



COGCC Update: Commission Revokes a Private Party's Ability to Prosecute Alleged Violations

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On July 20, 2015, the Colorado Oil and Gas Conservation Commission (“COGCC”) unanimously approved amendments to its rules, prohibiting a private party or local government from prosecuting an Order Finding Violation (“OFV”) hearing. The decision comes as a result of months of work from COGCC staff, the oil and gas industry, and local governments, including three proposed rule revisions drafted by COGCC staff, and numerous pleadings and alternative proposed rules offered by stakeholders.

For years, COGCC rules gave third party complainants (e.g. surface owners, local governments or any other person who was allegedly adversely affected or aggrieved as a result of an alleged violation) the right to compel an OFV hearing before the COGCC. However, these rules directly conflicted with the plain language of the Oil and Gas Conservation Act (“Act”), which establishes the powers of the Commission, and expressly limits the right to enforce the Act and COGCC regulations to the Commission and the Director. For example, the Act provides the Commission with the authority to “assign its inspection and monitoring function, but not its enforcement authority...” C.R.S. §34-60-106(15). To that end, the Act prohibits a private citizen or local government from prosecuting evidentiary hearings concerning alleged violations of COGCC rules and regulations. Accordingly, the rulemaking was undertaken to address the legal infirmity between the COGCC rules and the Act. ([Click here](#) for more information on the purpose of the rulemaking.)

At the hearing on this rulemaking, the COGCC noted another problem with private prosecutions of the Act. Historically, the right to compel an OFV hearing was rarely used. Recently, however, four OFV hearings were requested by complainants, and in all but one the complainants agreed to private settlements with the operator and then withdrew their complaints. It appears that the recent increase in penalties (from \$1000/day and \$10,000 maximum, to \$15,000/day with no maximum) inadvertently created new leverage for private parties to force operators to make cash settlements for alleged violations. The COGCC noted that financial compensation for a single individual was a misuse of the Act. The new rules remove this leverage, and are expected to prevent this sort of misuse in the future.

Among other things, the new rules adopted by the Commission revoke a third party's ability to prosecute a full-scale evidentiary hearing for an alleged violation. However, the new rules establish a process for review of the final action taken by the Director with respect to alleged

violations. Under the new process, a complainant may request a Petition for Review hearing before the Commission on the Director's decision not to issue an NOAV or to object to the terms of the final proposed settlement. The complainant must prove that the Director's decision was clearly erroneous. If the complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set the matter for an OFV hearing (which would be prosecuted by COGCC staff), or take other such measures as it deems appropriate. The Petition for Review hearing will be limited to the evidence and information that was first presented to the Director, and no discovery will be allowed.

Overall, the final rules approved by the Commission represent a significant victory for regulated industry. As written, the new rules will expedite a complainant's challenge to the Director's action with respect to an alleged violation, and will do away with evidentiary hearings before the Commission on alleged violations which are prosecuted by private citizens or local governments.

For more information on the new rules related to a Petition for Review hearing, or other COGCC information, please contact [Jill Fulcher](#) or [James Parrot](#).