

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-11. Administrative Penalties.

R649-11-1. General Information on Authority and Procedures.

1. Objectives and Enforcement Authority. Administrative penalties are assessed under Section 40-6-11 of the Utah Oil and Gas Conservation Act (the "Act") to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Oil and Gas Conservation Act on the part of the oil and gas industry. The division shall have any enforcement rights or procedures allowed under Title 40, Chapter 6, Board and Division of Oil, Gas and Mining.

2. How Assessments are Made. The division shall appoint an assessment officer to review each unabated notice of violation in accordance with the assessment procedures described in Rule R649-11 to determine whether an administrative penalty shall be assessed and the amount of the penalty.

3. Compliance Conference. A person may request a compliance conference with an authorized representative of the division to review the compliance status of any condition or practice at any operation.

3.1. A compliance conference may not change the required abatement period contained in a notice of violation.

3.2. The division shall grant any request for a compliance conference received within the abatement period contained within a notice of violation.

3.3. The division may accept or reject any good faith request to conduct a compliance conference received after the abatement period contained within a notice of violation.

R649-11-2. Provisions of State Enforcement.

1. Notice of Violation.

1.1. During any division inspection, including a record review, if the division determines that a violation exists that does not cause imminent danger or harm, the division may issue a notice of violation to the owner and operator fixing a reasonable time, not to exceed 90 calendar days, for the abatement of the violation and providing opportunity for a hearing before the division as articulated in Section R649-10-3.

1.2. A notice of violation shall be issued in writing, signed by an authorized representative of the division, and shall set forth with reasonable specificity:

1.2.1. the nature of the violation;

1.2.2. the remedial action required, which may include interim required actions;

1.2.3. a reasonable time for abatement; and

1.2.4. a reasonable description of the portion of the oil and gas operation to that it applies.

1.3. The division may extend the time set for abatement or for accomplishment of an interim step if the failure to meet the time previously set was not caused by lack of diligence on the part of the person. The total time for abatement under a notice of violation, including any extensions, may not exceed 90 calendar days from the date of issuance except as provided for in Subsection 1.5.

1.4. The division will terminate a notice of violation by written notice to the owner or operator when the division determines that violations listed in the notice of violation have been abated. If any violations have been abated within the time for abatement provided in the notice of violation, then no administrative penalty shall be assessed. Termination of a notice of violation will not affect the right of the division to assess administrative penalties for those violations that the owner or operator failed to abate within the time for abatement provided in the notice of violation.

1.5. Circumstances that may qualify an oil and gas operation for an abatement period of more than 90 days are:

1.5.1. where climatic conditions preclude complete abatement within 90 days;

1.5.2. where due to climatic conditions, abatement within 90 days would clearly cause more harm than it would prevent;

1.5.3. where the owner's or operator's action to abate the violation within 90 days would violate safety standards; or

1.5.4. other circumstances beyond the control of the owner and operator as deemed by the division.

2. Division Enforcement Order.

2.1. When a notice of violation has been issued and the owner or operator fails to abate the violation within the abatement period, then the division shall issue a division enforcement order. A division enforcement order shall require the person to take each step the division deems necessary to abate the violations covered by the order in the most expeditious manner possible.

2.2. A division enforcement order issued shall be in writing, signed by the authorized representative of the division who issued it, and shall set forth with reasonable specificity:

2.2.1. the nature of the violation;

2.2.2. the remedial action or affirmative obligation required, including interim required actions, if appropriate;

2.2.3. the time established for abatement;

2.2.4. a reasonable description of the portion of the oil and gas operation to which it applies; and

2.2.5. that the order shall remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the division.

2.3. Activities intended to protect public health, safety, and welfare and prevent resource detriment will continue during the period of any order unless otherwise provided.

2.4. The division may modify, terminate, or vacate a division enforcement order or cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person.

2.5. The division will terminate a division enforcement order or cessation order by written notice to the person, when it is determined that the conditions, practices, or violations listed in the order have been abated. If the violations have been abated within the time for abatement provided in the division enforcement order, then no administrative penalty shall be assessed. Termination of a division enforcement order will not affect the right of the division to assess administrative penalties for those violations that the person failed to abate within the time for abatement provided in the notice of violation.

3. Service of Notices of Violation, Division Enforcement Order and Administrative Penalties.

3.1. Notices of violation, division enforcement orders, and proposed administrative penalties assessment shall be served on the person promptly after issuance by one of the following methods:

3.1.1. Personal service, in accordance with the Utah Rules of Civil Procedure, Rule 4. Service shall be effective on the date of personal service.

3.1.2. First posting a copy of the notice at the oil and gas operation location or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the person at the last address provided to the division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.2. Service on the person shall be sufficient if service is made upon:

3.2.1. an officer of a corporation;

3.2.2. the person designated by law for service of process, or the registered agent for the corporation; or

3.2.3. an owner, or partner of an entity other than a corporation.

3.3. Proof of Service.

3.3.1. Proof of personal service shall be made in accordance with the Utah Rules of Civil Procedure, Rule 4.

3.3.2. Proof of posting or personal delivery may be made by a signed written statement of the person effecting posting or personal delivery stating the date, time, and place of posting, and, if personal delivery, the person to whom the notice was delivered.

4. Emergency Orders

4.1. The division director may immediately issue an emergency order, including an order to cease and desist if appropriate, in accordance with Section R649-10-5 if, during any division inspection, it finds any violation, which creates immediate and significant danger:

4.1.1. of waste occurring; or

4.1.2. to public health, safety or welfare.

R649-11-3. Administrative Penalty Assessment.

1. General. Any person who violated Title 40, Chapter 6, Board and division of oil, gas and mining, or a division rule, order or permit may be subject to an administrative penalty.

2. Maximum Administrative Penalty Amounts.

2.1. An administrative penalty on any person may not exceed \$5,000 per day for each day of a violation.

2.2. If the board determines that a violation is a willful violation, the board may impose an administrative penalty on that person not to exceed \$10,000 for each day of the violation.

2.3. Administrative penalties assessed by the division or the board may not exceed \$200,000 per violation per person.

3. Days of Violation. The duration of a violation shall be calculated in days as follows:

3.1. A reporting or other minor violation that presents low direct risk or threat of harm to public health, safety, and welfare, or resource detriment, begins on the day that the report should have been made or other required action should have been taken, and continues until the report is filed or the required action is completed to the division's satisfaction.

3.2. Violations that present a possibility of distinct, identifiable actual or threatened adverse impact, or violations that present a significant probability of actual or threatened adverse impact, begin on the date the violation was discovered or should have been discovered through the exercise of reasonable care and continue until the appropriate corrective action is completed to the division's satisfaction.

4. Penalty Calculation. The base penalty for each violation shall be calculated based on the division's penalty schedule. Each violation is initially assessed at the minor violation rate, but may be escalated to the major violation rate in accordance with Section R649-11-3.

5. Issuance of Proposed Assessments.

5.1. If a violation is not abated prior to the end of the abatement period specified for that violation, the division shall issue a proposed assessment to the person containing the penalty amount after the abatement period ends.

5.1.1. Failure by the division to serve a proposed assessment within 30 days will not be grounds for dismissal of any part of such assessment unless the permittee or operator:

5.1.1.1. proves actual prejudice as a result of the delay; and

5.1.1.2. makes a timely objection to the delay.

5.2. Upon abatement of the violation, or when the maximum penalty amount has been reached, the division will issue a final assessment to the person containing the final penalty amount.

5.2.1. Failure by the division to serve a final proposed assessment within 30 days will not be grounds for dismissal of any part of such assessment unless the permittee or operator:

5.2.1.1. proves actual prejudice as a result of the delay; and

5.2.1.2. makes a timely objection to the delay.

6. Violations Designated as Class 1.

6.1. Violations that present a low direct risk or threat of harm to public health, safety and welfare, or present a low direct risk of resource detriment, including:

- (a) Section R649-3-1 bonding violations;
- (b) Section R649-3-36 shut-in and temporarily abandoned wells violations;
- (c) Section R649-3-15 pollution and surface damage violations;
- (d) Section R649-3-34 well site restoration violations;
- (e) Section R649-3-16 reserve pit closure violations;
- (f) Rule R649-8 reporting violations;
- (g) Section R649-9-2 improperly secured disposal facility violations;
- (h) Section R649-9-2 minor leaks and spills violations;
- (i) Section R649-9-3 garbage and solid waste in evaporation pit violations;
- (j) Section R649-9-3 inadequate supervision violations;
- (k) Section R649-9-4 failure to monitor leak detection system violations;
- (l) Section R649-9-10 inadequate construction notification violations;
- (m) Section R649-9-11 facility records for review violations; and
- (n) any other violation listed in Title R649 or Title 40, Chapter 6, Board and Division of Oil, Gas and Mining.

7. Violations Designated as Class II.

7.1. Violations that present a possibility of distinct, identifiable, actual or threatened adverse impacts to public health, safety, and welfare, or resource detriment, including:

- (a) Section R649-3-22 commingling without approval;
- (b) Section R649-3-23 completion/recompletion without approval;
- (c) Section R649-3-32 not reporting an incident;
- (d) Section R649-3-20 flaring or venting without approval;
- (e) Section R649-3-23 and R649-3-4 not adhering to the approved procedure or conditions on an APD or sundry notice;
- (f) Rule R649-5 and R649-9 violation of permit conditions, such as UIC or facility;
- (g) Section R649-5-2 injecting over approved pressure;
- (h) Section R649-9-4 less than 2 feet freeboard;
- (i) Section R649-9-4;
- (j) Section R649-9-5;
- (k) Rule R649-8 false reporting; and
- (l) any other violation listed in Title R649 or Title 40, Chapter 6, Board and Division of Oil, Gas and Mining that presents

a possibility of distinct, identifiable, actual or threatened adverse impacts to public health, safety and welfare, or resource detriment.

8. Violations Designated as Class III.

8.1 Violations that present a significant probability of actual or threatened adverse impact to public health, safety, and welfare, or resource detriment, including:

- (a) Section R649-3-4 drilling or spudding without an approved permit;
- (b) Section R649-3-24 P&A without approval;
- (c) Section R649-3-15 disposal of fluids in unapproved or improper facility or by improper method;
- (d) Rule R649-5 injection into reservoir or formation without approval;
- (e) Section R649-9-3 facility operating without a permit;
- (f) Section R649-9-4 pits overtopped;
- (g) Section R649-9-4 breached pit; and
- (h) any other rule violation listed in Title R649 or Title 40, Chapter 6, Board and Division of Oil, Gas and Mining that

presents a significant probability of actual or threatened adverse impact to public health, safety and welfare, or resource detriment.

9. Administrative Penalty Schedule.

9.1. Penalty Schedule. The division's penalty schedule establishes a daily penalty based on the classification of the rule violation, Class I, II, or III as provided in Subsection (6), (7), and (8), and the degree of actual or threatened adverse impact resulting from the violation, minor or major as provided in Subsections (9.2) and (10).

TABLE

9.1.1. Daily Penalty Schedule

Violation	Class I	Class II	Class III
Degree:			
Minor	\$750	\$1,500	\$5,000
Major	\$1,500	\$5,000	\$10,000

9.2. Degree of actual or threatened adverse impact. A minor violation and associated penalty amount may be increased to a major violation and penalty amount based on the degree of actual or threatened adverse impact to public health, safety and welfare, or resource detriment resulting from the violation. The division shall determine the degree of actual or threatened adverse impact to public health, safety, and welfare, or resource detriment, based on the totality of circumstances in each case that may involve increasing a Class I violation to a Class II or Class III violation, or increasing a Class II violation to a Class III violation.

10. Penalty Adjustments based on Aggravating and Mitigating Factors. The division shall consider aggravating and mitigating factors when determining if a violation is minor or major. These factors shall include:

10.1. Aggravating factors:

10.1.1. The violation involved a substantial departure from the standards of ordinary care of a reasonable prudent person.

10.1.2. The violation was a willful violation.

10.1.3. The violation had a significant negative impact on human health or resource detriment.

10.1.4. The violation resulted in significant waste of oil and gas resources.

10.1.5. The violation had a significant negative impact on correlative rights of other parties.

10.1.6. The violator was nonresponsive to the division in correcting or responding to the violation.

10.1.7. The violator benefited economically from the violation, in that case the amount of such benefit shall be taken into consideration.

10.1.8. The violator has a history of previous violations at the particular well or facility.

10.2. Mitigating factors:

10.2.1. The violator self-reported the violation.

10.2.2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

10.2.3. The cause of the violation was outside of the violator's reasonable control and responsibility.

10.2.4. The violator made a good faith effort to comply with applicable requirements prior to the division learning of the violation.

10.2.5. The violator has demonstrated a history of compliance with division rules, orders, and permits.

10.2.6. The violator has not been served with a notice of violation within the twenty-four-month period prior to the subject violation at issue.

11. Repeat Violations. The division shall consider the history of previous violations at a particular well or facility when determining an appropriate administrative penalty. If the person has three or more violations of the same minor violation in the twenty-four-month period immediately preceding the violation at issue, the minor violation shall escalate to a major violation.

12. Unabated Violations. The division may request an emergency order from the board requiring well or facility operations be suspended for any unabated violation where the maximum penalty amount has accrued. Operations may only resume upon abatement of the violation and payment of the penalty.

13. Appeals. A notice of violation, division enforcement order, or administrative penalty assessment issued by the division may be appealed by filing a request for agency action with the division within 30 calendar days of the assessment following the procedures provided in Section R649-10-2.

KEY: oil and gas law

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Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.; 63G-4