



COGCC Update: Final Penalty & Enforcement Rulemaking

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On January 5, 2015, the Colorado Oil and Gas Conservation Commission (COGCC) held deliberations on the proposed changes to its enforcement program (Commission Rule 522) and penalty structure (Commission Rule 523). This meeting marks the end of an approximate nineteen-month project resulting from a May 8, 2013 executive order from Governor Hickenlooper directing the COGCC to review its enforcement program, penalty structure, and imposition of civil penalties. (For more background on this process, please click [here](#) to see the earlier article.)

At the previous hearing on December 16, 2014, the COGCC closed the record for the rulemaking, but deferred deliberation as to the proposed rule changes until January. On January 5, 2015, the COGCC reconvened to deliberate and vote on the proposed rules.

Rule 522 authorizes the Director of the COGCC to bring an enforcement action on his own initiative or based on a complaint. It also outlines who may bring a complaint, the rights and responsibilities of “Complainants” of alleged violations, and the process and requirement for resolution of alleged violations either by resolution without penalties or through an enforcement action seeking penalties. Despite substantial testimony offered by interested parties at the rulemaking hearing suggesting Rule 522 required further revision, Rule 522, as proposed, was unanimously adopted by the Commission with very limited revision. Indeed, the only substantive revision offered by the Commission was further limiting instances where the Director may resolve alleged violations without seeking penalties.

Rule 523 provides the formula for penalty calculations, which includes consideration of aggravating and mitigating factors. Rule 523 underwent only one minor revision to the draft promulgated by COGCC staff in December 2014 – a revision of the penalty for Class 1, Minor Violations from \$500 to \$200. The daily penalty amount ranges from \$200 to \$15,000 for each violation, and calls the COGCC to assess a penalty for each day the evidence demonstrates that a violation occurred. This rule passed by a vote of 5-3, with the three Commissioners representing industry opposing the rule as written. Among other things, the Commissioners voting in opposition to Rule 523 expressed concerns that the proposed rule did not provide clarity and certainty regarding how penalties will be assessed. The dissenting Commissioners expressed additional concern that the base penalties are not representative of a true median number, and will require substantial readjustment for most all enforcement actions.

Despite a lengthy review process, including input and testimony from various stakeholder groups, the final rules differ very little from the original versions drafted by COGCC staff. It is anticipated that the final adopted rules will result in more enforcement actions against operators, with a substantial increase to the total penalty assessed for an alleged violation (even where the violation does not result in actual adverse impacts or a threat of significant adverse impacts to public health, safety and welfare).

For further information regarding the Commission's new rules, please contact [Mike Wozniak](#) or [Jill Fulcher](#).