

COLORADO RISING

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February 5, 2020

Via email c/o: kyle.davenport@coag.gov

Colorado Oil and Gas Conservation Commission
Attn: Jeff Robbins, Director
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: Complaint #200448614

Mr. Robbins:

As you are aware, Colorado Rising for Communities filed the above-referenced complaint with your agency regarding the failure of 316 oil and gas operators to properly file reports or to file any reports from 2016 to present date related to severance tax. These reports are required to be filed by law. § 34-60-106(1)(b) and (e), C.R.S. (2019).

Based on the report from the Office of the State Auditor, it appears that since 2016, 51,264 reports were not properly filed and/or were not filed. This is not only a pattern of violation, but sheer gross negligence, and willful misconduct. § 34-60-121(1)(c)(II)(C)-(D). As you are well aware, these forms keep track of severance taxes owed to the people of Colorado for the taking of our irreplaceable and nonrenewable minerals. §§ 39-29-101(1)-(3).

While some people may want to point the finger at the Commission for its failure to ensure compliance, we think the blame is squarely placed on an industry that has known for decades that it must file these reports. It should disgust you, as it does Coloradans, that this industry has either failed or refused to adhere to its statutory obligations.

We filed our Complaint under the Commission's rules to ensure that this abusive industry is held accountable for its unlawful acts. These are more than just paperwork violations. These acts also are more than just a simple mistake committed 51,264 times over a three-year period. This matter involves severance taxes, which are allocated to projects that further protect public

health, safety, welfare, environment, and wildlife resources. As such, we seek the maximum penalties allowable for a pattern of misconduct that is grossly negligent and willful.

Under the Colorado Oil and Gas Conservation Act (the “Act”), the Legislature clearly mandates that penalties must be levied for these tens of thousands of violations. The Act states:

*Any operator that violates this article, any rule or order of the commission, or any permit is subject to a penalty of not more than fifteen thousand dollars for each act of violation **per day** that such violation continues.*

§ 34-60-121(1)(a) (emphasis added). The Legislature also was very clear that reporting violations: “[B]egins on the day that the report should have been made or other corrective action should have been taken; and ends when the required report is submitted or other corrective action is commenced.” § 34-60-121(1)(c)(I)(A). The Legislature ensured that neither you nor the Commission has the discretion to reduce the number of days of violation for which a penalty is assessed below that number which the evidence supports. § 34-60-121(1)(e).

With that said, it is our understanding based on reports in the press that you do not intend to pursue the **entire** penalty owed by these unlawful oil and gas operators. We also are hearing reports that your office is arguing that penalties cannot be assessed beyond one year. If these reports are true, your argument is legally false and raises substantial concerns about whether you and the Commission will follow the Act and protect Coloradans.

Upon review of the Act, it describes that no action or other proceeding based upon a violation can be commenced after one year from the date of the alleged violation. § 34-60-115. However, this one year limitation is completely separate from the violations and penalties section of the Act. In that section, reporting violations are continuing violations. It is precisely because of this separation that the one-year limitation does not apply to situations involving 51,264 reporting violations over a three-year period. My argument is not without substantial legal precedence. In fact, multiple Colorado Court of Appeals’ rulings clearly address this issue.

One particularly case on point, *Crowell v. Indus. Claims Appeals Ofc.*, 298 P.3d 1014 (Colo. App. 2012), involved a workers compensation claimant who sought review of a final order of the Industrial Claims Appeals Office determining that the penalty imposed against the employer and its insurer was properly awarded based on a one-time violation, rather than a continuing violation. The Court reversed the final order.

In its analysis, the Court noted that one part of the statute had a one year statute of limitations. However, the Court also noted that a second part of the statute addressed ongoing conduct. *Id.* at 1016. In finding that the ongoing conduct portion of the statute applied, the Court noted that: “[t]he difference between a one-time violation and a continuing violation hinges on whether the violation is subject to being cured by a subsequent action.” *Id.* The Court also indicated that continuing violations justify separate penalties for each day the illegal act occurs *Id.*, at 1017.

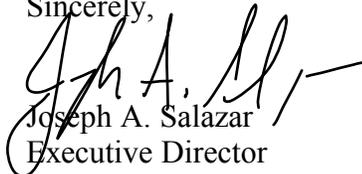
As explained above, the penalties section of the Act not only is separate from the one year limitation provision, but it also specifically addresses continuing violations and how oil and gas operators can correct their actions. § 34-60-121(1)(c)(I)(A). In sum, both the Act and case precedence prohibit you or the Commission from ignoring the continued acts and conduct of 316 oil and gas operators that failed to submit their severance tax reports since 2016.

The purpose of this letter is to seek clarification from you whether you intend on enforcing the law and penalize the offending oil and gas operators from the date of each violation until their conduct is corrected. It is important to the people of the state of Colorado to know if this agency will protect their rights.

Accordingly, as Colorado Rising for Communities is the complainant in this matter, please provide us with your response **on or before February 12, 2020**. If we do not receive your response, we will assume that the agency's statements to the press are true and that you will not follow the rule of law. We will then weigh whether we will have to seek a writ of mandamus from the Denver District Court for proper enforcement.

Should you have any questions or comments, please do not hesitate to contact me at your earliest convenience at (303) 895-7044. Mr. Robbins, I would rather see that we are on the same page with respect to this Complaint.

Sincerely,



Joseph A. Salazar
Executive Director