Enforcement Report
COGCC

COLORADO OIL AND GAS
CONSERVATION COMMISSION

Inadequate enforcement means current Colorado oil and gas development is irresponsible

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Failure to adequately enforce existing drilling rules is harming Colorado’s public health, safety, and environment
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 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),1 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
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.
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.

"it's saturated all around wellhead...some pooling..."tank bottoms from Christians Tank Battered were dumped..."spun-caused wellbore was observed and frackwater injection was noticed...blackened crude tank appears to be leaking..."It stinks...oil seep in 50% of tank; oil is not at end of load barge;" 
"small secondary containment from chemical tank..."chemical tank without containment..."location has not been reclaimed..."(citations from various COGCC field inspection reports.)

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

4. Fiscal year run from July 1 through June 30 because that is how COGCC reports spills to the Water Quality Control Commission.
8. In reality, more than 63% of well sites were not inspected in 2010. 27,216 = 62.6% of 43,354. NOTE: some well sites definitely were visited more than once, so follow-up inspections, etc. So in reality, more than 60% of wells sites were not inspected in 2010.
10. In 2010, there were 45,354 active wells. Assuming each of the 16,228 inspectors occurred at an individual well site, 43,354 - 16,228 = 27,126 active wells that were not inspected. 27,216 - 62.6% of 45,354. NOTE: some well sites definitely were visited more than once, so follow-up inspections, etc. So in reality, more than 60% of wells sites were not inspected in 2010.
12. Staff 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_AnnualReports/AnnualReports.htm
15. States, such as Pennsylvania, North Dakota and New York recommend that such 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 Facilities. Pennsylvania Department of Environmental Protection.  "http://www.dep.state.pa.us/dep/depweb/mc/20050625/G-10.html"
16. 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 spreadsheet to that users can sort the data and analyze it.
17. COGCC monthly staff reports include the number of NOAVs. http://cogcc.state.co.us/Staff_Reports/StaffReports.html
19. COGCC’s Compliance Reporting System and Oil and Gas Information System database only allow users to see 1,000 entries at a time.
21. By clicking on the document hyperlink, the field inspection reports were newest, whereas if you click on the date or on an NOAV was sent. NOTE: searches for newer inspection reports 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.
22. For example, in “Large area of oily soil and foam at skiffing fence...upon arrival at well, it was discovered that a supply line (for injection) had broke. The water...”
23. Of Colorado’s 43,000+ wells, over 27,000 were not inspected in 2010, and the number of inspections decreased in the following year.
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