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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF MAY 19, 1992

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

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1 May 19, 1992

2 This matter came on to be heard on this the 19th day of
3 May, 1992 before the Virginia Gas and Oil Board at the
4 Southwest Virginia 4-H Center, Abingdon, Virginia, pursuant to
5 Section 45.1-361.19.B and 45.1-361.23.B.
6

7 MR. CHAIRMAN: Good morning. My name is Benny Wampler,
8 Assistant Director of Mining for the Virginia Department
9 of Mines, Minerals and Energy. I'll ask our Gas and Oil
10 Board members to introduce themselves starting with Bill.
11 (MEMBERS INTRODUCED.)

12 MR. CHAIRMAN: Thank you. I have just a couple of items for
13 the Board's information. You're welcome to attend the
14 meeting that we have set -- an escrow meeting -- for the
15 21st, this Thursday, from 1:00 to 3:30 with the folks who
16 have been designated by the Board as operators for forced
17 pooling orders. The staff is meeting that morning with
18 the escrow agent from 9:30 to 12:00 and then the escrow
19 agent and the operators will meet from 1:00 to 3:30 to
20 try to facilitate payment to the escrow agent and
21 implementation of the contract that the Department has
22 entered into with the escrow agent. So you are invited
23 to attend and participate.

24 MR. HARRIS: Excuse me. Where is this?

25 MR. CHAIRMAN: That's going to be at the Department of Mines,

Minerals and Energy Office in Big Stone Gap.

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ITEM I

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MR. CHAIRMAN: The first item on the agenda, the Board on its own motion will consider policies and procedures for the implementation of civil penalty charges under VR 40-05-02.2, Section 19. This is docket number VGOB-92/05/19-0226. Tom, do you have copies for the Board?

MR. FULMER: Yes. (Pause.) As requested, the Board -- the staff and the personnel from the Department of Mines, Minerals and Energy personnel has drafted a procedural rule policy for implementation on the civil charges that is required under the Board Regulation 19 and procedure to implement civil charges. It's authorized under 45.1-361.8.C of the Code of Virginia in Section 19. The document you have before you was prepared to set the basis for bringing civil charges before the Board and the implementation or how we derive at those civil charges and the civil charge amount that would be recommended by the Director. The first part, in general, is talking about the applicability of setting the civil charges. The second one is the basis for civil charges. The Inspector, once you bring it before the Board, will use what is in Section 2 to determine whether to recommend civil charges. One is a violation resulting in or could reasonably have been expected to result in significant

1 adverse environmental impact. Two; if the violation
2 resulted in or could reasonably have been expected to
3 result in harm to the public's safety or general welfare.
4 Three; if the violation resulted or could reasonably have
5 been expected to result in harm to the correlative rights
6 of any person. Four; if the operation was not properly
7 permitted. Five; if the operator did not complete within
8 the abatement period all remedial actions including the
9 intern steps required to abate a violation cited in
10 another violation or in an enclosure order. Six; if the
11 operator has a recent history of similar violations at
12 the site subject to the civil charges or at other sites.
13 Seven; if the operator failed to comply with an order of
14 the Board. Eight; if the Inspector deems the action is
15 necessary to deter future violations by an operator.
16 Nine; if the Inspector is directed to do so by the Board.
17 These lists we derived from looking at both the regula-
18 tions promulgated under Section 1 and 3 of the Act and
19 Article 2 of the Act dealing with the Board's regula-
20 tions.

21 MR. CHAIRMAN: Do we have any parties here today that wish to
22 address the Board this matter? We'll kind of take these
23 one at a time as we go through this. The record will
24 show there's none wishing to address the Board on this.
25 Do the Board members have any questions on the basis for

1 the civil charge?

2 MR. HARRIS: We may have talked about this before, but can I
3 get some clarification about the difference between civil
4 charges and civil penalties? I would imagine. Could
5 somebody address that? Is there a difference between
6 those two? Because it looks like this has penalties
7 built in, but it classifies them as charges.

8 MR. CHAIRMAN: There's really, in essence, no difference in
9 the two. The civil penalties -- this perhaps is the term
10 chosen as civil charges because this is something that
11 could be negotiated in lieu of according imposed penalty.
12 I don't think it matters if it's more clear to say civil
13 penalties.

14 MR. FULMER: Well, civil charges -- when we drafted this in
15 talking about civil charges what we could bring up on
16 the violations and which could be negotiated, we got into
17 civil penalties it's the mandated penalties that were
18 going the Board -- I mean, not to the Board but to the
19 courts. It would be a civil penalty with a mandated
20 charge on that civil penalty. Whereas, this civil charge
21 would be something we would recommend and can be negoti-
22 ated.

23 MR. CHAIRMAN: Do you agree with the basis? Is there any
24 questions or comments on that?

25 MR. HARRIS: Is there any provision for amending this? Would

1 it be -- normally how would we --

2 MR. CHAIRMAN: At a later date you mean?

3 MR. HARRIS: Yes.

4 MR. CHAIRMAN: Sure, the Board on its own motion or upon a
5 request by other parties could reconsider this at any
6 time.

7 MR. FULMER: Considering that this is a draft document and let
8 me explain what this document does. It sets forth the
9 procedure by which these actions can be taken by the
10 Board. And it's not in regulation form. It's not a
11 mandated regulation. But it defines or gives you a
12 procedure by which Section 19 of the Board's regulations
13 is going to be implemented. That's what this is for.

14 MR. MASON: It doesn't have the force of a regulation adopted
15 under the APA?

16 MR. FULMER: No.

17 MR. MASON: It does not. I see. And it's just really adopted
18 guidelines for the Board?

19 MR. FULMER: The Board has the authority to assess penalties
20 and this is the procedure by which the Board would derive
21 at how it would assess penalty.

22 MR. CHAIRMAN: And use this as the guideline, but not the
23 imposed rule so to speak. This would give the operator
24 and the public an idea of what the Board is going to
25 consider when it has its hearing on the charges.

1 MR. MASON: Mr. Chairman, let me ask one question and direct
2 this to Tom.

3 MR. CHAIRMAN: Mr. Mason.

4 MR. MASON: In the time that all of this has been going on,
5 have you all had any occurrences of this? I mean, is it
6 a -- I have no feel whatever for the likelihood of any of
7 these things occurring. And if so --

8 MR. FULMER: There are constantly -- we have issued viola-
9 tions. Some more serious than others. There's not a
10 vehicle by which civil charges could be brought.

11 MR. MASON: I understand that. In terms of looking at this
12 it's hard to assess what you're dealing with in terms of
13 the scope of the problem and the instances in which it
14 would be necessary to deal with it. I guess that's one
15 of the things that I don't have any feel for at all.

16 MR. FULMER: Well, there is two ways --well, one way which is
17 authorized under the regulations and at the request of
18 the Board is to develop a procedure of setting civil
19 charges and civil penalties. The other procedural sort
20 of thing is how the Inspector himself derives to the
21 decision to bring forth to the Board a recommendation of
22 civil charges.

23 MR. CHAIRMAN: But, Tom, what he's looking for is to give him
24 a feel -- I believe Mr. Mason wants to clarify a feel for
25 -- say for the past twelve months how many times would

1 you -- if this had been in place for the past year how
2 many times would you have been before the Board approxi-
3 mately? A dozen times?

4 MR. FULMER: Maybe a half a dozen on serious charges.

5 MR. MASON: That's what I was -- I was trying to get some
6 idea of what you're talking about in terms of how
7 serious a problem it is. Thank you.

8 MR. EVANS: Benny.

9 MR. CHAIRMAN: Mr. Evans?

10 MR. EVANS: I have one comment. Everything on the basis is
11 pretty much factual or pretty much straightforward until
12 we get down to "if the Inspector deems the action is
13 necessary to deter future violations by an operator."
14 That seems pretty loose. That's kind of the proverbial
15 catch-all where you can --

16 MR. FULMER: Well, I'm not going to discount your description
17 of that, but a lot of times that's why that we used it in
18 here.

19 MR. EVANS: Well, I understand that it may be widely used.
20 But from an operator's standpoint that can be really
21 subjective. If we're trying to give the public and the
22 operators some idea of how this is going to go --

23 MR. FULMER: Well, one of the things when we looked at this
24 that we had to consider is if we go through the system-
25 atic determination of assigning points and so forth and

1 you have the situation where you have on the leaning
2 edge of whether they abate that violation or whatever and
3 continuously bring the point out and then it gets to be
4 intentional violations -- in the assessment of intention
5 violations but they abate it within the eleventh hour.
6 We looked at that situation. We looked at situations
7 whereas there's questionability of the operator to
8 operate with due diligence. That type situation. That's
9 basically what that was put in here.

10 MR. EVANS: If you're going to be coming to us and recommend
11 a penalty and it's based on that particular -- you made
12 a determination, it would probably be well to fine this
13 guy to deter some future violation. If he hasn't
14 technically done anything wrong I don't see how we could
15 fine him for not doing anything wrong. Maybe it's just
16 the wording of this. "If the Inspector deems the action
17 is necessary to deter future violations," I don't see
18 how we can say to an operator, "You might do this in the
19 future and to make sure that you don't, here's your
20 fine."

21 MR. CHAIRMAN: I don't see anything there that's not covered
22 somewhere else in there anyway if you have, like you say,
23 an actual violation.

24 MR. HARRIS: Mr. Chairman, there's always that grey area. And
25 I think what Mr. Fulmer is talking about is covering that

1 grey area. I'm not sure if the wording is what maybe it
2 should be to do that because it does say deter future
3 violations and that's fairly specific. But I can see his
4 point and I'm not sure if we even need something like
5 that, but at the same time I know that there are those
6 areas where people have had several violations and are
7 proned to wait until the last minute to do something
8 about. And I don't know if it's proper to add a point
9 because of attitude or something. Like I said, this is a
10 grey area and I'm not sure if that should even be listed,
11 but I can see the point.

12 MR. EVANS: Maybe just a wording change there or some -- maybe
13 rephrase that a little differently because I don't -- I
14 have a real problem with something that says we're going
15 to do something to make sure a future action --

16 MR. FULMER: Well, the document we've prepared for the Board
17 to review --

18 MR. MASON: Mr. Chairman, I think the problem, if you focus on
19 it, is the idea of punishing somebody now for something
20 they might do based on their conduct in the past when, in
21 fact, what you're really doing is punishing them for what
22 they've done and you feel that it's appropriate in the
23 scope of the overall enforcement of these regulations and
24 law. I think that perhaps Mr. Fulmer has been overly
25 honest and direct in what he thinks here in terms of the

1 way this ought to be done and that that is part of the
2 judgement certainly that an inspector would have to
3 exercise in terms of how he perceives this as an overall
4 component of this enforcement program. But to specify,
5 though, that it would be to deter that -- I mean, that's
6 inherent, I would think, in almost any enforcement action
7 or penalty of any kind -- that is one of the primary
8 reasons that you have penalties is to deter people from
9 doing it again and that some wording change would be
10 appropriate. I think one of things that I wanted to
11 comment on and I think that it's appropriate -- I think
12 that this concept that we had to start with when we were
13 first looking at this, and I think that this carries it
14 out, is the idea that single violations won't be that
15 important in determinations, but will be viewed and be
16 punished in terms of how they fit into a history of
17 conduct and that our enforcement actions were intended
18 and directed to be -- because the people -- you may have
19 individual problems from time to time. But the scope of
20 this -- and I think I'm correct in assuming that the
21 mechanics of this carry out the idea that isolated
22 incidents aren't that important, but the real penalties
23 will occur as individual events occur in the scope of the
24 history of misconduct. Is that an accurate characteriza-
25 tion?

1 MR. FULMER: Yes.

2 MR. MASON: And I think that's the Board expressed earlier in
3 its regulations as being its desire to implement in the
4 civil area. I'm not very articulate today.

5 MR. CHAIRMAN: When you look at the -- and maybe it would be
6 for us to move over into the setting of the points. When
7 we start moving to the criteria for determining that that
8 we can see more clearly and relate back to the basis for
9 the charge and make some decision on that particular item
10 or perhaps others.

11 MR. FULMER: I would maybe go back to that, Mr. Chairman,
12 after we go through the document.

13 MR. CHAIRMAN: Okay.

14 MR. FULMER: The third thing that we drafted is in how the
15 Inspector derives at determining the amount of civil
16 charge he'll recommend to the Board. And the factors
17 that we've laid out here are the factors the Inspector
18 will determine at that point before he brings it before
19 the Board. 1; was the seriousness of the violation,
20 whether it caused eminent danger at the time or whether
21 it's going to cause some kind of immediate environmental
22 problem or hazard. So the seriousness was very import-
23 ant. I will make a comment at this time that the
24 question of seriousness is addressed also in the sections
25 under Article 3. That same criteria is in also the

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Board's regulations. We just carried it over in both regulations. The difference between a NOB and a serious NOB. It has two different routes, two different procedures. The second is the degree of negligence exhibited by the operator. Thirdly, the operator's good faith in correcting the violation expeditiously. And here is the criteria that we put in there to allow the operator by its own actions to determine whether the assessment could be handled in a different manner than just straightforward. The operator's previous history of violations at the particular gas or geo-physical operation. And the last one, The operator's failure to comply with an abatement plan. So these are the things that the Inspector will consider in determining what is the amount of civil charge assessment that is before the Board. The A part of this section is setting the point schedule and, again, we addressed the seriousness of the violation. "The Inspector shall determine the seriousness of the violation based on the adverse impact that the violation created or opposed. The Inspector shall assign zero to ten points according to the points schedule on Table 1." Table 1 goes from zero to ten. It has broken it out into various stages across damage to the environment, danger to public health and safety, damage to correlative rights or resources, and obstruc-

1 tion to enforcement. We developed these to try to carry
2 back again to the basis which is civil charge. We broke
3 those down. As you go under different columns and
4 different items or different topics or types of viola-
5 tions that may occur -- as you go from zero to ten down
6 the column there is criteria set in there to determine
7 the nature of the violation or the description of that
8 violation. It goes from -- well, on damage to the
9 environment, for instance, it goes from no actual or
10 potential damage all the way down to extremely serious
11 and actual damage with a set degree all the way down.
12 Any questions on that particular table?

13 MR. MCGLOTHLIN: Tom, would you kind of run down what the --
14 if you have, say, damage to correlative rights, excess
15 production, a 1 to 2 points and you come over here. Do
16 you total up different -- will there be an instance where
17 it might be higher than a 10 on the point system after
18 it's all totalled up?

19 MR. FULMER: Would it higher than a 10?

20 MR. MCGLOTHLIN: Yeah.

21 MR. FULMER: Bear in mind, these are on each and every --

22 MR. MCGLOTHLIN: If you go to one well site and you find two
23 or three violations, will they be written separately or
24 together?

25 MR. FULMER: They are written separately because we've got to

1 charge them under separate regulations. They will be
2 written separately.

3 MR. MCGLOTHLIN: Okay. That answered it.

4 MR. CHAIRMAN: Other questions?

5 MR. EVANS: The criteria for determining the amount of civil
6 charge, the five things that the Inspectors consider --

7 MR. CHAIRMAN: Uh-huh.

8 MR. EVANS: -- I'd like to see something in there as to the
9 inspector considers the ability to abate the violation.
10 In certain instances you may give a time limit or specify
11 an action that may not be possible.

12 MR. FULMER: Well, the mechanism by which -- and it's struc-
13 tured here in law in the regulations is that there is an
14 abatement time period and they have no option except for
15 abate unless they request an extension of that abatement.
16 So they can request an extension of the abatement.

17 MR. EVANS: I guess what I'm saying is that there may be an
18 instance where a violation has occurred that is not
19 physically possible to abate. Benny, can tell you that
20 it happens in mining. You cannot abate the violation.
21 It has occurred. It doesn't continue, but you cannot
22 abate it. The damage is done and it's irretectable or
23 whatever --

24 MR. FULMER: For instance, if the whole site just falls off
25 the side of the hill. You can't really abate it, because

1 it's done gone. I understand what you're saying.

2 MR. CHAIRMAN: If you had a sediment load in a strain you can
3 get a little bit more picky and say that you've got to go
4 get it back out and you can't go get it back out.

5 MR. EVANS: I would like to see something in there that
6 recognizes the fact that there are instances that can
7 occur where a violation is present and cannot be physica-
8 lly abated. It's not possible to do it. You've got to
9 consider that. That's all I'm saying.

10 MR. FULMER: I guess my question here is -- and I understand
11 what you're saying, whether they can abate or not abate
12 it. I think just talking here, if it cannot be abated
13 then I really can't even consider it. I mean, it's
14 already done gone anyhow and if it's negligence on their
15 part that it occurred and they still can't abate it. Or
16 in the instance where they can then would you be in the
17 situation of trying -- would an amount of civil penalty
18 be taken into consideration if you can't abate it?

19 MR. EVANS: I would like to see -- at least consider it.
20 There are certain situations that could occur and if
21 we're going to put this out for operators, the public,
22 and everything else, I would at least like to see us
23 cover the fact that there are instances where -- and I
24 don't care how you do this -- something to the effect
25 that certain violations can or may occur that cannot be

1 abated, period. And a wording to the effect that that is
2 at least considered in your recommendation which is what
3 this -- I think we're talking about the seriousness of
4 the violation, the degree of negligence, blah, blah,
5 blah, the operator's failure to comply with an abatement
6 plan. Everything speaks to the fact that, yes, you can
7 do something about it and in some cases you cannot.

8 MR. FULMER: I guess the question I've got, Ken, is if it
9 determines the amount it will charge and the violation
10 cannot be abated --

11 MR. EVANS: Maybe a simple statement to the effect that in
12 the criteria for determining the amount of civil charge -
13 - the possibility or the ability to abate the violation.

14 MR. CHAIRMAN: Would it be something, Ken, that correction of
15 the violation is possible?

16 MR. EVANS: Something to that effect. Just something that
17 recognizes there may be situations that occur.

18 MR. FULMER: We could add the Operator's good faith in
19 correcting the violation.

20 MR. CHAIRMAN: It's a violation, but is it possible to correct
21 it? Yeah.

22 MR. EVANS: Do you understand what I'm saying?

23 MR. FULMER: Yeah, I understand what you're saying.

24 MR. EVANS: Then I'll leave it to the drafters to --

25 MR. EVANS: The thing that's going through my mind is when

1 you're determining the amount of civil charge -- if I'm
2 sitting up here determining the amount of civil charge,
3 whether he can abate or if it's abatable then I would
4 determine that. But you can't be then it really wouldn't
5 matter.

6 MR. CHAIRMAN: Well, it could matter because if you're coming
7 to the Board recommending that an operator be fined for
8 Violation A and obviously it's not just going to be the
9 Board and the operator that's appearing before the Board.
10 There will be interested public that could be pressing
11 for the charge to be higher, as well. It's not a closed
12 setting that we would have. So I think we have to
13 address that, as well -- the feasibility of the abating
14 to correct a violation.

15 MR. FULMER: How about going into the third part here, "The
16 operator's good faith in correcting the violation."

17 MR. CHAIRMAN: Ken, where we said, "The operator's good faith
18 in correcting the violation expeditiously" would adding
19 it to the extent possible there --

20 MR. EVANS: That would be fine. Some recognition that it --

21 MR. FULMER: To the extent possible?

22 MR. EVANS: That would be fine.

23 MR. FULMER: I understand what you're saying. I'm just trying
24 to figure it into this criteria.

25 MR. EVANS: I'm still trying to give you the leeway, too.

1 MR. CHAIRMAN: Any other comments on that section?

2 MR. MCGLOTHLIN: The operator's failure to comply with an
3 abatement plan, if the Inspector recommends to the Board
4 that a fine be assessed and the operator comes in and
5 proves that he couldn't abate -- I mean, doesn't that
6 take care of it?

7 MR. CHAIRMAN: Well, I think that -- at least, what I under-
8 stood, Mr. Evans was trying to give the Inspector more
9 guidance in what he should consider even before coming
10 before the Board in doing the penalty so that you
11 minimize the adverse situations. The idea situation is
12 you come before the Board and generally have an agreement
13 on what it's going to be coming in. I think that's what
14 he was getting at.

15 MR. MCGLOTHLIN: I'm like Mr. Fulmer, if he's out there and
16 the sediment pond breaks and flows down the LeVisa River,
17 there is no way that he's going to be able -- he can't --
18 how do you abate that? I mean, the damage is done. He
19 has to assess a penalty at that point and bring it before
20 the Board.

21 MR. CHAIRMAN: I think a lot of that would depend on what --
22 as he considered that, what caused it to break. Was it
23 improper construction or was it a rainfall event that was
24 beyond his control or --

25 MR. MCGLOTHLIN: You know, the pond still has to be fixed.

1 MR. CHAIRMAN: That would get into the gross negligence versus
2 no negligence. All those kinds of things. But you're
3 right. You can't go catch the water and bring it back,
4 and that's what we're trying to get at. But I understood
5 Mr. Evans is trying to give more guidance to the In-
6 spector in what he uses in doing that and he felt like
7 that under this area the operator's good faith in
8 correcting the violation expeditiously to the extent
9 possible -- may cover his concern.

10 MR. FULMER: A-2 talks about the degree of diligence and
11 actually defines the way we would define negligence. For
12 the purpose of determining the degree of negligence the
13 following term shall have the following meaning, "No
14 negligence means an inadverse or unavoidable violation
15 that occurred despite the operator's exercise of reason-
16 able care. Typically, the violation resulted from an
17 unpredictable natural event or vandalism. The acts of
18 all persons working at the particular operation are
19 distributed to the operator unless the operator estab-
20 lishes that the acts were deliberately sabotaged. While
21 an operator is not considered negligent for an unpredict-
22 able natural event or vandalism, the operator would be
23 considered negligent for failing to repair the damage
24 caused by such person. Negligence means the failure of
25 an operator to prevent the occurrence of or to correct

1 the violation due to indifference, a lack of diligence,
2 or lack of reasonable care. If an operator is exhibiting
3 in a pattern of similar violations at other sites
4 negligence may be determined. Gross negligence means
5 reckless, knowing or intentional conduct. An operator
6 is deemed reckless when it should have been clear to a
7 prudent operator that the course of conduct taken by the
8 operator was likely to create a serious amount of damage
9 or harm yet the operator follows the course anyway or
10 when in a situation deemed inherently dangerous the
11 operator failed to exercise the degree of care warranted
12 to insure safety. Knowingly or intentional conduct
13 occurs when an operator is aware of the potential or
14 actual violation but fails to avoid or correct the
15 violation. The Inspector currently placing a proposed
16 civil charge on the docket shall give notice of the
17 proposed civil charge in the hearing and to the operator
18 and subject to the civil charge." That is setting the
19 requirements of the Inspector to inform the operator he
20 is being brought before the Board for civil charges.
21 Again, from the certified mail route the notice shall
22 identify the violation subject to the civil charges and
23 explain the basis for and the amount of the civil charge
24 recommendation setting clear to the operator exactly what
25 the Inspector is bringing before the Board for its

1 consideration. If the operator refuses to accept
2 delivery of or collect the certified mail proper notice
3 shall be deemed complete.

4 MR. MASON: MRr. Chairman.

5 MR. CHAIRMAN: Mr. Mason?

6 MR. MASON: Just a real minor technical point. When you talk
7 about certified mail, do you all intend to include the
8 return receipt requested or is it just certified mail?

9 MR. FULMER: Well, when you send it by certified by mail --
10 when we send it we'll get the receipt back.

11 MR. CHAIRMAN: You can send certified mail without sending
12 certified mail return receipt requested.

13 MR. MASON: Yeah. If you want to specify that you ought to
14 say it. I just recently got --

15 MR. FULMER: Does the Board want to specify it? This is your
16 all's docket.

17 MR. MASON: I know, but I'm just telling you -- I didn't think
18 it matter either till recently. I had it pointed out to
19 me by a judge.

20 MR. CHAIRMAN: I have had it ppointed out to me, too, Mr.
21 Mason.

22 MR. HARRIS: Mr. Chairman, I have a comment. I keep reading
23 this last sentence and I want to put the word still in
24 there somewhere. "If the operator refuses to accept the
25 delivery of or to collect the certified mail proper

1 notice shall be deemed complete." It's almost like those
2 two conditions -- in order for the notice to be given
3 those two conditions must exist. And maybe I'm being
4 picky, but the implication is -- you know, we're applying
5 here that notice is given by certified mail and whatever.
6 And what we're saying is that even if they don't pick it
7 up and even if they refuse it it is still considered by
8 us to have be given. I'm not sure that that's best
9 worded and it's a minor point, but it almost implies here
10 -- that last sentence almost implies that that's the only
11 time proper notice is given, is when it's refused or
12 not --

13 MR. MASON: What if you inserted "even" in front of "if"?

14 MR. HARRIS: Yeah. I would almost turn the sentence around
15 and say, "Proper notice shall be deemed complete even if
16 the operator refuses." I think I would feel more
17 comfortable seeing it written that way.

18 MR. MCGLOTHLIN: Mr. Chairman, I have a problem with that
19 whole concept. I don't know what it is. Just some-
20 thing's in the back of my head saying wait a minute. If
21 the operator refuses to accept deliver of or to collect
22 the certified mail, that sounds to me like a penalty --
23 they're saying that they're properly noticed, but if they
24 have a -- if whoever's collecting their mail inadvertent-
25 ly doesn't collect it or doesn't have the authority that

1 day or something to collect the certified mail, I can see
2 some problems within --

3 MR. FULMER: One of the things behind this -- I mean, this was
4 brought up in our discussions -- was considering the
5 fact that the Board is going to be recommending civil
6 charges pretty much the same way as a judge could rule
7 upon civil charges or civil penalties. And we don't have
8 the ability to subpoena anybody. All we have is proper
9 notice that you've been brought before the Board on civil
10 charges and they may be assessed on that. In lieu of
11 subpoenas, what else can we do.

12 MR. MASON: Mr. Chairman.

13 MR. CHAIRMAN: Mr. Mason?

14 MR. MASON: Subject to the -- the Assistant Attorney General
15 can certainly speak to this more clearly than I, but it
16 is a well established principal of law in multiple
17 situations that the United States Postal Services is an
18 agent for receipt of notice for people to whom things are
19 directed properly within that service. I mean, the laws
20 are replete with that concept of agency by the Postal
21 authority in that most people deem once the -- in many
22 instances, once the mail is deposited the U. S. Mail is
23 deemed to be received by the person to whom it's direct-
24 ed. But certainly in a case like this where you've got a
25 certified mail in which there are notices -- the Postal

1 Services notice to the recipient of a box holder or to a
2 rural route holder -- you know, they send those little
3 yellow slips, at least two of those every time. I
4 understand your concern, Ken, but it takes a pretty
5 deliberate act not to get certified mail. And to allow
6 someone to avoid notice by avoiding delivery would
7 basically render the ability to do this negative.

8 MS. RIGGS: I think the only thing I would add is I'd like to
9 see a positive statement of how notice will be given and
10 that is by certified mail, return receipt requested, and
11 then a statement that in the event they refuse that
12 delivery they will be deemed to have received such notice
13 of the date of posting or mailing so that you have an
14 affirmative statement as to how the Board -- because in
15 all cases you will send by certified mail, return receipt
16 requested?

17 MR. FULMER: Yeah. Particularly by the fact that the Board
18 will be -- you will be in hearing when this -- it will be
19 an agenda item pretty much as forced pooling or that
20 nature. So we would have to handle it in that mode by
21 trying to figure out some way to address the legality of
22 setting penalties that we're charging which is serious -

23 MR. MASON: Satisfying due process of law requires notifica-
24 tion.

25 MR. MCGLOTHLIN: That might take care of my concern.

1 MR. FULMER: Now, this is what I have. "The notice shall be
2 sent by certified mail, return receipt requested. The
3 notice shall identify the violation subject to civil
4 charges explaining the basis for the amount of civil
5 charge recommendation." And you wanted to change that
6 last sentence?
7 MR. CHAIRMAN: Yeah, to state "proper notice shall be deemed
8 complete even if the operator refuses to accept deliver
9 of or to collect certified mail."
10 MR. MASON: And I think we were also directed to put the date
11 in there.
12 MS. RIGGS: As of the date of the mailing.
13 MR. FULMER: Even if the operator refuses to accept delivery
14 of or to collect certified mail.
15 MR. CHAIRMAN: As to the date of posting.
16 MS. RIGGS: Proper notice shall be deemed complete as to the
17 date of posting.
18 MR. FULMER: I'll make that correction.
19 MR. CHAIRMAN: Okay.
20 MR. FULMER: "The operator subject to civil charge may intro-
21 duce information during the hearing pertinent to the
22 civil charge determination. The information may address
23 only the appropriateness of the civil charges serious-
24 ness, negligence, history, and good faith determinations.
25 The violation or violations addressed in the determina-

1 tion of the civil charge may not be challenged or
2 appealed in the civil charge proceeding."

3 MR. MASON: Mr. Chairman.

4 MR. CHAIRMAN: Mr. Mason?

5 MR. MASON: I'm not sure exactly how this would proceed.

6 Would there be any evidence offered by anyone else?

7 Would it be essentially the Inspector's determination

8 stands and it's up to the proposed violator to refute

9 that?

10 MR. CHAIRMAN: I think what they were getting at here is that

11 the subject of the violation itself is separate --

12 MR. MASON: Well, I understand the limit -- the scope of what

13 evidence can be offered. But I guess what I'm saying is

14 is there implicit in that any statement or belief that

15 no one else may offer any evidence?

16 MR. CHAIRMAN: I think that's a good question.

17 MR. MASON: I mean, I don't know exactly how you would

18 anticipate -- I don't know this would go forward because

19 obviously you have the finding of the Inspector or the

20 recommendation of the Inspector and then the Board can do

21 what it wishes. And the Inspector, I would assume, would

22 present to the Board his -- in fact, it calls for it in

23 here, does it not, his conclusions and findings and so

24 forth?

25 MR. CHAIRMAN: Uh-huh. Right.

1 MR. MASON: But I didn't know whether it would be an opportu-
2 nity if necessary -- if you wanted, for instance, to
3 refute or to impeach anything that the operator may say
4 on his own behalf -- I mean, I don't guess that's all
5 that important in terms of this. I want it clear that
6 the Board would have the ability, if necessary, to
7 request whatever other information it might want.

8 MS. RIGGS: A right of cross-examination, is that what you're
9 looking for?

10 MR. MASON: Yes. Or even the right of --

11 MR. EVANS: The right to contest the fact of the violation.

12 MS. RIGGS: Well, that's in separate channel.

13 MR. FULMER: Now, that's in a separate section.

14 MR. CHAIRMAN: Yeah. I think that's all he's trying to get at
15 here, that the fact of the violation is a separate issue
16 before the Board and that once they come to the Board for
17 a civil charge it's civil charge only. The fact the
18 violation proceedings has already taken place.

19 MR. MASON: I understand all that, that the violation has been
20 determined. You're saying that the scope of the operat-
21 or's defense before this Board is limited to these
22 criteria only, is that correct?

23 CHAIRMAN: To the basis of the penalty amount, right.

24 MR. MASON: Right. In other words, it has nothing to do with
25 whether the violation occurred or anything else. What

1 I'm saying is that on the other hand that Board either
2 through cross-examination or whatever means it has the
3 right to refute whatever the operator said.

4 MR. CHAIRMAN: Most certainly. I think that exists without
5 putting that in here. I think the Board's authority and
6 law would allow it to --

7 MR. MASON: Okay. I mean, I don't want to beat it to death.

8 MR. HARRIS: At the end of that first sentence, if you put a
9 comma to the civil charge determination, for considera-
10 tion by the Board -- because this is all done before the
11 Board, is that correct?

12 MR. CHAIRMAN: Right.

13 MR. HARRIS: I'm thinking that might take care of the fact
14 that this is at the Board's pleasure -- well, it's really
15 not at our pleasure, but it is in front of us.

16 MR. MASON: Also, Tom, what if you put after the hearing
17 pertinent, what if you put only to the civil charge to
18 clarify that that's the --

19 MR. CHAIRMAN: That makes it clearer, yes.

20 MR. FULMER: "The Board shall review the assessment criteria
21 for each civil charge determination. The Board and
22 operator may agree to affirm, reduce, or increase a civil
23 charge based upon the evidence submitted or discussed at
24 the hearing. The Board and operator may agree to waive a
25 civil charge derived from this procedure if exceptional

1 factors were present which would make the civil charge
2 demonstratable unjust. The waiver may be requested by
3 the operator or be made upon the Board's initiative. A
4 waiver may not be awarded on the argument that a reduc-
5 tion in the proposed civil charge amount could be used to
6 abate violations."

7 MR. MASON: I would suggest that argument might be better
8 served by the word basis. I would hope that we wouldn't
9 do anything based on the argument but, in fact, on the
10 basis established.

11 MR. CHAIRMAN: He's suggesting the change, the waiver may not
12 be awarded on the basis that a reduction in the civil
13 charge could be used to abate the violation. That's
14 good.

15 MR. FULMER: The Board may seek civil penalty between the
16 Section 45.1-361.8.B of the Code of Virginia if an
17 agreement on the civil charge cannot be reached. To
18 answer to your question, it probably defines what you
19 were talking about saying civil the charge and the civil
20 penalty where the civil charge is a negotiable item and
21 civil penalty is not.

22 MR. MASON: Tom, refresh my memory when you say seek. Do we
23 have to take an action outside of our own jurisdiction to
24 do that?

25 MR. FULMER: You would then recommend to the Circuit Court.

1 MR. MASON: Okay. I'm curious as to the word seek.

2 MR. FULMER: The civil penalties will be pursued.

3 MR. CHAIRMAN: Yeah. We would issue an order directing the
4 Department, is how I see that worked, to pursue with the
5 Attorney General's Office civil penalties in the Circuit
6 Court.

7 MR. MASON: I'm just trying to refresh my memory as to how
8 that works. Thank you.

9 MR. FULMER: The Inspector shall prepare a written order
10 summarizing the findings and the decisions reached during
11 the hearing and shall forward the order to the Board's
12 hearing for review and signature. The Inspector shall
13 send by certified mail the order to the operator subject
14 to the civil charge. The Inspector shall send by first
15 class mail a copy of the order to the city or county
16 where the gas, oil, or geophysical operation subject to
17 the charge is located.

18 MR. MASON: A point of curiosity again. When you say send it
19 to the city or county, who do you actually send it to?

20 MR. CHAIRMAN: He's notifying the party that's going to be
21 collecting the charge.

22 MR. MASON: I understand that. But I mean who do you --

23 MR. CHAIRMAN: Oh, I see what you're saying. What official?

24 MR. MASON: Yeah.

25 MR. CHAIRMAN: It says in the Act the Treasurer.

1 MR. MASON: Is that who you send the -- well, I understand
2 that's who you make them payable to, but who do you send
3 the notice to?
4 MR. CHAIRMAN: You're trying to notice the person that's
5 subject to collect. So we probably should say Treasurer
6 here.
7 MR. MASON: Well, I don't know. I mean, I didn't know whether
8 you notified the attorney or somebody who would be
9 charged with -- if for some reason the money wasn't forth
10 coming, is that the idea?
11 MS. RIGGS: The Attorney General has the obligation of
12 collection and then it's remitted over to the Treasurer
13 and it just puts them on notice that there is an entitle-
14 ment there.
15 MR. MASON: I guess that's what I -- it's sort of an odd
16 mixture of State and local function.
17 MR. EVANS: How would you do that? City or county. See, the
18 county has a Treasurer.
19 MR. HARRIS: Is it always the Treasurer?
20 MR. FULMER: It could be the Commissioner of Revenue. It
21 could be the --
22 MR. CHAIRMAN: Whatever the Treasurer counterpart would be and
23 whatever. The accent says Treasury.
24 MR. MASON: I'm not trying to say that you need to change it
25 at all. I'm just curious as to what you do because I

1 didn't know. I'm not suggesting that it needs to be
2 changed. I was just wondering what you do.

3 MR. MCGLOTHLIN: On the Inspector shall prepare a written
4 order summarizing the findings and decisions reached
5 during the hearing and shall forward the order to the
6 Board or the Board Chairman for review and signature,
7 could there also be something there that the Board
8 members get a copy of that as well?

9 MR. CHAIRMAN: Certainly.

10 MR. FULMER: Any more questions?

11 MR. CHAIRMAN: We just hand another change recommended. The
12 Inspector shall prepare a written order summarizing the
13 finding and decisions reached during the hearing and
14 shall forward the order to the Board Chairman for review
15 and signature with copies to the Board members.

16 MR. FULMER: I'll make that change. Civil charge disposition,
17 the operator subject to a civil charge shall submit
18 within thirty days of receipt of the Board order payment
19 to the county or city where the gas, oil, or geophysical
20 operation subject to the charge is located. The payment
21 shall be made by certified check payable to the locality.

22 MR. MASON: Yeah. That may be the appropriate place to put
23 the Treasurer.

24 MR. CHAIRMAN: Yeah.

25 MR. HARRIS: This is kind of petty, but if we're going to

1 city and county in the above paragraph we might ought to
2 be consistent.

3 MR. CHAIRMAN: Okay.

4 MR. FULMER: The operator shall submit a copy of the certified
5 check as proof of payment of the civil charge to the
6 Inspector concurrently with submittal of the payment to
7 the Treasurer, right?

8 MR. MASON: I think locality is fine there.

9 MS. RIGGS: Uh-huh.

10 MR. FULMER: Okay. The next several pages are the chart
11 breakdown on how the points would be assessed and the
12 criteria.

13 MR. CHAIRMAN: Just let me say at this point do you want to
14 review this point by point or do you want to just take a
15 minute to look at them and ask questions? Direct me as
16 to how you would like to go through this part.

17 MR. MASON: Why don't we just review them and then ask
18 questions. I don't think it's necessary to read them.

19 MR. CHAIRMAN: Okay.

20 MR. HARRIS: Mr. Chairman, my only comment, I think I had this
21 before and I know this gets to be very subjective and I
22 would imagine in Mr. Fulmer's mind there's probably a
23 difference between moderately significant and significant
24 or slightly significant -- these kinds of things. I
25 don't know if there's a clear division. I don't know

1 that there needs to be, but that's about the only concern
2 that I have. It tends to be very subjective and these
3 kinds of things -- I mean, when you talk about danger to
4 the public, that tends to be a very -- and sometimes it's
5 very real, but other times it's potential danger to the
6 public. And then the degree of that danger has to be
7 very subjective. So I can understand that, but the
8 wording sometimes when you read that you think moderately
9 significant and you think well, where does that fall in.

10 MR. CHAIRMAN: Right.

11 MR. HARRIS: I guess I'm expressing my frustration about the
12 wording, but there's nothing that I can suggest that
13 will --

14 MR. CHAIRMAN: Of course, it does put more of a burden on the
15 Inspector to try to define that, but at least the Board
16 then becomes the net that has to sort all of that out.

17 MR. MASON: What I was going to ask, Mr. Chairman, is as I
18 understand this the way we've got these positive and
19 negative points, they're all determined within the
20 criteria of a single violation, is that correct?

21 MR. CHAIRMAN: That's correct.

22 MR. FULMER: It can be a group of violations when you're
23 looking at the history.

24 MR. MASON: I understand that. There reason I was asking
25 about it is when you determine the plus points or the

1 good points, there's no necessity for any time frame
2 relationship because it's related to individual events,
3 is it not?

4 MR. FULMER: Uh-huh. They don't carry over.

5 MR. MASON: Yeah. They don't carry over from one event to
6 another. I mean, if you a violation or a group of
7 violations how do you -- I guess when you start adding
8 and taking away, how do you define the parameters of an
9 event in which the negative and the positives occur?

10 MR. CHAIRMAN: The violation that's written is going to
11 specific to a well, specific to a permitted site.

12 MR. MASON: I see. And that's all determined as to that?

13 MR. CHAIRMAN: Right.

14 MR. MASON: So there's no need of any time frames or defini-
15 tional areas of that?

16 MR. CHAIRMAN: That comes into consideration when you look at
17 the good faith credit.

18 MR. MASON: Well, I understand that. In other words, there's
19 not something like -- kind of like your driving record
20 where if you don't do anything bad for four years you get
21 good points thereafter.

22 MR. CHAIRMAN: Well, it comes into play from the history.

23 That starts giving you credits then or taking away.

24 MR. MASON: But that's what I'm saying. Would they carry over
25 from -- let's suppose that there's a violation and this

1 operator does everything he can do and he ends up with
2 more good points than bad points as a result of that
3 violation.

4 MR. CHAIRMAN: Uh-huh.

5 MR. MASON: Would he then on a subsequent violation be able to
6 use those points?

7 MR. FULMER: No.

8 MR. CHAIRMAN: No. That's for that violation.

9 MR. MASON: Okay. That's my point.

10 MR. HARRIS: Mr. Chairman, I have a question along the same
11 lines. Suppose there is a violation and the operator is
12 given sixty days for an abatement to take care of those
13 problems. They send the check within thirty days to pay
14 the penalty. And let's say within forty days they take
15 care of the problem, so they are awarded negative one,
16 maybe negative two points, because they did do it
17 promptly and diligently and it was abated prior to the
18 abatement date. What happens after they've paid the
19 penalty. They've already paid the penalty, but now
20 they're eligible for bonus -- good faith points. What
21 happens then? Do they get a refund or money back?

22 MR. FULMER: There's one thing that changes that a little bit.
23 The operator subject to a civil charge shall submit
24 within thirty days of receipt of the Board order payment
25 to the county.

1 MR. CHAIRMAN: It's not paying the Inspector. The Inspector
2 is only going to be coming to the Board. It's going to
3 be noticing an operator and noticing the public that he
4 is going to recommend to the Board a civil charge for a
5 violation.

6 MR. FULMER: I can not assess a civil charge. The only people
7 that can assess a civil charge is the Board.

8 MR. HARRIS: Okay. I may have asked that incorrectly. Let me
9 ask that again. Once the Board makes a determination
10 that penalties should be imposed and that there is a
11 problem, at what point does the operator start working on
12 the problem?

13 MR. FULMER: Immediately.

14 MR. HARRIS: You say immediately when you --

15 MR. FULMER: When the violation is issued he has to abate it
16 immediately.

17 MR. HARRIS: By you or the Board?

18 MR. FULMER: By me. By regulation he has to abate the
19 violation immediately. Now, he can appeal the abatement
20 date and then we go through the process of the hearing
21 before the director and then he can go on to the Board on
22 the violation, not a civil charge.

23 MR. CHAIRMAN: When he comes before this Board he is already
24 -- you're just considering in this instance the penalty
25 amount, not the violation. The violation has already

1 going to follow the procedural rules and judging the
2 amount whether or not to go with what's been recommended.

3 MR. HARRIS: In Table 4 -- again, this is a minor item. I
4 would like to see and this isn't absolutely necessary --
5 I always like starting at zero. I'd like to see zero
6 points and zero dollars, for instance. I don't know if
7 that's being redundant or over simplified. I'm sure that
8 if you have zero points I would image you would under-
9 stand that it's zero charge. But I always like to start
10 at some basis.

11 MR. MASON: One question. When you talk about this history of
12 violation charges, and we talked about this before when
13 we were working on our regs, is this per well, per unit,
14 per operator, what?

15 MR. FULMER: Per violation.

16 MR. CHAIRMAN: It's per violation.

17 MR. MASON: I understand that. Number of violations, is that
18 on a per well basis or per operator basis?

19 MR. FULMER: It can be on a -- let's get away from per well.

20 MR. MASON: Per permit, is that what you're looking at?

21 MR. FULMER: They can be a per operator. Let's get away from
22 per well because on a particular permitted site there may
23 be a number of violations issued for different criteria.
24 And as far as an operator, they may be a number of
25 violations that the operator has committed on different

1 sites.

2 MR. MASON: But this history of violation charges can apply to
3 per permitted site or to operators generally? Who makes
4 that determination?

5 MR. CHAIRMAN: I don't think that's right. You have to go
6 back to the basis for the charge when you're asking that
7 or at least that's what I would say. And what we've said
8 here when you deal with operations, you're talking -- the
9 first three say the violation. Then you say if the
10 operation was not properly permitted. I would view
11 that -- and I'm opening this up for discussion -- as for
12 that site which is always tied to a permitted site. If
13 the operator didn't complete the abatement, that's for
14 that site. If the operator has a recent history of
15 similar violations, it says at the site or at other
16 sites. Now, there you could tie that in on an operator
17 basis.

18 MR. MASON: Let me ask you one more question based on that.
19 I'm just curious about this. How would this work? If
20 you had a fine that's imposed on a permitted site, would
21 that charge or that cost be charged back to the opera-
22 tions of the well or would the operator have to pay it?
23 The reason I think it's interesting is that from the
24 standpoint of what -- you know, when we get into these
25 things like well operation costs and stuff. And I guess

1 the reason I'm asking this is is the intent to impose
2 this penalty --

3 MR. FULMER: Let me break it down. If it's a recommendation
4 involved under Article 3 then it more than likely will be
5 assessed against the operator. If it's done under a
6 Board then the Board will assess against the unit
7 operator which may not necessarily be the well operator.

8 MR. MASON: Right. I understand that. I guess what I'm
9 curious about -- and Benny, I'd be real interested in
10 some direction from you -- is it the intent here to fine
11 the well or fine the operator?

12 MR. CHAIRMAN: The intent is to fine the operator.

13 MR. MASON: Okay. I think that's important to understand.

14 MR. CHAIRMAN: Let me see if I can do a wrap-up. We have
15 this, obviously, all on tape and we'll go back through
16 and we'll prepare this like we do the orders -- from that
17 standpoint. But let me see if I can summarize the
18 changes here and then we'll go from there. On Page 1,
19 basis for civil charge we had a proposal, I believe, from
20 the various discussions to delete "if the Inspector deems
21 the action is necessary to deter future violations by an
22 operator or."

23 MR. HARRIS: Was it to delete that?

24 MR. CHAIRMAN: Yes.

25 MR. MASON: I think there was a change.

1 MR. HARRIS: Yeah, I thought it was to change that. I thought
2 we wanted to leave in some lee way.

3 MR. CHAIRMAN: Well, we left it open to come back to. I was
4 just seeing how strong we were on it.

5 MR. HARRIS: Again, I think there are grey areas that need to
6 be addressed that -- it's like a job description. The
7 last thing that's always there and anything else they
8 tell you to do kind of thing. It's always number
9 thirteen. And I'm wondering if we don't need something
10 to cover things that aren't listed above.

11 MR. CHAIRMAN: Do we need to worry about that now or come back
12 if we find in the application of this that we need
13 something else?

14 MR. HARRIS: Well, the other one is the last one. If the
15 Inspector is directed to do so by the Board and we may
16 find that we determined that there was a grey area and we
17 can direct him to issue that.

18 MR. CHAIRMAN: Right.

19 MR. HARRIS: So that may be covered under the last one there.

20 MR. MCGLOTHLIN: But if he doesn't have the grey area to bring
21 it before the Board in the first place we're not going to
22 know about it.

23 MR. HARRIS: Well, that's true.

24 MR. MCGLOTHLIN: I really think we ought to allow for things
25 in the grey area, but I don't know how best to write it.

1 MR. CHAIRMAN: If the authority is there to write a viola-
2 tion --

3 MR. MASON: Mr. Chairman, what if it just said if the Inspect-
4 or deems the action is necessary to enforce these
5 guidelines or something to that effect -- for the
6 enforcement or for the implementation. In other words,
7 you're saying that if there's any -- what you've got,
8 you've got a whole list of things that you can levy these
9 for and yet there's the specifics of these things and
10 you've got the intent of it. And if there's something
11 that comes up that falls in between those things I would
12 assume that that's what this is sort of directed toward.

13 MR. CHAIRMAN: Here again, I'm just participating in the
14 discussion right now. I'm not trying to exercise any
15 influence at all. But I have trouble envisioning what
16 would ever be brought before this Board that's in that
17 kind of grey area.

18 MR. MASON: Okay. Which it's not needed, then we ought to
19 leave it out.

20 MR. CHAIRMAN: Because these are things that we're prepared to
21 go forward to court with. It could be something as these
22 procedures are implemented could fall out later on and we
23 would be able to clearly define it. I have trouble that
24 we can't define it now because --

25 MR. EVANS: If you want to strike it it's fine with me.

1 MR. CHAIRMAN: Well, I want to try to address the Board's
2 concerns. I'm just saying I can't envision what that
3 might be at this point in time. I think it's a point
4 well raised. And if we find that our procedure is
5 deficient we could fix it.

6 MR. EVANS: We can delete it. My only problem with it was to
7 deter future violations.

8 MR. MASON: Let's delete it.

9 MR. EVANS: That's fine with me.

10 MR. CHAIRMAN: On Page 2 of 7, at the top of the page, we made
11 a change or recommended to change, "The operator's good
12 faith in correcting to violation expeditiously to the
13 extent possible." Page 4 of 7, first paragraph, "The
14 notice of violation shall be sent by certified mail,
15 return receipt requested." In the last sentence we said
16 that proper notice shall be deemed complete even if the
17 operator refused to accept to deliver of or to collect
18 the certified mail, return receipt requested, as to the
19 date of the filing. In the third paragraph, last
20 sentence, "The waiver may not be awarded on the basis
21 that a reduction of the civil charge amount could be used
22 to abate the violation." We strike argument and then
23 insert basis.

24 MR. HARRIS: We inserted only up there.

25 MR. CHAIRMAN: Oh, I'm sorry. I missed that one. The second

1 paragraph, "During the hearing pertinent only to the
2 civil charge determination." The second line. The fifth
3 paragraph, the third line, "Board Chairman for review and
4 signature with copies to the Board members." The sixth
5 paragraph, third line, "A copy of the order to the
6 Treasurer of the city or county." Under civil charge
7 disposition, in the first paragraph, second line,
8 "Receipt of the Board order payment to the Treasurer of
9 the city or county." I believe that covers it. Any
10 other comments?

11 MR. HARRIS: I had asked about the zero base, but that's
12 not --

13 MR. CHAIRMAN: I'm sorry.

14 MR. HARRIS: That's the mathematician in me.

15 MR. CHAIRMAN: I did have that noted and didn't call it out
16 there. Zero point, zero dollar, under the Table 4.

17 MR. MASON: Mr. Chairman, do we have to take any action on
18 this?

19 MR. CHAIRMAN: Yes, I think we should. We need to take action
20 to adopt this as a procedural rule.

21 MR. MASON: Mr. Chairman, I would move the adoption of these
22 procedural rules as amended pursuant to our discussions.

23 MR. CHAIRMAN: Okay. I have a motion.

24 MR. MCGLOTHLIN: Second.

25 MR. CHAIRMAN: A motion and a second. All in favor signify

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by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)

It's unanimous. We'll take a five minute recess.

(AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS

FOLLOWS:)

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3 ITEM II

4 MR. CHAIRMAN: The next item on the agenda is docket number
5 VGOB-92/05/19-0227. OXY, USA, Incorporated has sold and
6 assigned it's holdings into Buchanan Production Company
7 which is a Virginia Partnership whose partners are
8 wholly owned subsidiaries of Oxidental Oil and Gas
9 Corporation. OXY, USA, Incorporated has been designated
10 the operator for and/or on behalf of Buchanan Production
11 Company. This is contained in a letter to Tom Fulmer
12 referencing a notice of change of ownership from Martin
13 E. Wirth, Coalbed Methane Project Manager. I would ask
14 the parties that wish to address the Board in this matter
15 to come forward, please.

16 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
17 OXY. This is really the Board's own motion. Essentially
18 the mechanism, we understand, applies under the Board's
19 regs is that we're required to -- well, it doesn't say
20 that we are but we fell as if we're required to notify
21 the Division of Oil and Gas and the Board of any transfer
22 and we did that. And my understanding is that it was
23 placed on the docket so that the Board could approve the
24 transfer which has occurred under Rule 12. Marty is here
25 and can answer questions with regard to the transaction.
We spent a lot of time with regard to the transaction

1 last month and I think you probably have a pretty good
2 idea of what occurred. In substance, OXY, USA assigned a
3 50 percent interest in all of it's lease hold interest to
4 two corporations which were wholly owned subsidiaries of
5 Oxidental Petroleum which now have title to those leases.
6 Those two corporations -- I think it's Appalachian
7 Methane and Appalachian Operators. Each wound up with a
8 50 percent interest and they in turn conveyed those
9 interests into a Virginia partnership which is known as
10 Buchanan Production. Buchanan Production has no employe-
11 es, has designated OXY, USA as it's professional manager.
12 OXY has been designated by this Board as operator of a
13 number of units, the list of which was attached to
14 Marty's letter to Tom, and we'll continue to petition
15 this Board to appoint OXY. So OXY is still the operator
16 visa vi the Board still has the responsibilities under
17 the Code and the regs. So the only thing that has
18 changed is who holds legal and equitable title to the
19 leases.

20 MR. CHAIRMAN: The notice of ownership and Exhibit A included
21 all the Board orders that had heretofore designated OXY,
22 USA as operator?

23 MR. WIRTH: To the best of our knowledge and the records we
24 had.

25 MR. CHAIRMAN: Any questions, members of the Board? This is

ITEM III

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MR. SWARTZ: Mr. Chairman, if I could interrupt for a moment. I had filed a motion to continue the hearing on BB-9 yesterday for reasons that were expressed in that motion. On conferring with Mr. Wirth today, he is concerned that because of other matters that he needs to deal with he could not be in a position to complete the work that needs to be done to have a hearing on BB-9 within the sixty days. And we would move, subject to anyone who may have appeared today, to just withdraw that application and when we have dealt with the issues that have surfaced we'll be back and we'll file a new petition.

MR. CHAIRMAN: Let me ask if there's anyone present today that wishes to address the Board on Buchanan Production Company for BB-9? That's docket number VGOB-92/05/19-0225. There record will show no one is identified. Your proposal is to withdraw the application?

MR. SWARTZ: Correct.

MR. CHAIRMAN: Okay.

MR. EVANS: I make a motion to so allow the withdrawal.

MR. CHAIRMAN: Okay.

MR. MCGLOTHLIN: Second.

MR. CHAIRMAN: A motion and a second. All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)

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It's unanimous. That concludes the items on the agenda.
Any other comments? The next Board meeting is June 16th
and it's at Break's Interstate Park. Thank you.

(End of Proceedings for
May 19, 1992.)

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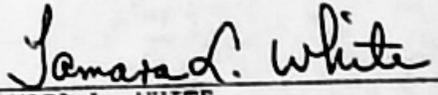
CERTIFICATE

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Tamara L. White, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing proceedings of the Virginia Gas and Oil Board meeting held on April 19, 1992 at the Southwest Virginia 4-H Center, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

I further certify that I am not a relative, counsel, or attorney for either party, or otherwise interested in the outcome of this action.

GIVEN under my hand this 11th day of June, 1992.


TAMARA L. WHITE
NOTARY PUBLIC

My commission expires June 30, 1996.