

V I R G I N I A

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

ORDER ADOPTING CIVIL CHARGE PROCEDURAL RULE
FOR IMPLEMENTATION OF §45.1-361.8.C., CODE OF
VIRGINIA, AND §19 OF THE VIRGINIA GAS AND
OIL BOARD REGULATIONS, VR 480-05-22.2

) VIRGINIA GAS
) AND OIL BOARD
)
)
) DOCKET NO.
)
) VGOB 92/05/29-0226

REPORT OF THE BOARD

FINDINGS AND ORDER

1. Hearing Date and Place: This matter came on upon the Virginia Gas and Oil Board's (hereafter "Board") own motion for hearing at 9:00 a.m. on May 19, 1992, Southwest Virginia Education 4-H Center, Route 609, Hillman Highway, Abingdon, Virginia 24210 to consider policies and procedures for the implementation of civil penalty charges under § 19 of VR 480-05-22.2, Virginia Gas and Oil Board Regulations, and § 45.1-361.8.C., Code of Virginia, 1950 as amended.

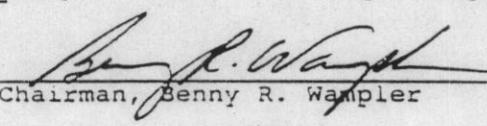
2. Appearances: Byron Thomas Fulmer, Principal Executive to the Staff, Virginia Gas and Oil Board, and Sandra B. Riggs, Assistant Attorney General were present to advise the Board. No appearances were made in this matter.

3. Findings: Civil penalties may be assessed in the manner provided by law against a gas, oil, or geophysical operator who violates provisions of the Virginia Gas and Oil Act (Chapter 22.1 of Title 45.1 of the Code of Virginia), any condition of a permit, any regulation, or any order of the Board. Civil charges are authorized under § 45.1-361.8.C. of the Code of Virginia and § 19 of the Virginia Gas and Oil Board Regulations (VR 480-05-22.2). Under the circumstances specified in the statute, payment of civil charges may be used in lieu of seeking and/or assessing civil penalties under § 45.1-361.8.B. of the Code of Virginia. Civil charges collected under § 45.1-361.8.C. are to be paid into the treasury of the county or city wherein lies the gas, oil, or geophysical operation subject to any order of the Board providing for the payment of such civil charges for past violations.

4. Conclusion: IT IS ORDERED THAT the Virginia Gas and Oil Board Civil Charge Procedural Rule dated May 19, 1992, a copy of which is attached hereto and made a part hereof as Exhibit A, is hereby adopted by the Board for the purpose of setting forth the manner in which the Board will implement § 19 of VR 480-05-22.2, Virginia Gas and Oil Board Regulations, and § 45.1.361.8.C., Code of Virginia, 1950 as amended.

5. Effective Date: This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 10th day of June, 1992, by a majority of the Virginia Gas and Oil Board.


Chairman, Benny R. Wampler

DONE AND PERFORMED this 11th day of June, 1992, by Order of this Board.

Byron T. Fulmer
Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

STATE OF VIRGINIA)
COUNTY OF WISE)

Acknowledged on this 10th day of June, 1992, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed same as Chairman of the Virginia Gas and Oil Board and was authorized to do so.

Susan G. Garrett
Susan G. Garrett
Notary Public

My commission expires 7/31/94

STATE OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 11th day of June, 1992, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed same as Principal Executive to the Staff of the Virginia Gas and Oil Board and was authorized to do so.

Diane J. Davis
Diane Davis
Notary Public

My commission expires 9/23/92

Civil Charge Procedural Rule

Virginia Gas and Oil Board

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By Order of the Board

Civil Charge Procedural Rule

I. GENERAL

Civil charges may be assessed in the manner provided by law against a gas, oil, or geophysical operator who violates provisions of the Virginia Gas and Oil Act (Chapter 22.1 of Title 45.1 of the Code of Virginia), any condition of a permit, any regulation, or any order of the Virginia Gas and Oil Board issued thereunder. Civil charges are authorized under S 45.1-361.8.C of the Code of Virginia and S 19 of the Virginia Gas and Oil Board Regulations (VR 480-05-22.2). Under the circumstances specified in the statutes, payment of civil charges may be used in lieu of seeking and/or assessing civil penalties under S 45.1-361.8.B of the Code of Virginia.

II. BASIS FOR CIVIL CHARGE

The Inspector shall base his decision whether to recommend a civil charge on the following:

- If the violation resulted in, or could reasonably have been expected to result in, significant adverse environmental impacts;
- If the violation resulted in, or could reasonably have been expected to result in, harm to the public safety or general welfare;
- If the violation resulted in, or could reasonably have been expected to result in, harm to the correlative rights of any person;
- If the operation was not properly permitted;
- If the operator did not complete, within the abatement period, all remedial actions, including interim steps, required to abate a violation cited in a notice of violation (NOV) or in a closure order (CO);
- If the operator has a recent history of similar violations at the site subject to the civil charge, or at other sites;
- If the operator failed to comply with an order of the Board;
- If the Inspector is directed to do so by the Board.

III. CRITERIA FOR DETERMINING AMOUNT OF CIVIL CHARGE

The Inspector shall determine the basis for and recommended amount of the civil charge according to the following criteria:

- The seriousness of the violation;
- The degree of negligence exhibited by the operator;
- The operator's good faith in correcting the violation expeditiously to the extent possible;
- The operator's previous history of violations at the particular gas, oil, or geophysical operations; and
- The operator's failure to comply with an abatement plan.

IV. POINT SCHEDULE/SERIOUSNESS OF VIOLATION

The Inspector shall determine the seriousness of the violation based on the adverse impacts the violation created or posed. The Inspector shall assign zero to 10 points according to the point schedule in Table 1.

V. POINT SCHEDULE/NEGLIGENCE

The Inspector shall determine whether negligence points are to be assigned based on the degree to which the operator caused or allowed the violation to occur, either through act or failure to act. The Inspector shall assign zero to six points for negligence according to the point schedule in Table 2.

For the purposes of determining the degree of negligence, the following terms shall have the following meaning:

- "No negligence" means an inadvertent and unavoidable violation that occurred despite the operator's exercise of reasonable care. Typically, the violation resulted from an unpredictable natural event or vandalism. The acts of all persons working at the particular operation are attributed to the operator, unless the operator establishes that the acts were deliberate sabotage. While an operator is not considered negligent for an unpredictable natural event or vandalism, the operator would be considered negligent for failing to repair the damage caused by such occurrences.
- "Negligence" means the failure of an operator to prevent the occurrence or, or to correct the violation due to indifference, lack of diligence, or lack of reasonable care. If the operator has exhibited a pattern of similar violations at other sites, negligence may be determined.
- "Gross negligence" means reckless, knowing or intentional conduct. An operator is deemed reckless when it should have been clear to a prudent operator that the course of conduct taken by the operator was likely to

create a serious amount of damage or harm, yet the operator followed the course anyway; or when in a situation deemed inherently dangerous, the operator failed to exercise the degree of care warranted to ensure safety. Knowing or intentional conduct occurs when an operator is aware of the potential or actual violation, but fails to avoid or correct the violation.

The Inspector may consider any mitigating circumstances prior to assigning negligence points.

VI GOOD FAITH POINTS

The Inspector may award good faith points when an operator complied with the remedial action required by a NOV or CO prior to the set abatement date. The Inspector shall deduct zero to four points for good faith credit from the point total derived from the seriousness and negligence determinations according to the point schedule in Table 3.

VII. SETTING THE CIVIL CHARGE AMOUNT

The Inspector shall propose the base civil charge amount based on the total points assigned according to the point schedule in Table 4.

- The Inspector shall determine the previous history of violation if the operator has been issued NOVs or COs at the site subject to the civil charge during the 12 months preceding the date of the violation subject to the civil charge. The Inspector may consider only those NOVs and COs finally resolved during the preceding 12 month period. The following may not be considered:
 - Any NOV or CO subject to pending administrative or judicial review;
 - Any NOV or CO eligible for administrative review because deadline to seek review has not passed; and
 - Any NOV or CO that was overturned on review.

The Inspector shall adjust the base civil charge amount according to the point schedule in Table 5.

- The Inspector may propose to assess an additional civil charge of up to \$1,500 for each day of a continuing violation or failure to abate if an operator failed to comply with a NOV's or CO's remedial measures. This daily assessment shall not be assessed for more than 30 days.

In no event shall the daily civil charge for each violation cited in the NOV or CO exceed \$10,000.00.

VIII. CONDUCT OF HEARINGS

The Inspector, at least 30 days prior to a Board hearing, shall assign a docket number and place the proposed civil charge on the docket for the Board hearing when he determines a civil charge may be warranted.

The Inspector, concurrently with placing the proposed civil charge on the docket, shall give notice of the proposed civil charge and hearing to the operator subject to the civil charge. The notice shall be sent by certified mail return receipt requested. The notice shall identify the violations subject to the civil charges, and explain the basis for and amount of the civil charge recommendation. Proper notice shall be deemed complete as to the date of posting, should the operator refuse to accept delivery of, or fail to collect the certified mail.

The operator subject to the civil charge may introduce information during the hearing pertinent only to the civil charge determination. The information may address only the appropriateness of the civil charge's seriousness, negligence, history, and good faith determinations. The violation or violations addressed in the determination of the civil charge may not be challenged or appealed in the civil charge proceeding.

The Board shall review the assessment criteria for each civil charge determination. The Board and operator may agree to affirm, reduce or increase a civil charge based upon the evidence submitted or discussed at the hearing. The Board and operator may agree to waive a civil charge derived from this procedure if exceptional factors were present which would make the civil charge demonstrably unjust. The waiver may be requested by the operator or be made upon the Board's initiative. A waiver may not be awarded on the basis that a reduction in the proposed civil charge amount could be used to abate violations.

The Board may seek civil penalties pursuant to S 45.1-361.8.B of the Code of Virginia if an agreement on the civil charge cannot be reached.

The Inspector shall prepare a written order summarizing the findings and decision reached during the hearing, and shall forward the order to the Board Chairman for review and signature with copies mailed to the Board members.

The Inspector shall send, by certified mail return receipt requested, the order to the operator subject to the civil charge. The Inspector shall send, by first class mail, a copy of the order to the Treasurer of the city or county where the gas, oil or geophysical operation subject to the charge is located.

IX. CIVIL CHARGE DISPOSITION

The operator subject to a civil charge shall submit, within 30 days of receipt of the Board order, payment to the city or county where the gas, oil or geophysical operation subject to the charge is located. Payment shall be made by certified check payable to the Treasurer of the city or county.

The operator shall submit a copy of the certified check, as proof of payment of the civil charge, to the Inspector concurrently with submittal of the payment to the locality.

TABLE 1: SERIOUSNESS POINT DETERMINATION

Points	Damage to the Environment	Danger to Public Health/Safety	Damage to Correlative Rights or Resources	Obstruction to Enforcement
0	No actual or potential damage	No threat	None	None
1-2	Slight actual or potential damage	Slight actual or potential threat	Excess production able to be offset by under production	Violation of requirement that can be quickly corrected
3-4	Moderately significant actual or potential damage	Moderately significant actual or potential threat or hazard	Failure to make a payment in accordance with a Board order	Violation of administrative requirement that that is correctable after some delay and tends to hamper or obstruct enforcement
5-6	Significant actual or potential damage, correctable only after substantial effort/time	Significant actual or potential threat or hazard	Waste or escape of resource, with no resource damage	
7-8	Extremely serious potential, or substantial actual damage correctable only after substantial effort/time	Substantial actual or potential hazard	Waste causing moderate resource damage	
9-10	Extremely serious actual damage	Extreme actual or potential hazard	Waste causing substantial resource damage	

TABLE 2: DEGREE OF NEGLIGENCE

<u>Points</u>	<u>Degree of Operator Negligence</u>
0	No negligence
1-3	Negligence
4-6	Gross negligence

TABLE 3: GOOD FAITH CREDIT DETERMINATION

<u>Good Faith Points</u>	<u>Compliance Efforts by Operator</u>
0	If the violation was not abated prior to the set abatement date.
-1 to -2	If prompt and diligent efforts were taken and the violation was abated prior to the set abatement date.
-3 to -4	If extraordinary measures were taken to abate the violation in the shortest time possible, prior to the set abatement date.

TABLE 4: BASE CIVIL CHARGE AMOUNT

<u>Points</u>	<u>Base Civil Charge</u>	<u>Points</u>	<u>Base Civil Charge</u>
0	\$ 0.00	9	\$2,100.00
1	\$ 100.00	10	\$2,700.00
2	\$ 200.00	11	\$3,400.00
3	\$ 350.00	12	\$4,100.00
4	\$ 500.00	13	\$4,800.00
5	\$ 650.00	14	\$5,500.00
6	\$ 800.00	15	\$6,200.00
7	\$ 950.00	16	\$7,000.00
8	\$1,500.00		

TABLE 5: HISTORY OF VIOLATION CHARGES

<u>Number of Violations</u>	<u>Adjustment</u>
None	Reduce the base civil charge by 10 %
10 or fewer violations cited on NOVs	Add \$ 40 per violation
11 or more violations cited on NOVs	Add \$ 100 per violation
1 or more violations cited in COs	Add \$ 200 per violation
