Colorado Oil and Gas Conservation Commission
Enforcement Program

Operator and Local Government Training
    Rifle * Durango * Longmont * Limon

Dave Andrews and Bob Frick
Agenda

- Introduction
  - Executive Order D 2013-004
  - Enforcement and NOAV process improvement

- Program Implementation
  - Effective May 1, 2014
Introduction
Comprehensive Regulations

• Colorado enforces one of the most comprehensive and protective set of oil and gas regulations in the Country.
• Established by the Oil and Gas Act of 1951 (See C.R.S. 34-60-101 et. seq.)
• Directed by the governor and legislators, COGCC in 2007 and 2008 overhauled existing regulations to significantly toughen protections for the communities, the environment and wildlife. Extensive new rules took effect in 2009.
• In 2012, the COGCC has undertaken rulemaking regarding statewide ground water monitoring and setbacks.
• New rules also provide far greater opportunities for public and local government participation.
• Executive Order D 2013-004.
Executive Order D 2013-004

- 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.
Executive Order D 2013-004

- Provide a transparent enforcement process
- Promote enforcement uniformity and consistency
- Develop an enforcement program that deters violations and encourages compliance
- Review rules, policies, and implementation methods
- Develop a publicly-available Enforcement Guidance
- Report to the Governor’s Office due December 10, 2013
Why is NOAV Process Improvement Necessary?

- Process Improvement Goals
  - Change enforcement culture and system structure
  - Improve system transparency
  - Create enforcement guidance
  - Improve uniformity and consistency
  - Improve internal coordination
  - Improve efficiency
  - Improve timeliness
  - Promote operator compliance
Agency-Wide Enforcement

- All COGCC Staff who are involved with enforcement matters:
  - Hearings Unit
  - Field Inspection Unit
  - Environmental Unit
  - Engineering Unit
  - Permitting Unit
  - Bonding Unit
  - Production Unit
Past Enforcement Culture and Rule 522.b.(1)

- “Informal procedures to resolve issues raised by an NOAV with the Director are encouraged…”

- The Executive Order required review of our enforcement culture and formal procedures for NOAV resolution.
Proposed Penalty Matrix

**Penalty Matrix**

<table>
<thead>
<tr>
<th>Penalty Schedule Classification</th>
<th>Class 1</th>
<th>Class 2</th>
<th>Class 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major: actual significant adverse impacts</td>
<td>$1,500</td>
<td>$3,500</td>
<td>$5,500</td>
</tr>
<tr>
<td>Moderate: threat of significant adverse impacts or moderate actual adverse impacts</td>
<td>$500</td>
<td>$1,500</td>
<td>$3,500</td>
</tr>
<tr>
<td>Minor: no actual adverse impact and little or no threat</td>
<td>$2,500</td>
<td>$5,500</td>
<td>$8,500</td>
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</table>

**Violation Duration Matrix**

<table>
<thead>
<tr>
<th>Days of Continuing Violation</th>
<th>1-10</th>
<th>11-30</th>
<th>31-60</th>
<th>61-120</th>
<th>121-365</th>
<th>366+</th>
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<tbody>
<tr>
<td>Class 3/Major</td>
<td>100.00%</td>
<td>56.60%</td>
<td>25.00%</td>
<td>10.00%</td>
<td>5.00%</td>
<td>2.00%</td>
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<tr>
<td>Class 3/Moderate</td>
<td>100.00%</td>
<td>43.60%</td>
<td>22.00%</td>
<td>9.00%</td>
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<tr>
<td>Class 2/Major</td>
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<td>28.60%</td>
<td>15.00%</td>
<td>6.00%</td>
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<tr>
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<td>23.60%</td>
<td>10.00%</td>
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<tr>
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<tr>
<td>Class 1/Minor</td>
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<td>7.50%</td>
<td>3.00%</td>
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Program Implementation
Key Process Improvements

- **Transparency**
  - COGCC IT Tool being developed for the website to allow all interested parties to view the status of enforcement matters
  - Frequently Asked Questions document will be posted on the website

- **Consistency**
  - Written process (PowerPoint training materials) is available
  - Responsible units defined and review/coordination steps added
  - Automated IT process and template language
  - Document storage and tracking standardized

- **Compliance**
  - Rule Matrix and Penalty structure review
Implementation Steps

- Initiation, Confirmation, and Coordination
- Rule Matrix and Enforcement Path (Discretionary vs. Mandatory)
- Documentation and Referral to Hearings Unit
Enforcement Initiation

- Operator Self-Reports
- Complaint
- Administrative Violation
  - evaluate Discretionary (Warning Letter) path or Mandatory (NOAV) path
- Field Violation
  - complete Field Inspection Report [FIR] and evaluate Discretionary (“Corrective Action Required” FIR) path or Mandatory (“Violation” FIR-NOAV) path
### Rule Matrix

#### COGCC Rule Characterizations and Enforcement Designations

<table>
<thead>
<tr>
<th>Rule Numbers</th>
<th>Rule Titles</th>
<th>Rule Class</th>
<th>Lead NOAV Unit (Permitting (Perm); Field Inspection (FRI); Environmental (Env); Engineering (Eng))</th>
<th>Mandatory (M) Discretionary (D) Penalty</th>
<th>Recidivism Measured by Well (W) Location (L) Operator (O)</th>
<th>Presumptive Time for Corrective Actions (Months unless otherwise stated)</th>
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<tr>
<td>214</td>
<td>Local Governmental Designee</td>
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<td>Global Positioning Systems</td>
<td>1</td>
<td></td>
<td>D</td>
<td>W</td>
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<td>Comprehensive Drilling Plans</td>
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<td>DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)</td>
<td>301 Records, Reports, Notices - General</td>
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<td>EngPerm</td>
<td>D</td>
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<td>EngPerm</td>
<td>M</td>
<td>1</td>
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<td>OGCC Form 2. Requirements for Form 2 Application for Permit-to-Drag, Deepen, Reenter, or Recomplete and Operate: Form 2A, Oil and Gas Location Assessment</td>
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<td></td>
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<td>OGCC Form 10. Certificate of Clearance and/or Change of Operator</td>
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<td>OGCC Form 11. Monthly Report of Gasoline or Other Extraction Plants</td>
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<td>Report of Reservoir Pressure Test</td>
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<td>FL/PERM/ENVY</td>
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<td>Notice of Intent to Conduct Hydraulic Fracturing Treatment</td>
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<td></td>
<td>Eng</td>
<td>D</td>
<td>O</td>
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<td></td>
<td>General Drilling Rules</td>
<td>2</td>
<td></td>
<td>Any</td>
<td>D</td>
<td>W</td>
</tr>
</tbody>
</table>
Enforcement Confirmation

- **Contact** complainant (if any) and operator, to verify facts and observations. Investigate and document facts, statements, and observations as appropriate.

- **Consult** with Supervisor and/or Manager to determine if a rule, order, or permit condition was violated and secure management support to proceed. * Supervisor and/or Manager review of materials for sufficiency.*

- **Coordinate** with Supervisor and/or Manager of other units if referrals are necessary (see Rule Matrix Lead NOAV Unit for guidance).
Discretionary Enforcement

- **Rule Matrix** offers enforcement path guidance for COGCC staff, Supervisors, and Managers.

- **Discretionary Enforcement** allows for the use of a Warning Letter (“Administrative” violation) and/or a Corrective Action Required FIR (“Field” violation) before considering a NOAV.
Warning Letter

November 6, 2013

[Company Name]

[Address]

Dear [Recipient's Name],

This Warning Letter is to inform you that the oil and gas facilities at the oil and gas production site located at [Location] are in violation of the Colorado Oil and Gas Conservation Act [CGGCC] and the Colorado Oil and Gas Conservation Act of 2002 [COGCC].

The violation involves the failure to comply with the requirements of the CGGCC, which require the implementation of certain measures to ensure the safe and responsible operation of oil and gas wells. Specifically, the violation involves the failure to... (Continue with detailed explanation of the violation).

If you do not address this violation promptly, the CGGCC may take enforcement action, including fines and/or other penalties. You are required to correct the violation within [specific timeframe provided in the letter].

Please contact [CGGCC representative's name] at [phone number] or [email address] to discuss this matter further.

Sincerely,

[Name of CGGCC representative]
[Title]
[Department]

[CGGCC logo]

[State of Colorado logo]
Warning Letter Opening Content

This Warning Letter is to inform you that the oil and gas facility or the oil and gas operations listed above may be in violation of the rules and regulations of the Colorado Oil and Conservation Commission (“COGCC”) and correction action is required.

There is reasonable cause to believe that a violation of the Oil and Gas Conservation Act, or of any rule, regulation, or order of the Commission, or of any permit issued by the Commission, has occurred. The Operator’s compliance with this Warning Letter is required to resolve these alleged violations. This document requires the Operator to timely respond to the COGCC and to comply with directives as listed by the Corrective Action Deadline Date. Failure to do so will result in the issuance of a Notice of Alleged Violation and initiation of enforcement proceedings in which COGCC will seek monetary penalties for the alleged violations pursuant to § 34-60-121, C.R.S. and Rule 523, COGCC Rules of Practice and Procedure, 2 CCR 404-1.

The COGCC requires [Operators Name] to implement corrective action(s) for the conditions identified below.
Warning Letter Variable Content

- Corrective action requirements, time deadlines, and the submission of corrective action documentation will vary based on the alleged violations.

- Consequences for non-compliance may be specified in certain situations (e.g., order to cease and desist an operation to stop an on-going release).

- COGCC staff will use template language if available or seek management approval for new or custom language.
Warning Letter Closing Content

Corrective Action Deadline Date: [Due Date]

Failure to Comply with Warning Letter:

If [Operator Name] fails to perform required corrective actions, COGCC will issue a Notice of Alleged Violation and seek penalties pursuant to § 34-60-121, C.R.S. and Rule 523, COGCC Rules of Practice and Procedure, 2 CCR 404-1.
Discretionary Enforcement Tracking

- Refer to Rule Matrix for Warning Letter or Corrective Action Required FIR corrective action period guidance (may be adjusted, as appropriate for the situation)

- Administrative Warning Letters and NOAVs will be tracked using a new IT tool, which will be available to the public.

- Corrective Action Required FIRs are stored electronically in eForm and are available to the public. Past FIRs or the IT tool will be used for field violation tracking.
Discretionary Enforcement
Reminders and Extensions

- A documented reminder (e.g. email or phone log) prior to the end of the Corrective Action period is allowed *but not required*.

- Extension requests *must be in writing* prior to the corrective action period expiration and must be *approved by the Director* (only to be approved for exceptional circumstances).
Discretionary Enforcement Corrective Action

- If corrective action is completed within the specified period, then no further action is required.

- If corrective action is not completed within the specified period, then a NOAV will be issued with referral to Hearings Unit for enforcement. A compliance schedule will be established during preparation of a Commission Order (AOC/OFV).
Discretionary Enforcement Recidivism

- The expectation is that NOAVs will be issued for Operator recidivism.

- NOAVs will be issued for Mandatory rule recidivism.

- An NOAV will be considered for Discretionary rule recidivism if tracking indicates that a violation of the same rule occurred within the prior two years by the same Operator or at the same Well or Location, as defined in the Rule Matrix.
Mandatory Enforcement

- An NOAV will be issued in the following circumstances:
  - Rule designated **Mandatory** in the Rule Matrix.
  
  - Rule designated **Discretionary**, but the operator did not complete required corrective action described in a Warning Letter or Corrective Action Required FIR within the specified corrective action period.

- **Discretionary** rule violation is repeated within two years of the last tracked violation.

- Fines will be pursued for all NOAVs
COGCC staff will continue to develop agency-wide consistency in Warning Letter, FIR, and NOAV template language.

This effort will promote consistency and uniformity with COGCC’s enforcement process.
Enforcement Documentation

- Warning Letter, Corrective Action Required FIR, and NOAV documentation will be scanned or generated electronically and cross-referenced to the enforcement matter in the IT tool.
- This effort will promote transparency with COGCC’s enforcement process.
NOAV Referral to Hearings Unit

- NOAVs will be referred to the Hearings Unit for enforcement immediately after issuance. Supervisor and/or Manager review of materials for sufficiency.

- Hearings Unit will evaluate adequacy of supporting documentation and request additional documentation if necessary.

- Hearings Tracking form or IT Tool will be completed with referral date and indexed to the NOAV document number in Laserfische.
NOAV Resolution

- Hearings Unit assigns Docket Number, updates Tracking Form or IT Tool, and indexes to NOAV document number in Laserfische.

- After Commission Hearing, Hearings Unit updates Tracking Form or IT Tool with Order Number and indexes to NOAV document number in Laserfische.

- Hearings Unit notifies operations staff, who resolves NOAV, citing Order Number.
Fast-Track AOC

- In select situations where an NOAV is issued and both the COGCC and the operator do not dispute the violation; the Enforcement Officer may prepare an AOC to be sent in conjunction with the NOAV as one ‘package’.

- This “Fast-Track” AOC process is designed to put select violations before the Commission in an abbreviated time period. This is not eligible for major enforcement matters.

- Hearings Unit staff will be involved early on in these situations.
Questions?

- **David Andrews**  
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  970-625-2497 ext. 1  
  david.andrews@state.co.us

- **Robert J. Frick**  
  Hearings Manager  
  303-894-2100 ext. 5152  
  robert.frick@state.co.us