Open	
200378033	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	FEDERAL	Open	
200378034	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200378035	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378036	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378037	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	FEDERAL	Open	
200378051	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378063	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378065	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM	Open	
200378066	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM	Open	
200378068	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	MCCALLUM UNIT	Open	
200378070	BONANZA CREEK ENERGY OPERATING COMPANY LLC	4/10/2013	PRONGHORN	Open	
200378184	WILLIFORD ENERGY COMPANY	4/12/2013	RHOADES UNIT TRACT 5	Closed	No
200378185	CITATION OIL & GAS CORP	4/12/2013	ARAPAHOE UNIT	Closed	No
200378308	CHEVRON PRODUCTION COMPANY	4/16/2013	UNION PACIFIC	Closed	No
200378309	CHEVRON PRODUCTION COMPANY	4/16/2013	UNION PACIFIC "B"	Closed	No

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200378449	CONOCO PHILLIPS COMPANY	4/22/2013	ARGENTA 33-10	Closed	No
200378586	CAERUS WASHCO LLC	4/22/2013	STATE	Closed - Order No. 1V-420	Yes (\$70,000)
200379257	MONUMENT GLOBAL RESOURCES INC	5/1/2013	CACHE UNIT	Open	
200379270	MONUMENT GLOBAL RESOURCES INC	5/2/2013	CACHE UNIT	Open	
200380093	MULL DRILLING COMPANY INC	5/13/2013	MILLER SWDW	Closed	No
200380088	MULL DRILLING COMPANY INC	5/13/2013	UPRR ROTH-TWIN	Closed	No
2617919	MULL DRILLING COMPANY INC	5/13/2013	MULL UNIT	Closed by Order 1V-416	Yes (\$10,000)
200380096	CITATION OIL & GAS CORP	5/14/2013	GARY 33-2	Closed	No
200380112	FOUNDATION ENERGY MANAGEMENT LLC	5/17/2013		WITHDRAWN	
200380155	CITATION OIL & GAS CORP	5/17/2013	BLEDSON	Closed	No
200380393	PDC ENERGY INC	5/23/2013	Ochsner	Closed by Order 1V-415	Yes (\$41,600)
200380672	SWEPI LP	5/24/2013	Trout Creek	Closed	No
200380611	GEOKINETICS USA INC	5/24/2013	Seismic Project ID #5878 (Stanley)	Closed	No

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200380647	FOUNDATION ENERGY MANAGEMENT LLC	5/24/2013	ALLARD	Open	
200380912	CHEVRON PRODUCTION COMPANY	5/29/2013	EMERALD	Closed	No
200380949	CHEVRON PRODUCTION COMPANY	5/29/2013	FEE	Closed	No
200380950	CHEVRON PRODUCTION COMPANY	5/29/2013	EMERALD	Closed	No
200380951	CHEVRON PRODUCTION COMPANY	5/29/2013	EMERALD	Closed	No
200380956	CHEVRON PRODUCTION COMPANY	5/29/2013	FEE	Closed	No
200380972	CHEVRON PRODUCTION COMPANY	5/29/2013	UNION PACIFIC	Closed	No
200380995	CHEVRON PRODUCTION COMPANY	5/29/2013	UNION PACIFIC	Closed	No
200380996	CHEVRON PRODUCTION COMPANY	5/29/2013	LARSON, M B	Closed	No
200381004	CHEVRON PRODUCTION COMPANY	5/29/2013	LEVISON	Closed	No
200380929	CHEVRON PRODUCTION COMPANY	5/29/2013	FEE	Open	
200381201	PINTAIL PETROLEUM LTD	6/4/2013	ALPINE KLIESEN	Closed	No
200381789	INDUSTRIAL GAS SERVICES INC	6/20/2013	BEHRING	Open	

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200381968	BEEMAN OIL & GAS LLC	6/21/2013	GROMMETT	Open Docket No 1310-OV-27	Not yet (In progress)
200382050	BEEMAN OIL & GAS LLC	6/21/2013	GROMMETT	Open Docket No 1310-OV-27	Not yet (In progress)
200382055	BEEMAN OIL & GAS LLC	6/21/2013	GROMMETT	Open Docket No 1310-OV-27	Not yet (In progress)
200382243	THOMAS L SPRING LLC	6/26/2013	GREGERY	Closed by Order 1V-437	Yes (\$20,000; \$18,000 suspended)
200382407	URSA OPERATIONG COMPANY LLC	6/27/2013	HANGS	Open	
200382414	URSA OPERATING COMPANY LLC - #10447	6/27/2013	O'TOOLE	Open	
200382410	URSA OPERATING COMPANY LLC	6/27/2013	ROBINSON	Open	
200382372	KERR-MCGEE OIL & GAS ONSHORE LP	6/27/2013	REIGLE	Closed by Order 1V-417	Yes (\$42,500)
200382177	CARRIZO OIL & GAS INC	6/27/2013	Timbro Ranch	Closed	No
200382395	CARRIZO OIL & GAS INC	6/27/2013	Bringelson Ranch	Closed	No
200382157	MARALEX RESOURCES, INC	7/2/2013	CALF CANYON	Closed by Order 1V-438	Yes (\$10,000)
200382487	MARALEX RESOURCES, INC	7/2/2013	SPEARS	Closed by Order 1V-438	Yes (\$5,000)
200382488	MARALEX RESOURCES, INC	7/2/2013	BALDY CREEK UNIT	Closed by Order 1V-438	Yes (\$5,000)

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200382489	MARALEX RESOURCES, INC	7/2/2013	DOME ALBERTSON	Closed by Order 1V-438	Yes (\$5,000)
200382156	MARALEX RESOURCES, INC	7/2/2013	CALF CANYON	Closed by Order 1V-438	Yes (\$5,000)
200382155	MARALEX RESOURCES, INC	7/2/2013	CALF CANYON	Closed by Order 1V-438	Yes (\$5,000)
200382486	MARALEX RESOURCES, INC	7/2/2013	PAVLAKIS	Closed by Order 1V-438	no (Dismissed in AOC)
200382154	MARALEX RESOURCES, INC	7/2/2013		WITHDRAWN	No
2482461	KERR-MCGEE OIL & GAS ONSHORE LP	7/3/2013	DONALD COOK GU	Open	
200382861	P & M PETROLEUM MANAGEMENT LLC	7/8/2013	LOUSBERG	Open	
200382924	STEHLE OIL COMPANY	7/12/2013		Open	
200382926	M E III CORPORATION	7/12/2013		Open	
200382921	HYNDREX RESOURCES	7/12/2013	WIRTH	Open	
200382922	GRYNBERG* JACK DBA GRYNBERG PETROLEUM CO	7/12/2013		Open	
200382923	ENERGY OIL AND GAS INC	7/12/2013		Closed	No
200382925	BEREN CORPORATION	7/12/2013	MOYER UNIT	Closed - Order No. 1V-421	Yes (\$100,000; \$50,000 suspended)

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200382927	BEREN CORPORATION	7/12/2013	MOYER UNIT	Open	
200383155	RITCHIE EXPLORATION INC	7/19/2013	LOWE	Open	
200383159	OXY USA INC	7/19/2013	MY WAY RANCH	Closed	No
200383160	OXY USA INC	7/19/2013	ZIEGAL	Closed	No
200383250	ENCANA OIL & GAS (USA) INC	7/22/2013	BENZEL DISPOSAL	Closed	No
200383714	OXY USA INC	7/26/2013	COLORADO LAND	Open	
200383713	CHEMCO INC	7/26/2013	WEAR	Closed	No
200383874	SAGA PETROLEUM LIMITED LIABILITY CO OF CO	7/29/2013	FEDERAL	Open	
200383854	CHEMCO INC	7/29/2013	MUNDHENKE	Closed	No
200387530	SYNERGY RESOURCES CORPORATION	8/1/2013	Swift	Closed by Order 1V-428	Yes (\$1,000)
200384524	THOMAS L SPRING LLC	8/9/2013	DRW STATE	Closed	No
200384809	BONANZA CREEK ENERGY OPERATING COMPANY LLC	8/14/2013	MCCALLUM UNIT	Open	

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200384810	BONANZA CREEK ENERGY OPERATING COMPANY LLC	8/14/2013	MCCALLUM	Open	
200384922	CHEVRON PRODUCTION COMPANY	8/15/2013	UNION PACIFIC	Open	
200384968	SUNDANCE ENERGY INC	8/16/2013	Hornung	Open Docket No. 1309-OV-24	Not yet (In progress)
200386330	LONESTAR GEOPHYSICAL SURVEYS LLC	8/29/2013		Closed by Order 1V-432	Yes (\$20,000)
200386283	CHEVRON PRODUCTION COMPANY	8/29/2013	UNION PACIFIC	Open	
200386422	PROSPECT ENERGY LLC	8/30/2013	MSSU	Open	
200386404	PROSPECT ENERGY LLC	8/30/2013		WITHDRAWN	
1772372	ORR ENERGY LLC	8/31/2013	HALL	Closed by Order 1V-428	Yes (\$1,000)
1772371	NOBLE ENERGY INC	8/31/2013	BATTLEMENT MESA	Closed	No
1772370	MCELVAIN ENERGY INC	8/31/2013		Closed -Dismissed by Hearings Unit	
1772464	MATRIX ENERGY LLC	8/31/2013	HOLTON	Closed -Dismissed by Hearings Unit	No
1772465	MARATHON OIL COMPANY	8/31/2013		Closed -Dismissed by Hearings Unit	No
1772466	LARAMIE ENERGY II, LLC	8/31/2013	Jensen	Closed by Order 1V-423	Yes (\$1,000)

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
1772468	KERR-MCGEE OIL & GAS ONSHORE LP	8/31/2013	STREAR	Closed by Order 1V-426	Yes (\$1,000)
1772469	GUNNISON ENERGY CORPORATION	8/31/2013	SPU Cockroft 1294	Closed by Order 1V-431	Yes (\$1,000)
1772483	ENCANA OIL & GAS (USA) INC	8/31/2013		Closed -Dismissed by Hearings Unit	No
1772471	CONOCO PHILLIPS COMPANY	8/31/2013	Grimm 34	Closed by Order 1V-427	Yes (\$1,000)
1772472	BONANZA CREEK ENERGY OPERATING COMPANY LLC	8/31/2013	State Antelope	Open	
1772473	BARRETT CORPORATION* BILL	8/31/2013	Egan State	Closed	No
200386504	NOBLE ENERGY INC	9/3/2013	LILLI UNIT	Open	
200386506	NOBLE ENERGY INC	9/3/2013	LILLI UNIT	Open	
200386508	NOBLE ENERGY INC	9/3/2013	LILLI UNIT	Open	
200386553	WPX ENERGY ROCKY MOUNTAIN LLC	9/10/2013	SG Cuttings Trench	Open	
200387258	CARRIZO OIL & GAS INC	9/13/2013	Debrine	Open	
200387458	EPHPHATHA LLC	9/16/2013	DRY CREEK UT HD 31	Open	

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200387086	HILCORP ENERGY COMPANY	10/1/2013	Myers	Closed by Order 1V-436	Yes (\$10,000)
200388006	REDWINE RESOURCES INC	10/7/2013	SOUTH NUCLA UNIT	Open	
200388188	GENESIS GAS & OIL COLORADO LLC	10/9/2013	FLETCHER GULCH	Open	
200388751	URSA OPERATING COMPANY LLC	10/28/2013	Valley Farms J Pad	Open	
200388898	FEES JR AND SON OIL & GAS* WALTER S	10/31/2013	BAR-X	Open	
200389195	ANTELOPE ENERGY COMPANY LLC	11/6/2013	STATE OF COLORADO	Open	
200389196	ANTELOPE ENERGY COMPANY LLC	11/6/2013	STATE	Open	
200389198	ANTELOPE ENERGY COMPANY LLC	11/6/2013	BREEZE STATE	Open	
200389384	MAGPIE OPERATING, INC	11/14/2013	WARNECKE	Open	
2618002	SAGA PETROLEUM LIMITED LIABILITY CO OF CO	11/20/2013	JONES-DUPREE	Open	
200389608	NOBLE ENERGY INC	11/25/2013	Wells Ranch AE	Open	
200390427	K P KAUFFMAN COMPANY INC	11/26/2013	STATE	Open	

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NOAV #	Operator Name	NOAV Issue Date	Facility Name	Open/Closed	Penalty issued?
200390707	PDC ENERGY	11/29/2013	LEFFLER	Open	