

Enforcement Report

COGCC

COLORADO OIL AND GAS
CONSERVATION COMMISSION

**Inadequate enforcement means
current Colorado oil and gas
development is irresponsible**

MARCH 2012



Failure to adequately enforce
existing drilling rules is harming
Colorado's public health, safety,
and environment



EARTHWORKS™

Colorado's Inadequate Enforcement of Oil & Gas Rules

COGCC — IT IS TIME FOR SERIOUS INSPECTIONS AND ENFORCEMENT

The Colorado General Assembly created the Colorado Oil and Gas Conservation Commission to “foster the responsible development of Colorado’s oil and gas natural resources.” To do so, the COGCC developed and implemented regulations to govern the oil and gas industry.

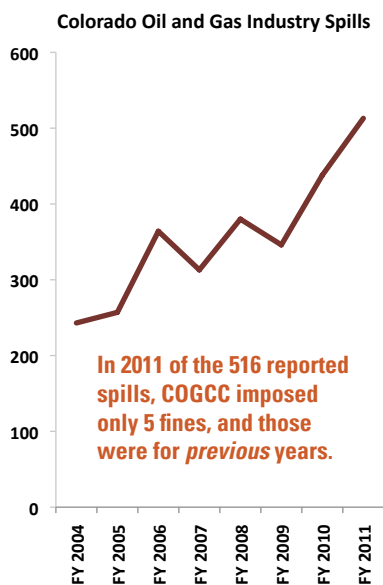
Unfortunately, COGCC fails to achieve its mission thanks to its inadequate enforcement of its own rules. Current oil and gas development is irresponsible because under current regulatory enforcement:

- inspection capacity is inadequate;
- violations are not consistently assessed;
- violations are inadequately reported and tracked;
- fines are rarely issued to violators;
- fines are inadequate to punish or prevent irresponsible behavior by oil and gas operators;
- the environment is not protected.

Colorado, like many other states, has experienced a drilling boom in the last decade –the number of active wells almost doubled from 22,228 in 2000 to 43,354 in 2010.¹ With a potential shale gas and shale oil boom on the horizon, Colorado is positioned to see even more drilling in years to come. But regulatory enforcement has not kept pace with drilling, and as a result, Colorado’s public health, safety and the environment have suffered.

As seen in the chart at right, compiled from COGCC data, there’s been a large increase in the number of oil and gas related spills over the past seven years.² One possible reason for the increase in spills is that there is no real incentive for operators to replace faulty equipment or train employees to prevent spills, as the COGCC rarely penalizes companies responsible for spills; and when enforcement actions do occur, they are not taken in a timely

Right: There’s been a large increase in the number of oil and gas related spills over the past seven years.² In fiscal year (FY) 2011, 133 of the 516 reported spills (or 26%) contaminated either ground or surface water.³



manner. In 2011, the COGCC imposed fines for a mere five spills, all of which had happened in previous years.⁴

In 2010 and 2011, Noble Energy had more spills than any other operator (126 spills – 81 affected ground water, 6 surface water),⁵ yet in 2011 it received an Outstanding Operator Award for environmental protection from the COGCC.⁶ Congratulating the worst spill offender for its efforts at preventing pollution sends the message to both the public and other operators that spills don’t matter and there are no real consequences for breaking the rules.

Inspection Capacity — LACKING

In 2010, there were more than 43,000 active wells in Colorado. That year the COGCC employed 15 inspectors,⁷ who performed a total of 16,228 inspections.⁸ Assuming that each inspection was conducted for an individual well site, approximately 27,000 wells or 63% of Colorado’s active oil and gas wells were not inspected in 2010.⁹ Even fewer inspections were conducted in 2011 (12,239), while the number of active wells increased to 46,835,¹⁰ leaving an even greater number of wells with little or no oversight.

Colorado’s inspection capacity has lagged behind other states such as Pennsylvania, which has greatly increased its inspection and enforcement staff in response to the Marcellus shale gas boom. Between 2000 and 2010 the number of active wells in Pennsylvania almost doubled from 36,000 to 71,000.¹¹ In response to the drilling of thousands of shale gas wells, Pennsylvania Department of Environmental Protection recently quadrupled the size of its enforcement

staff to 130 employees, 65 of which are inspectors.¹² In 2010, each Pennsylvania oil and gas inspector was responsible for, on average, 1,092 active wells.

With 43,000 active wells in 2010, and just 15 inspectors in Colorado, each inspector here was responsible for an average of 2,890 active wells – more than twice the number of their Pennsylvania counterparts.

It is nearly impossible for one inspector to visit, let alone carefully inspect 2,890 well sites a year. In 2010, each of COGCC’s 15 inspectors performed, on average, 1,082 inspections.¹³ That number is high compared to oil and gas inspectors in Pennsylvania, Ohio and New York state, each of whom conducted 253, 499 and 154 inspections in 2010, respectively,¹⁴ and implies that COGCC inspectors are not able to spend as much time on each inspection as their counterparts in some other states.

The COGCC needs to hire more inspectors to keep up with the growing number of active wells in Colorado.¹⁵



At minimum COGCC should be inspecting new wells three times and producing wells once per year. In 2012, that would mean approximately 55,000 inspections. In 2011, COGCC conducted just over 12,000 inspections.¹⁵

Violations — INCONSISTENT ENFORCEMENT, INADEQUATE REPORTING

The COGCC does a very poor job of tracking and publishing information and statistics on violations of its rules. And unlike some other states,¹⁶ the COGCC does not have a user-friendly, public database that provides information on violations. Consequently, it is extremely difficult to determine if the number of violations is increasing or decreasing, which rules are most often violated, or if there are companies that are particularly bad actors. Without this information, it is difficult to know where to focus inspection and enforcement efforts.

The only publicly accessible statistics related to violations are for “Notices of Alleged Violations” (NOAVs).¹⁷ The number of NOAVs, however, does not represent the number of violations because violations do not necessarily lead to the issuance of NOAVs (see box below). Also, when NOAVs are issued, they may cite violations of more than one rule, order, or permit condition. For example, an NOAV issued on Dec. 28, 2010 to the Cutler Brothers cited alleged violations of Rules 604 a(4), 906 e(1), 210 d(1)(2), 210 b(1), and 14 other rules.¹⁸

The COGCC does not appear to consistently report violations. A review of 1,000 inspections that took place between August 3 and Sept. 23, 2011,¹⁹ showed 145 “unsatisfactory” inspections, yet only 77 of those inspections listed violations.²⁰ If rules were broken, the inspection reports should have noted violations. If rules were not broken, then it’s not clear what made the inspection “unsatisfactory.”

Of the 77 inspections showing violations only 11 NOAVs were issued to operators.²¹ In some cases, the violations were minor, such as not having the proper signs on tanks. In other cases, however, **NOAVs were not issued even when there were spills or contamination events,**²² or when the inspection indicated that the operator had been informed of the violation two times before (i.e., it was the third notice).²³ There were also cases where a similar type of violation (e.g., an open wellbore that needed to be plugged) resulted in an NOAV for one operator but not for another.²⁴

The COGCC needs to do a better job of consistently assessing, tracking and publicly reporting violations, and the agency should issue NOAVs whenever violations occur.

Enforcement — FINES ARE WEAK AND RARELY ISSUED

When oil and gas rules are violated, most states have the ability to assess “civil” monetary penalties (i.e., fines). The purpose of penalties is two-fold: to deter violators, and in some cases to provide compensation for harm, such as pollution.²⁵ In Texas, a regulatory review of enforcement practices concluded that penalties play a key role in deterring and punishing violators, thus increasing compliance.²⁶

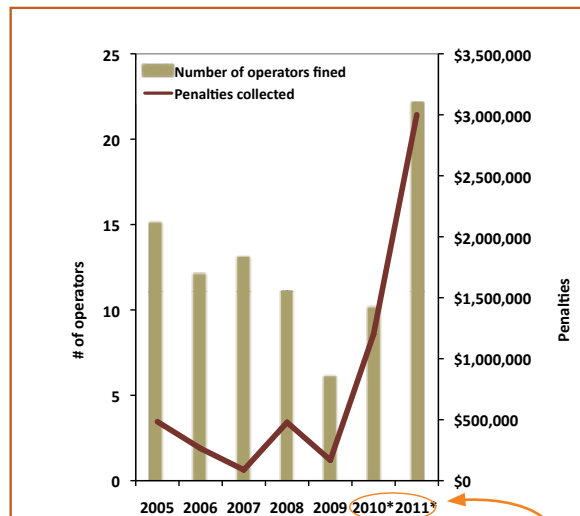
Compared to other major oil and gas producing states, Colorado’s fines for oil and gas violations are weak. According to COGCC rules, operators may receive a maximum fine of \$1,000 a day for each day that a violation continues.²⁷ This is similar to New Mexico, which hasn’t changed its penalty schedule since 1935. Pennsylvania, on the other hand, has the ability to issue a \$25,000 fine (plus \$1,000/day for each day of continued violation) for conventional wells, and \$75,000 (plus \$5,000 per day) for unconventional gas wells.²⁸ Texas also has stronger penalty provisions – its Railroad Commission can issue fines of \$10,000 per day for oil and gas violations that pertain to safety or the prevention or control of pollution.²⁹

Also seen in the chart below, the penalties collected for violations are low. Between 2005 and 2009 less than \$500,000 in penalties were assessed per year. In 2010 the commission reported collecting three times the typical amount because “the COGCC pursued a backlog of enforcement matters, most

of which involved incidents that had occurred in previous years.”³⁰ Similarly, in 2011 “COGCC continued to pursue a backlog of enforcement matters.”³¹ Therefore, one cannot assume that the higher total amount of penalties assessed in 2010 and 2011 are going to continue in future years.

A recent fine issued to Aspen Operating LLC (“Aspen”) suggests that COGCC is continuing its weak application of penalties. At a May 2011 hearing COGCC staff recommended to COGCC Commissioners that a \$200,000 penalty, the maximum allowed under its rules, be assessed against Aspen for 20 alleged violations. Aspen failed to show up for the May hearing. When the case was re-heard in January 2012, the Commissioners reduced the fine to \$20,000.³² This is yet another example that suggests to the public and operators that violating COGCC rules results in minor consequences.

COGCC should assess more fines, increase maximum penalties and hire more enforcement staff to ensure that penalties actually deter violators and better protect public health, safety, welfare and the environment.



Above: Number of oil and gas operators fined and penalties collected in Colorado. Note the increase in operators fined and penalties collected in 2010 and 2011 is due to a “backlog of enforcement matters” from previous years.

As seen in the chart, very few operators in Colorado receive penalties for violating rules. In 2010, just ten operators received penalties, even though 319 NOAVs were issued that year to 93 different operators. In 2011, only 22 operators received penalties even though 80 operators received a total of 230 NOAVs.³³

It’s unclear if this is a resource issue (i.e., enforcement actions require more staff time), or if there is some other reason that COGCC is not fully utilizing its enforcement powers against violators.

The Path Forward

From top management to field staff, the COGCC must demonstrate by its enforcement actions that it is serious about fulfilling its mission to “foster responsible development” which includes “the protection of public health, safety and welfare” and the “prevention and mitigation of adverse environmental impacts”. **In short, the COGCC must start adequately enforcing its regulations to ensure oil and gas development doesn’t occur at the expense of Colorado’s public health, safety or environment. To do so, it must:**

- Hire enough inspectors to adequately enforce existing regulations. COGCC must not permit more wells than it can competently inspect.
- Publicly and consistently assess, report, and track the resolution of violations (in addition to NOAVs). Violation-related data must be published online to enable easy public access and evaluation.
- Improve its use of penalties so as to provide a credible deterrent to irresponsible operation. Fines should be assessed more frequently; maximum and minimum fine amounts should be significantly increased.



Of Colorado’s 43,000+ wells, over 27,000 were not inspected in 2010, and the number of inspections decreased in the following year.

For more information including data on inspections, violations and enforcement:
<http://enforcement-co.earthworksaction.org>

ENDNOTES

- 2010 data from: Colorado Oil and Gas Conservation Commission (COGCC) staff report, January 2011. http://cogcc.state.co.us/Staff_Reports/2011/2011_01_SR.pdf
 2000 data from: COGCC staff report, January 2001: http://cogcc.state.co.us/Staff_Reports/2k1/jan01/stats3.jpg
- Spills data from COGCC Annual Reports to Water Quality Control Commission. http://cogcc.state.co.us/Library/WQCC_WQCD_AnualReports/AnnualReports.htm
- Fiscal years were used because that is how COGCC reports spills to the Water Quality Control Commission.
- Finley, B. Sept. 13, 2011. “Drilling spills rise in Colorado, but fines rare.” *Denver Post*. http://www.denverpost.com/popular/ci_1888151?source=pop_neighbors_colorado
 See Earthworks’ Colorado Enforcement web page for details on spills and fines: <http://enforcement-co.earthworksaction.org>
- COGCC Incident Database. <http://cogcc.state.co.us/cogis/IncidentSearch.asp>, select Spill/Release. Search Operator: Noble. Other companies with large number of spills in 2010 and 2011 included Kerr-McGee (124), Encana (114).
- August 3, 2011. “DOING IT RIGHT! Colorado Oil and Gas Conservation Commission Recognizes Outstanding Operators.” *Colorado Energy News*. <http://coloradoenergynews.com/2011/08/doing-it-right-colorado-oil-and-gas-conservation-commission-recognizes-outstanding-oil-gas-operators/>
- COGCC. 2010 Report to the Water Quality Control Commission and Water Quality Control Division of the Colorado Department of Public Health and the Environment. p. 3. http://cogcc.state.co.us/Library/WQCC_WQCD_AnualReports/WQCC09_10RPT.pdf
- COGCC staff report, Jan. 13, 2011. p. 25. http://cogcc.state.co.us/Staff_Reports/2011/2011_01_SR.pdf
- In 2010, there were 43,354 active wells. Assuming each of the 16,228 inspections occurred at an individual well site, 43,354 - 16,228 = 27,126 active wells that were not inspected. 27,126 = 62.6% of 43,354. NOTE: some well sites definitely were visited more than once, for follow-up inspections, etc. So in reality, more than 63% of well sites were not inspected in 2010.
- COGCC. January 20, 2012. Staff Report. p. 26. http://cogcc.state.co.us/Staff_Reports/2012/2012_01SR.pdf
- Urbina, I. Feb. 26, 2011. “Regulations lax as gas wells’ tainted water hits rivers.” *New York Times*. <http://www.nytimes.com/2011/02/27/us/27gas.html?pagewanted=all>
- Kusnetz, N. Feb. 3, 2011. “Many PA gas wells go unreported for months.” *ProPublica*. <http://www.propublica.org/article/many-pa-gas-wells-go-unreported-for-months>
- 16,228 inspections / 15 inspectors = 1,082.
- Pennsylvania: 65 inspectors conducted 16,472 inspections, or 253 per inspector. Ohio: 21 inspectors conducted 10,472 inspections, or 499 per inspector. New York: 16 inspectors conducted 2,460 inspections, or 154 per inspector. (Sources: PENNSYLVANIA: Pennsylvania Department of Environmental Protection, Bureau of Oil and Gas Management, Jan. 25, 2011. 2010 Year End PowerPoint Presentation. Slide 3. <http://www.dep.state.pa.us/dep/deputate/minres/oilgas/2010%20YEAR%20END%20REPORTS> and Kusnetz, N. Feb. 3, 2011. “Many PA gas wells go unreported for months.” *ProPublica*. <http://www.propublica.org/article/many-pa-gas-wells-go-unreported-for-months>. OHIO: State Review of Oil and Natural Gas

- Environmental Regulations (STRONGER), Inc. January 2011. *Ohio Hydraulic Fracturing State Review*. p. 6. http://www.dnr.state.oh.us/Portals/11/oil/pdf/stronger_review11.pdf and Email request for data made Sept. 16, 2011. Data received Oct. 4, 2011 from Beth Wilson, Public Information officer with Ohio Division of Minerals Resources Management. NEW YORK: Sickle, A. April 28, 2010. “New York DEC staff shorthanded to reply to 14,000 Marcellus Shale comments – environmental inspectors down to 16.” *National Security News Service*. <http://www.dcbureau.org/20100429137/natural-resources-news-service/new-york-dec-staff-shorthanded-to-reply-to-13500-marcellus-shale-comments-environmental-inspectors-down-to-16.html> and McAllister, E. June 29, 2011. “Insight: NY water at risk from lack of natgas inspectors?” *Reuters*. <http://www.reuters.com/article/2011/07/29/us-new-york-shale-drilling-idUSTRE7655FA20110729>
- States, such as Pennsylvania, North Dakota and New York recommend that each producing well be inspected at least once per year, and new wells, especially horizontal wells, be inspected multiple times during the drilling and completion process. (E.g., see Pennsylvania Department of Environmental Protection, Bureau of Oil and Gas Management, June 25, 2005. Compliance Monitoring of Oil and Gas Wells and Related Facilities and Activities. Document number 550-3000-001. <http://www.ellibrary.dep.state.pa.us/dsweb/Get/Document/48286/550-3000-001.pdf>)
 To do an adequate job of inspecting new and active wells, all new wells should be inspected at least three times (e.g., twice during the drilling/completion process, and once after drilling is completed), and each active well in Colorado should be inspected at least once a year. This means that COGCC should perform at least 55,000 inspections in 2012.
 3 inspections x 2,700 new wells in 2012 (assumed to be similar to wells spud in 2011 and 2010) = 46,800 inspections of active wells (number of active wells at beginning of 2012) = 8,100 + 46,800 = 54,900 inspections.
 If COGCC inspectors continue to perform approximately 1,000 inspections per year (as they did in 2005, 2006, 2007, 2008, 2010), then COGCC would need 55 inspectors to keep to this schedule. There are currently 15 inspectors. If each COGCC inspector conducted fewer inspections per year (i.e., spent more time on inspections like their counterparts in PA, NY and OH), e.g., 500 inspections per year, then approximately 110 inspectors would be needed to do the work. That is more than seven times the current inspection staff.
- The best example is Pennsylvania’s Compliance Reporting database, which provides information on inspections, violations, enforcement actions, and penalties assessed and collected. It is a searchable, and data can be downloaded to spreadsheets so that users can sort the data and analyze it.
- COGCC monthly staff reports include the number of NOAVs. http://cogcc.state.co.us/Staff_Reports/StaffReports.html
- Colorado Oil and Gas Information System. NOAV Report: 200290815. http://cogcc.state.co.us/cogis/NOAVReport.asp?doc_num=200290815
- COGCC’s Colorado Oil and Gas Information System database only allows users to see 1,000 entries at a time.
- COGCC Incident Database. <http://cogcc.state.co.us/cogis/IncidentSearch.asp>, select Inspection. Search for 1000 records (the maximum). Search conducted Sept. 27, 2011
- Ibid.* By clicking on the document hyperlink, the field inspection reports were viewed, which indicated whether or not an NOAV was sent. NOTE: searches for newer inspection records do not link to online data; rather, the user is able to download a pdf of the inspection report. These pdf reports do not indicate whether or not an NOAV was sent.
- For example, “large area of oily soil from well leak at stuffing box,” “upon arrival at well, it was discovered that a supply line (for injection) had broke. The water was coming out of the ground 3 feet from the well and traveling down grade,”

- “oil saturated soil around well head,” “some pooling oil,” “tank bottoms from Christians Tank Batter were dumped,” “open-cased wellbore was observed and hydrocarbon odor was noted,” “partially buried crude tank appears to be leaking,” “oil in berms, oily soil in 50% of tank pad, oily soil at end of load lines,” “install secondary containment for chemical tank,” “chemical tank without containment,” “location has not been reclaimed.” (Citations taken from various COGCC field inspection reports.)
- COGCC field inspection report. Sept. 19, 2011. API: 05-017-06894. Wiepking-Fullerton Energy LLC. Skarphol 32-10 #2 well. http://cogcc.state.co.us/cogis/FieldInspectionDetail.asp?doc_num=200321648 AND inspection report. Sept. 19, 2011. API: 05-017-06725. Wiepking-Fullerton Energy LLC. WECO-UPRC William #33H-11#5 well. http://cogcc.state.co.us/cogis/FieldInspectionDetail.asp?doc_num=200321647
- COGCC field inspection report. Aug. 26, 2011. API Number: 05-103-40191. Equity Oil Co. McLaughlin #68. http://cogcc.state.co.us/cogis/FieldInspectionDetail.asp?doc_num=200319598 (no NOAV issued) AND COGCC field inspection report. Aug. 26, 2011. API Number: 05-103-01357. D & D Resources, Inc. Emerald-C #E-97. http://cogcc.state.co.us/cogis/FieldInspectionDetail.asp?doc_num=200319966 (NOAV issued)
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- Sunset Advisory Commission. July 2011. *Final Report - Railroad Commission of Texas*. p. 33. http://www.sunset.state.tx.us/62ndreports/trc/trc_fr.pdf
- COGCC Rules and Regulations. Rule 523.a.(1) The Commission may in its discretion find that each day a violation exists constitutes a separate violation; however, no fine for any single violation shall exceed one thousand dollars (\$1,000) per day. http://cogcc.state.co.us/RR_Docs_new/Rules/Completed%20Rules.pdf
- Feb. 14, 2012. “Pa. Gov. Corbett signs new oil and gas legislation,” Spillman Thomas & Battle. <http://www.spillmanlaw.com/Resources/Attorney-Authorized-Articles/Marcellus-Fairway/Pa-Gov-Corbett-Signs-New-Oil-Gas-Legislation>
- Texas Natural Resources Code, Title 3. Oil and Gas, Subtitle B. Subchapter K. Penalties, Imprisonment, and Confinement. Sec. 85.381. <http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.85.htm>
- COGCC. 2010 Report to Water Quality Control Commission and Water Quality Control Division of the Colorado Department of Public Health and the Environment. p. 9. Report available at: http://cogcc.state.co.us/Library/WQCC_WQCD_AnualReports/AnnualReports.htm
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- Data on number of operators penalized from: COGCC. 2010 and 2011 Reports to Water Quality Control Commission and Water Quality Control Division of the Colorado Department of Public Health and the Environment. Available at: http://cogcc.state.co.us/Library/WQCC_WQCD_AnualReports/AnnualReports.htm NOAV data from: COGCC Staff Reports. http://cogcc.state.co.us/Staff_Reports Data on operators with NOAVs from: COGCC Incident Database. <http://cogcc.state.co.us/cogis/IncidentSearch.asp>, select NOAV. Searched 1000 most recent reports. Counted number of operators receiving NOAVs in 2010 and 2011.



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OGAP 863 ½ Main Avenue • Durango, CO 81301 • 970-259-3353
 EARTHWORKS • 1612 K St., NW, Suite 808 Washington, D.C., USA 20006
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