

CHAPTER 372

NATURAL RESOURCES

HOUSE BILL 14-1356

BY REPRESENTATIVE(S) Foote, Becker, Buckner, Court, Exum, Fields, Ginal, Hamner, Hullinghorst, Kagan, Kraft-Tharp, Labuda, Lebsock, Lee, May, McCann, McLachlan, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Schafer, Singer, Tyler, Wright, Ferrandino;
also SENATOR(S) Jones, Aguilar, Guzman, Heath, Kefalas, Nicholson, Schwartz, Carroll.

AN ACT

CONCERNING AN INCREASE IN THE COLORADO OIL AND GAS COMMISSION'S PENALTY AUTHORITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 34-60-121, **amend** (1) and (7) as follows:

34-60-121. Violations - penalties - rules - legislative declaration. (1) (a) Any operator that violates ~~any provision of~~ this article, any rule or order of the commission, or any permit ~~shall be~~ is subject to a penalty of not more than ~~one~~ FIFTEEN thousand dollars for each act of violation per day that such violation continues; ~~Any such~~

(b) THE COMMISSION MAY IMPOSE A penalty ~~shall be imposed~~ by order of the ~~commission~~; ONLY after a hearing in accordance with section 34-60-108 or by an administrative order by consent entered into by the commission and ~~an~~ THE operator. ~~For a violation that does not result in significant waste of oil and gas resources or damage to correlative rights or does not result in a significant adverse impact on public health, safety, or welfare, the maximum penalty shall not exceed ten thousand dollars.~~

(c) The commission shall:

(1) Promulgate rules that establish a penalty schedule appropriate to the nature of the violation and ~~that~~ provide for the consideration of any aggravating or mitigating circumstances. THE RULES MUST ESTABLISH THE BASIS FOR DETERMINING THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DURATION OF A VIOLATION FOR PURPOSES OF IMPOSING THE APPLICABLE PENALTY AND INCLUDE PRESUMPTIONS THAT:

(A) A REPORTING OR OTHER MINOR OPERATIONAL VIOLATION: BEGINS ON THE DAY THAT THE REPORT SHOULD HAVE BEEN MADE OR OTHER CORRECTIVE ACTION SHOULD HAVE BEEN TAKEN; AND ENDS WHEN THE REQUIRED REPORT IS SUBMITTED OR OTHER CORRECTIVE ACTION IS COMMENCED;

(B) ANY OTHER VIOLATION: BEGINS ON THE DATE THE VIOLATION WAS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF REASONABLE CARE; AND ENDS WHEN CORRECTIVE ACTION IS COMMENCED;

(C) THE FAILURE TO DILIGENTLY IMPLEMENT CORRECTIVE ACTION PURSUANT TO A SCHEDULE EMBODIED IN AN ADMINISTRATIVE ORDER ON CONSENT, ORDER FINDING VIOLATION, OR OTHER ORDER OF THE COMMISSION CONSTITUTES AN INDEPENDENT VIOLATION FOR WHICH THE OPERATOR MAY BE SUBJECT TO ADDITIONAL PENALTIES OR CORRECTIVE ACTION ORDERS IMPOSED BY THE COMMISSION; AND

(D) THE NUMBER OF DAYS OF VIOLATION DOES NOT INCLUDE ANY PERIOD NECESSARY TO ALLOW THE OPERATOR TO ENGAGE IN GOOD FAITH NEGOTIATION WITH THE COMMISSION REGARDING AN ALLEGED VIOLATION IF THE OPERATOR DEMONSTRATES A PROMPT, EFFECTIVE, AND PRUDENT RESPONSE TO THE VIOLATION.

(II) PUBLISH A QUARTERLY REPORT ON ITS WEB SITE THAT SPECIFIES, FOR EACH PENALTY ASSESSED IN THE PREVIOUS QUARTER:

(A) THE ACTUAL PENALTY ASSESSED, INCLUDING THE NUMBER OF DAYS FOR WHICH THE PENALTY WAS ASSESSED AND THE AMOUNT OF THE PENALTY PER DAY OF VIOLATION;

(B) THE AGGRAVATING OR MITIGATING CIRCUMSTANCES FROM THE PENALTY SCHEDULE THAT APPLIED;

(C) WHETHER THE VIOLATION WAS PART OF A PATTERN OF VIOLATIONS;

(D) WHETHER AN EGREGIOUS VIOLATION RESULTED FROM GROSS NEGLIGENCE OR KNOWING AND WILLFUL MISCONDUCT;

(E) WHETHER THE PENALTY WAS ASSESSED AFTER A HEARING OR BY AN ADMINISTRATIVE ORDER BY CONSENT; AND

(F) ANY OTHER RATIONALE USED IN DETERMINING THE AMOUNT OF THE PER-DAY PENALTY, DURATION OF THE VIOLATION, OR AMOUNT OF THE PENALTY ACTUALLY ASSESSED; AND

(III) ENSURE THAT THE REPORTS PREPARED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) ARE DISCUSSED AT THE ANNUAL DEPARTMENTAL PRESENTATIONS MADE PURSUANT TO SECTION 2-7-203, C.R.S.

(d) An operator subject to a penalty order shall pay the amount due within thirty days after its imposition unless ~~such~~ THE operator files a judicial appeal. The

COMMISSION MAY RECOVER penalties owed under this section ~~may be recovered~~ in a civil action brought by the attorney general at the request of the commission in the second judicial district. Moneys collected through the imposition of penalties shall be credited first to any legal costs and attorney fees incurred by the attorney general in ~~such a~~ THE recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund created in section 34-60-122.

(e) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSES OF THIS SUBSECTION (1) ARE TO DETER NONCOMPLIANCE AND TO ENCOURAGE ANY OUT-OF-COMPLIANCE OPERATORS TO COME INTO COMPLIANCE AS SOON AS POSSIBLE AND TO THOSE ENDS INTENDS THAT, IN DETERMINING THE AMOUNT OF A PENALTY, THE COMMISSION SHOULD NOT REDUCE THE NUMBER OF DAYS OF VIOLATION FOR WHICH A PENALTY IS ASSESSED BELOW THAT NUMBER WHICH THE EVIDENCE SUPPORTS.

(7) (a) THE COMMISSION OR THE DIRECTOR SHALL ISSUE AN ORDER TO AN OPERATOR TO APPEAR FOR A HEARING BEFORE THE COMMISSION IN ACCORDANCE WITH SECTION 34-60-108 whenever the commission or the director has evidence that an operator is responsible for:

(I) GROSS NEGLIGENCE OR KNOWING AND WILLFUL MISCONDUCT THAT RESULTS IN AN EGREGIOUS VIOLATION; OR

(II) A pattern of violation ~~of any provision~~ of this article, ~~or of any rule regulation~~, or order of the commission, or of any permit. ~~the commission or the director shall issue an order to such operator to appear for a hearing before the commission in accordance with section 34-60-108.~~

(b) If the commission finds, after such hearing, ~~that a knowing and willful pattern of violation exists~~ THE OPERATOR IS RESPONSIBLE UNDER THE LEGAL STANDARDS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (7), it may issue an order ~~which shall prohibit~~ THAT PROHIBITS the issuance of any new permits to ~~such~~ THE operator, suspends any or all of the operator's certificates of clearance, OR BOTH. When ~~such~~ THE operator demonstrates to the satisfaction of the commission that it has brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, ~~such~~ THE COMMISSION MAY VACATE THE order. ~~denying new permits shall be vacated.~~

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the oil and gas conservation and environmental response fund created in section 34-60-122 (5), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, for the fiscal year beginning July 1, 2014, the sum of \$80,425 and 0.9 FTE, or so much thereof as may be necessary, for allocation to the oil and gas conservation commission for the implementation of this act.

SECTION 3. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 2014