STATE OF COLORADO

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John W. Hickenlooper
Governor

D 2013-004

EXECUTIVE ORDER

Directing the Colorado Oil and Gas Conservation Commission to Review, Propose Regulations, and Adopt Guidance Regarding Its Enforcement and Penalty-Assessment Procedures

Pursuant to Article IV, Section 2 of the Colorado Constitution and the authority vested in the Office of the Governor, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order directing the Colorado Oil and Gas Conservation Commission to undertake a review of its enforcement program, penalty structure, and imposition of fines.

I. Background and Purpose

As we move forward in developing energy, we ought to insist on the strictest and most effective environmental safeguards. The Colorado Oil and Gas Conservation Commission (Commission) should reevaluate its enforcement philosophy and approach and strive to structure fines and penalties to ensure that operators comply with rules and respond promptly and effectively to any impacts from such violation. Appropriate penalties for violations of rules on those developing oil and gas constitute one tool available to the Commission. Penalties are designed to discourage violations and encourage prompt response in environmental or public health and safety concerns in the event that violations occur. For these reasons, Colorado requires strong and clear enforcement of the rules and assessment of fines and penalties accordingly.

The Commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of the Colorado Oil and Gas Conservation Act (Act), to make and enforce rules, regulations, and orders pursuant to the Act, and to do whatever may reasonably be necessary to carry out the provisions of the Act. *See* C.R.S. § 34-60-105(1).

In order to carry out the provisions of and fulfill its responsibilities under the Act, and to foster public trust that oil and gas operations in Colorado are conducted in a manner that is protective of public health, safety, and welfare, the Commission must enforce its rules and assess

penalties so as to strongly deter violations and encourage cooperative compliance response if and when violations occur. To that end, the Commission's penalty rules should, (1) only make downward adjustments to maximum fines when an alleged violator behaves in a fully cooperative manner and perform any and all mitigation measures as directed and warranted, (2) be clear and understandable and publicly available so that alleged violators and the public can know what to expect by way of any penalties if and when a violation occurs, (3) as much as reasonably possible, be assessed in a uniform and consistent manner, (4) where applicable, allowing for a reasonable amount of flexibility and discretion, (5) ensure that penalties assessed are appropriate for the gravity of violations of its rules or the Act, and (6) make certain that any economic incentives for noncompliance with the Act and its regulations are eliminated.

II. Directive and Scope

The Commission is hereby directed to undertake a strategic review of its violation and penalty assessment program used to enforce its rules and the Act. This review should include its rules regarding the notice of violations and procedures for issuing notices of violations, the penalty schedule and its policies, calculating or adjusting penalties, and imposing and collecting fines.

The Commission is also directed to evaluate its rules, consistent with its statutory authority, regarding the adjustment of fines based on aggravating and mitigating factors so as to strongly deter violations and, equally strongly, encourage prompt and cooperative post-violation response and mitigation. The Commission must structure these adjustments so as to hold the oil and gas industry to the highest operating standards in the nation for protection of public health, safety, and welfare, including the environment and wildlife resources. In doing so, the Commission is directed to:

a) apply the statutory maximum as necessary to protect public health, safety, welfare, and environment;
b) establish minimum fine amounts in the case of a violation that involves an especially egregious or aggravating factor;
c) provide that certain violations or series of violations preclude the process for administrative orders on consent and must instead undergo the hearing process set forth in C.R.S. § 34-60-108;
d) make clear the process for determining the date on which a violation occurs and thereby penalties begin to accrue; and
e) post all violations and the basis for penalty assessment is made publicly available on the website.

The Commission is directed to undertake any other necessary policy and rule changes consistent with this order and will detail its compliance with this order in a report to the Governor's Office no later than December 10, 2013. In addition, the Commission is directed to report to the Governor's Office each year by December 10th on all violations, any and all penalties imposed regarding violations, and the rationale for the calculation of final penalty assessments, including fines. Finally, the Commission is directed to develop and adopt an "enforcement guidance" setting forth procedures for processing violations, including the issuance of notices of violations, calculating or adjusting penalties, and imposing and collecting fines. Such guidance shall be published on the Commission's website.

III. Staffing and Resources

The Commission staff shall use existing funding, if at all, in undertaking the reviews, proposing the regulations, and developing the guidance called for in this Executive Order. Members of the Commission shall be reimbursed for any expenses incurred in undertaking official duties called for in this Executive Order, consistent with C.R.S. § 34-60-104(2)(b).

IV. Duration

This Executive Order shall remain in full force and effect until modified or rescinded by future Executive Order of the Governor.

GIVEN under my hand
and the Executive Seal of
the State of Colorado this
eighth day of May, 2013.

John W. Hickenlooper
Governor