



COGCC Update: Director Announces Plans for Rulemaking Concerning Third Party Prosecution of Alleged Violations

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During the Colorado Oil and Gas Conservation Commission's ("COGCC") regularly scheduled April 13, 2015 hearing, COGCC Director Lepore announced plans to initiate a stakeholder process in the coming months in advance of a possible rulemaking to amend the COGCC's current rules pertaining to a third party complainant's right to file an application for a hearing seeking an Order Finding Violation ("OFV") against an operator.

On December 15-16, 2014, at the Enforcement and Penalty Rulemaking, certain operators and industry groups raised the issue of whether the COGCC's current rules, which allow third party complainants to file an application for an OFV hearing, go beyond the COGCC's authority under the Oil and Gas Conservation Act ("Act"). Specifically, COGCC Rule 522.b.(4) allows a third party complainant to apply for an OFV hearing before the Commission when the Director decides not to issue a Notice of Alleged Violation ("NOAV") against an operator for the violation alleged by the complainant, or where the complainant objects to the settlement terms agreed to by the operator and the Director. However, the Act explicitly grants the Commission the authority to "assign its inspection and monitoring function, but not its enforcement authority." §34-60-106(15), C.R.S. Accordingly, industry argued that the COGCC's rules allowing third party complainants the right to compel an OFV hearing is an unlawful delegation of its enforcement authority under the Act.

At the conclusion of the December 15-16, 2014 Enforcement and Penalty Rulemaking, the COGCC took the industry's argument under advisement, but declined to adopt industry's alternative proposed rule, which revoked a complainant's right to prosecute alleged violations of COGCC rules. Subsequently, Director Lepore requested the office of the Attorneys General to prepare a memorandum to review pertinent case law in order to evaluate industry's argument in greater detail. According to Director Lepore, the final memorandum issued by the office of the Attorneys General tends to support industry's claim that the COGCC's current rules allowing third party complainants to prosecute alleged violation is contradictory to the COGCC's authority under the Act.

In light of the memorandum, the COGCC is contemplating a possible amendment to its rules regarding complainant OFV hearing requests to bring those rules into compliance with the Act. This process will begin with a meeting between various stakeholders in the coming months. Among other things, stakeholders will be looking at ways to bring the COGCC rules into compliance with the Act as it pertains to a complainant's right to prosecute, while providing an alternative mechanism for complainants to properly voice their concerns before the Commission.

For further information on third party prosecutions of alleged violations, or other COGCC information, please contact [James Parrot](#) or [Jill Fulcher](#).