

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-0290.02 Thomas Morris x4218

HOUSE BILL 14-1356

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Jones,

House Committees

Transportation & Energy
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law specifies that a violation of the "Oil and Gas Conservation Act" is punishable by a maximum daily penalty of \$1,000, subject to a penalty schedule promulgated by the oil and gas conservation commission that considers aggravating and mitigating circumstances. The

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
April 21, 2014

HOUSE
Amended 2nd Reading
April 17, 2014

maximum total penalty is capped at \$10,000 for violations that do not result in significant waste of oil and gas resources, do not damage correlative rights, and do not result in a significant adverse impact on public health, safety, or welfare.

The bill:

- ! Increases the maximum daily penalty to \$15,000;
- ! Directs the commission to:
 - ! Adopt rules that specify a process for determining the dates on which a violation begins and ends; and
 - ! Publish a quarterly report on its web site that specifies certain information about each penalty assessed in the previous quarter and discuss these reports at the department of natural resources' SMART Act hearings; and
- ! Repeals the cap on the maximum total penalty.

The commission must hold a hearing if an operator is responsible for gross negligence or knowing and willful misconduct that results in an egregious violation or a pattern of violations. The commission may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both. The commission may vacate the order after the operator has come back into compliance and paid all penalties.

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

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

4 **34-60-121. Violations - penalties - rules - legislative**
5 **declaration.** (1) (a) Any operator that violates ~~any provision of this~~
6 article, any rule or order of the commission, or any permit ~~shall be~~ IS
7 subject to a penalty of not more than ~~one~~ FIFTEEN thousand dollars for
8 each act of violation per day that such violation continues; ~~Any such~~

9 (b) THE COMMISSION MAY IMPOSE A penalty ~~shall be imposed by~~
10 order of the commission, ONLY after a hearing in accordance with section
11 34-60-108 or by an administrative order by consent entered into by the
12 commission and an THE operator. ~~For a violation that does not result in~~
13 ~~significant waste of oil and gas resources or damage to correlative rights~~

1 ~~or does not result in a significant adverse impact on public health, safety,~~
2 ~~or welfare, the maximum penalty shall not exceed ten thousand dollars.~~

3 (c) The commission shall:

4 (I) Promulgate rules that establish a penalty schedule appropriate
5 to the nature of the violation and ~~that~~ provide for the consideration of any
6 aggravating or mitigating circumstances. THE RULES MUST ESTABLISH THE
7 BASIS FOR DETERMINING THE DURATION OF A VIOLATION FOR PURPOSES OF
8 IMPOSING THE APPLICABLE PENALTY AND INCLUDE PRESUMPTIONS THAT:

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

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

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

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

1 RESPONSE TO THE VIOLATION.

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

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

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

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

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

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

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

18 (III) ENSURE THAT THE REPORTS PREPARED PURSUANT TO
19 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) ARE DISCUSSED AT THE
20 ANNUAL DEPARTMENTAL PRESENTATIONS MADE PURSUANT TO SECTION
21 2-7-203, C.R.S.

22 (d) An operator subject to a penalty order shall pay the amount
23 due within thirty days after its imposition unless ~~such~~ THE operator files
24 a judicial appeal. The COMMISSION MAY RECOVER penalties owed under
25 this section ~~may be recovered~~ in a civil action brought by the attorney
26 general at the request of the commission in the second judicial district.
27 Moneys collected through the imposition of penalties shall be credited

1 first to any legal costs and attorney fees incurred by the attorney general
2 in ~~such a~~ THE recovery action and then to the environmental response
3 account in the oil and gas conservation and environmental response fund
4 created in section 34-60-122.

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

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

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

18 (II) A pattern of violation ~~of any provision of this article, or of any~~
19 ~~rule regulation, or order of the commission, or of any permit. the~~
20 ~~commission or the director shall issue an order to such operator to appear~~
21 ~~for a hearing before the commission in accordance with section~~
22 ~~34-60-108.~~

23 (b) If the commission finds, after such hearing, that ~~a knowing~~
24 ~~and willful pattern of violation exists~~ THE OPERATOR IS RESPONSIBLE
25 UNDER THE LEGAL STANDARDS SPECIFIED IN PARAGRAPH (a) OF THIS
26 SUBSECTION (7), it may issue an order ~~which shall prohibit~~ THAT
27 PROHIBITS the issuance of any new permits to ~~such~~ THE operator,

1 suspends any or all of the operator's certificates of clearance, OR BOTH.
2 When ~~such~~ THE operator demonstrates to the satisfaction of the
3 commission that it has brought each of the violations into compliance and
4 that any penalty not subject to judicial review or appeal has been paid,
5 ~~such~~ THE COMMISSION MAY VACATE THE order. ~~denying new permits shall~~
6 ~~be vacated.~~

7 **SECTION 2. Appropriation.** In addition to any other
8 appropriation, there is hereby appropriated, out of any moneys in the oil
9 and gas conservation and environmental response fund created in section
10 34-60-122 (5), Colorado Revised Statutes, not otherwise appropriated, to
11 the department of natural resources, for the fiscal year beginning July 1,
12 2014, the sum of \$80,425 and 0.9 FTE, or so much thereof as may be
13 necessary, for allocation to the oil and gas conservation commission for
14 the implementation of this act.

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

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