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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,

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Minerals and Energy Office in Big Stone Gap.



ITEM I

1  
2  
3 MR. CHAIRMAN: The first item on the agenda, the Board on its  
4 own motion will consider policies and procedures for the  
5 implementation of civil penalty charges under VR 40-05-  
6 02.2, Section 19. This is docket number VGOB-92/05/19-  
7 0226. Tom, do you have copies for the Board?

8 MR. FULMER: Yes. (Pause.) As requested, the Board -- the  
9 staff and the personnel from the Department of Mines,  
10 Minerals and Energy personnel has drafted a procedural  
11 rule policy for implementation on the civil charges that  
12 is required under the Board Regulation 19 and procedure  
13 to implement civil charges. It's authorized under 45.1-  
14 361.8.C of the Code of Virginia in Section 19. The  
15 document you have before you was prepared to set the  
16 basis for bringing civil charges before the Board and the  
17 implementation or how we derive at those civil charges  
18 and the civil charge amount that would be recommended by  
19 the Director. The first part, in general, is talking  
20 about the applicability of setting the civil charges.  
21 The second one is the basis for civil charges. The  
22 Inspector, once you bring it before the Board, will use  
23 what is in Section 2 to determine whether to recommend  
24 civil charges. One is a violation resulting in or could  
25 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 prone 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 defer 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

1 Board's regulations. We just carried it over in both  
2 regulations. The difference between a NOB and a serious  
3 NOB. It has two different routes, two different proce-  
4 dures. The second is the degree of negligence exhibited  
5 by the operator. Thirdly, the operator's good faith in  
6 correcting the violation expeditiously. And here is the  
7 criteria that we put in there to allow the operator by  
8 its own actions to determine whether the assessment  
9 could be handled in a different manner than just  
10 straightforward. The operator's previous history of  
11 violations at the particular gas or geo-physical opera-  
12 tion. And the last one, The operator's failure to  
13 comply with an abatement plan. So these are the things  
14 that the Inspector will consider in determining what is  
15 the amount of civil charge assessment that is before the  
16 Board. The A part of this section is setting the point  
17 schedule and, again, we addressed the seriousness of the  
18 violation. "The Inspector shall determine the serious-  
19 ness of the violation based on the adverse impact that  
20 the violation created or opposed. The Inspector shall  
21 assign zero to ten points according to the points  
22 schedule on Table 1." Table 1 goes from zero to ten. It  
23 has broken it out into various stages across damage to  
24 the environment, danger to public health and safety,  
25 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 Service 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:)



ITEM II

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

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

1  
2 CERTIFICATE  
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON  
6

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

14 I further certify that I am not a relative, counsel, or  
15 attorney for either party, or otherwise interested in the  
16 outcome of this action.  
17

18 GIVEN under my hand this 11th day of June, 1992.  
19

20 Tamara L. White  
21 TAMARA L. WHITE  
22 NOTARY PUBLIC  
23

24 My commission expires June 30, 1996.  
25