

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF) CAUSE NO. 1V
THE RULES AND REGULATIONS OF THE) DOCKET NOS. 170900311
COLORADO OIL AND GAS CONSERVATION) 171000772
COMMISSION BY CHARLES P DUNNING, LLC,)
ADAMS COUNTY, COLORADO) TYPE: ENFORCEMENT
) ORDER NO. 1V-650

ADMINISTRATIVE ORDER BY CONSENT

(Pursuant to Rule 522.e.(1) of the Rules and Regulations of the
Colorado Oil and Gas Conservation Commission, 2 CCR 404-1)

FINDINGS

1. Charles P. Dunning, LLC ("Dunning") (Operator No. 200077) is the operator of record of the JOLLY-PLATTS-63S58W34SWSW Location ("Jolly Platts Location") (Location ID 319643) and the Jolly-Platts 1 well ("Well") (API No. 05-001-06031) located in Adams County, Colorado.

2. On July 20, 2010, effective February 10, 2010, Dunning assumed operatorship of the Jolly Platts Location and associated Well and facilities. (Doc. No. 1906627)

NOAV 401241213

3. On March 12, 2015, COGCC Staff inspected the Well and observed that natural gas from the Well was being flared through an enclosed combustion device. (Doc. No. 673900776) Inspection No. 673900776 was provided to Dunning's Principal Agent of record listed on Dunning's most recent Form 1A, Designation of Agent. (Doc. No. 02540098)

4. On March 27, 2015, COGCC Staff sent an email to Dunning's Principal Agent requiring that Dunning submit a Sundry requesting Director approval to flare the Well and to include a gas analysis as an attachment. In the email, (Doc. No. 681700239)

5. Beginning with July 2016, Dunning submitted Form 7s, Operator's Monthly Reports of Operations, reporting the flaring of gas from the Well. Dunning failed to submit a Form 4, Sundry Notice, requesting Director approval to flare the Well and continued to flare the Well without ever receiving such approval.

6. On March 23, 2017, Commission Staff issued a Notice of Alleged Violation ("NOAV") (No. 401241213) to Dunning citing a violation of COGCC Rules of Practice and Procedure, 2 CCR 404-1 ("Rule" or "Rules") Rule 912.b. (Venting or Flaring Natural

Gas – Notice and Prior Approval Required) for failure to obtain Director approval to flare the well.

7. On September 1, 2017, Dunning submitted a Form 4, Sundry Notice, requesting Director approval to continue flaring the Well. (Doc. No. 401397548)

NOAV 401408533

Rules 303, 903, and 904

8. There are four production pits located on the Jolly Platts Location, including the Jolly Platts 200628 Pit ("Western Pit") (Facility ID 452274) and a complex of three pits to the east of the Western Pit (collectively the "Eastern Pit Complex").

9. Dunning constructed the Western Pit after assuming operatorship of the Jolly Platts Location.

10. The Western Pit is a Production Pit, as defined by the COGCC 100-Series Rules, and has been used historically to temporarily store produced water on the Jolly Platts Location. The Western Pit is not currently in operation, but upon completion of the conditions of approval contained in the approved Form 15, Earthen Pit Report/Permit, identified in Paragraph 19 herein, Dunning may use the pit to temporarily store produced water.

11. Dunning constructed the Western Pit unlined and did not submit to the COGCC for prior approval a Form 15, Earthen Pit Report/Permit, or a Form 2A, Oil and Gas Location Assessment, before constructing the Western Pit.

12. After assuming operatorship of the Jolly Platts Location, Dunning constructed a new pit area enlarging the Eastern Pit Complex without submitting to the COGCC for prior approval a Form 15, Earthen Pit Report/Permit, and a Form 2A, Oil and Gas Location Assessment.

13. On March 12, 2015, COGCC Staff inspected the Jolly Platts Location and Well and reported in Field Inspection Report No. 673900776 that four pits were present on the Location and noted that there was only a single pit permit for a single produced water pit for the Location. The three additional pits observed in Field Inspection Report 673900776 are the Western Pit and the enlarged Eastern Pit Complex.

14. Field Inspection Report 673900776 included a Corrective Action requiring Dunning to submit permits for the other three pits and established a Corrective Action deadline of April 30, 2015; Dunning did not submit Form 15s, Earthen Pit Reports/Permits, for the Western Pit and enlarged Eastern Pit Complex by April 30, 2015.

15. On April 7, 2016, COGCC Staff inspected the Jolly Platts Location and reported in Field Inspection Report No 681700115 that four pits were present on the

Location and noted that there was only a single pit permit for a single produced water pit for the Location.

16. Field Inspection Report No. 681700115 included a Corrective Action requiring Dunning to file immediately Form 15s, Earthen Pit Report/Permits, for all produced water pits on the Jolly Platts Location including the Western Pit and enlarged Eastern Pit Complex. Report 681700115 restated the Corrective Action deadline of April 30, 2015 from Field Inspection No. 673900776.

17. During the April 7, 2016 inspection, COGCC Staff also reported that Dunning constructed the Western Pit on top of a drainage and in proximity to surface water. Upon review of additional information, COGCC Staff determined that the Western Pit was built in a Sensitive Area.

18. On August 11, 2017, Dunning submitted a Form 15, Earthen Pit Report/Permit for the Western Pit, but, after conducting their review, on August 22, 2017, COGCC Staff informed Dunning that the submission was incomplete and could not be approved as submitted.

19. On September 18, 2017, Dunning submitted all required attachments for the Form 15, Earthen Pit Report/Permit and on September 21, 2017, Staff approved the Form 15, Earthen Pit Report/Permit, with Conditions of Approval (Doc. No. 401373722)

20. On October 6, 2017, COGCC Staff inspected the Jolly Platts Location and observed that a pit liner was installed in the Western Pit (Doc. No. 685504062).

Rules 204 and 205

21. On the morning of August 30, 2017, COGCC Staff attempted to inspect Dunning's Jolly Platts Location, but the gate blocking the road to the location was locked and Dunning did not provide access to the location. (Doc. No. 681700831)

22. On August 31, 2017, Dunning, through counsel, provided the information necessary for Staff to access the Jolly Platts Location.

NOAV Issued

23. On September 20, 2017, Commission Staff issued NOAV No. 401408533 to Dunning citing violations of the following COGCC Rules:

- a. Rules 204 and 205.g. (General Functions of the Director and Access to Records) for failure to guarantee access for COGCC Staff to inspect an oil and gas property at a reasonable time;
- b. Rule 303 (Form 2A, Oil and Gas Location Assessment) for conducting surface disturbances to add a production pit to the Well location and to enlarge an existing production pit prior to submitting, and securing approval of, a Form 2As;

- c. Rule 903 (Pit Permitting/Reporting Requirements) for failing to submit Form 15s and secure Director approval prior to the addition of a production pit and prior to the enlarging of an existing pit at the Well location; and
- d. Rule 904 (Pit Lining Requirements and Specifications) for constructing an unlined production pit after April 1, 2009.

24. Following factual investigation and legal review of the violations alleged in the NOAV, Hearing Staff now asserts Dunning has committed violations of the following COGCC Rules:

NOAV	Rule Nos.	Days of Violation	Start Date	End Date	Class	Impact	Daily Base Penalty	Total Penalty
401241213	912.b.	397	7/31/2016	9/1/2017	2	Minor	\$2,500	\$61,390
401408533	204/ 205.g.	1	8/30/2017	8/31/2017	2	Minor	\$2,500	\$2,500
401408533	303.b./ 903	445	9/22/2016	12/11/2017	2	Minor	\$2,500	\$62,350
401408533	904.a.	379	9/22/2016	10/6/2017	2	Minor	\$2,500	\$61,030
TOTAL PENALTY								\$187,270

25. Pursuant to Rule 523 and the Commission's Enforcement and Penalty Policy, Hearings Staff calculated a penalty of \$187,270 for this violation. The penalty calculation is based on the following:

- a. Rules 204 and 205.g.;
 - i. Consolidation of Rules 204 and 205.g. for penalty purposes;
 - ii. Violation commenced on August 30, 2017, and ended on August 31, 2017;
 - iii. Class 2, minor impact;
 - iv. Daily base penalty of \$2,500;
- b. Rules 303.b. and 903;
 - i. Consolidation of Rules 303.b. and 903 for penalty purposes;
 - ii. Violation commenced on September 22, 2016, is ongoing, and for purposes of calculating penalty will be deemed to end on December 11, 2017, the start date of the December 2017 Commission Hearing;
 - iii. Class 2, minor impact;
 - iv. Daily base penalty of \$2,500;
- c. Rule 904.a.;
 - i. Violation commenced on September 22, 2016, and ended on October 6, 2017, the date that Staff confirmed Dunning completed the installation of the liner in the Western Pit;
 - ii. Class 2, minor impact;
 - iii. Daily base penalty of \$2,500;
- d. Rule 912.b.;

- e. Application of the Duration Matrix from the COGCC Enforcement Guidance and Penalty Policy January 2015 (corrected 4/8/2015); and
- f. No mitigating or aggravating factors, pattern of violation, or gross negligence or knowing and willful misconduct.

26. On November 10, 2017, Dunning submitted to the office of the Colorado Attorney General a "COGCC Application for Consideration of Inability to Pay Standard Enforcement Penalty" and supporting documentation as contemplated in the COGCC Enforcement Guidance and Penalty Policy. Documents submitted included IRS tax filings for 2014-16, a tax-basis financial summary of Charles P Dunning, LLC's financial condition, and a written narrative. The documents submitted sufficiently demonstrate that imposition of the standard enforcement penalty, as calculated by Hearings' Staff, would be likely to jeopardize Dunning's ability to continue oil and gas operations in Colorado and could cause Dunning to "orphan" its assets, leaving the State with unfunded liability for remediation, plugging, abandonment, and reclamation. The intent of this AOC between Staff and Dunning is to permit Dunning to continue operating its assets and avoid leaving the State with unfunded liability for remediation, plugging, abandonment, and reclamation of orphaned assets.

AGREEMENT

NOW, THEREFORE, based on the Findings and pursuant to Rule 522.e.(1) and the Commission's Enforcement and Penalty Policy, the Director and Dunning request that the Commission approve the Order set forth below.

RECOMMENDED this 16th day of November, 2017.

OIL AND GAS CONSERVATION COMMISSION OF
THE STATE OF COLORADO

By 
David A. Beckstrom, Assistant Attorney General

AGREED TO AND ACCEPTED this 16 day of November, 2017.

CHARLES P. DUNNING, LLC

By Charles P. Dunning
Signature of Authorized Company Representative
CHARLES P. Dunning
Print Signatory Name
OWNER
Title

ORDER

HAVING CONSIDERED the Agreement between the Director and Charles P. Dunning, LLC to resolve the NOAV, the COMMISSION ORDERS:

1. Dunning is found in violation of Rules 204, 205.g., 303.b., 903, 904, and 912.b., as described above.
2. Dunning is assessed a penalty of \$187,270.
3. Based on the finding that Dunning is unable to pay the penalty calculated by Hearings Staff, it is hereby ordered that within 30 days of this approved AOC being mailed by the Commission, Dunning will remit \$15,000 in additional financial assurance for the Jolly Platts Location. COGCC will retain the additional financial assurance in the amount of \$15,000 pursuant to Commission Rules 701 and 709 to ensure Dunning's successful completion of Final Reclamation of the Jolly Platts Location pursuant to COGCC Rules 1002, 1003, and 1004.
4. The entire \$187,270 of the standard enforcement penalty will be suspended pending Dunning's remittance of the additional financial assurance in Paragraph 3 and successful completion of the Corrective Actions in Paragraph 5, below.
5. Corrective Actions:
 - a. No later than January 31, 2018:
 - i. Dunning will submit a Form 2A and all necessary supporting documentation for the Western Pit and Eastern Pit Complex. The Form 2A must comply with all applicable provisions of the COGCC 300 Series Rules.

- ii. Dunning will complete all Conditions of Approval set out in Form 15, Earthen Pit Permit/Report, No. 401373722.
- iii. Dunning will submit all information necessary for COGCC Staff to approve Dunning's Form 4, Sundry Notice, No. 401397548, requesting approval to flare the Jolly Platts #1 Well.
- iv. Dunning will submit the Form 6, Subsequent Report of Abandonment, for the Shoemaker #7-19 well (API 05-123-18970).

b. No later than April 30, 2018:

- i. Dunning will cut and cap the Shoemaker #7-19 wellhead in accordance with COGCC Rule 319.a. (Plugging) and commence final reclamation of the location in accordance with the COGCC 1000-Series Rules; and
- ii. Dunning will cut and cap the Shoemaker #4-19 (API 05-123-18989) wellhead in accordance with COGCC Rule 319.a. (Plugging) and commence final reclamation of the location in accordance with the COGCC 1000-Series Rules.

6. If Dunning timely remits the additional financial assurance set forth in Paragraph 4 and timely completes all Corrective Actions set forth in Paragraph 5, the suspended penalty of \$187,270 will be vacated. If Dunning fails to comply with Paragraphs 4 or 5, the Director may require Dunning to pay the suspended penalty of \$187,270 without further action from the Commission. Dunning will pay any unsuspended penalties assessed pursuant to this paragraph within 30 days of the mailing of the Director's demand for payment.

7. Compliance dates specified in this Order may be extended only for good cause, as determined at the Director's sole discretion. A request for extension must be made, in writing, at least 35 days prior to the pertinent compliance deadline or as soon as possible if 35 days prior notice is not feasible. Failure to receive an extension prior to the compliance deadline or the failure to meet a compliance deadline may constitute a new violation subject to additional penalties.

8. This Order does not relieve Dunning from undertaking and completing abatement or corrective actions that may be required by the Notices of Alleged Violation described in Finding Nos. 6 and 23, above, or any amendments or modifications thereto specified by the COGCC Staff.

9. Failure to pay the penalty or perform any corrective actions by the above deadlines is an independent violation that may be subject to additional penalties.

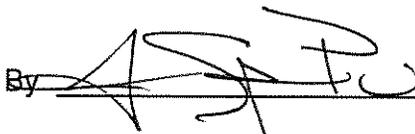
10. This Order is effective as of the date it is mailed by the Commission. It constitutes final agency action for purposes of judicial review.

11. The Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above orders.

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ENTERED this 12 day of December, 2017 as of the 11th day of December, 2017.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By  _____
Julie Prine, Secretary

CERTIFICATE OF MAILING

On December 18 2017, a true and accurate copy of Commission Order 1V- 650 was mailed by first-class mail return receipt requested to the following:

Charles P. Dunning, LLC
Attn: Chuck Dunning
PO Box 1365
Fort Morgan, CO 80701

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Margaret Humecki