

Example of Arguments to expect during upcoming New Mexico Legislative Sessions regarding the push by environmental advocates to give OCD administrative authority to penalize Oil and Gas producers.

ENVIRONMENT ADVOCATES have written the following to push for legislation to give OCD administrative authority to hand out penalties, such as significant fines, for violations. Here is an example of one of their arguments to give more regulatory power to OCD:

In November 2007, Marbob Energy Corporation ([Marbob](#)) [challenged the agency’s statutory authority to assess civil penalties](#). In November 2009, the [New Mexico Supreme Court ruled that OCD does not have the authority](#) to administratively assess penalties for violations. Rather, the Court ruled that the state Attorney General’s office must bring suit on behalf of the OCD for each and every violation to establish liability and assess the appropriate penalty, and this [suit must be brought in the district court](#) in the county in which the operator/defendant resides or in the county where the violation occurred.

Comparison of NM statutory penalties

Inconsistent penalty assessment in New Mexico statutes.

	Maximum Penalty	Strict Liability	Able to administratively assess penalties
<i>Oil and Gas Act</i>	1,000 ¹	NO. OCD must prove violator acted willfully and knowingly. ¹	NO ¹
<i>Air Quality Control Act</i>	\$15,000 ²	YES. Knowing and willful violations can increase a penalty, but lack of knowledge cannot reduce or negate a penalty. ³	YES ²
<i>Water Quality Act</i>	\$10,000 to \$15,000 ⁴	YES. Whenever a constituent agency determines there has been a violation the agency may issue a compliance order to assess a civil penalty. ⁴	YES ⁴
<i>New Mexico Mining Act</i>	\$10,000 ⁵	YES. Knowing and willful violations may increase a penalty but aren’t required to assess a penalty. ⁵	YES ⁵

Not only is the maximum penalty extremely low, but the threshold for assessing this penalty is extremely high: [penalties only apply if an operator knowingly and willfully commits the violation](#). This is a much higher burden of proof than is required in other states such as Pennsylvania, where civil penalties “may be assessed [whether or not the violation was willful](#).” New Mexico’s own Air Quality Bureau has a policy that states, “a violator’s knowledge regarding the requirement may result in an upward adjustment [to the penalty amount], but the violator’s lack of knowledge regarding the requirement does not excuse the violation because [ignorance of the law is not a defense to liability](#).”

As seen from this table, other New Mexico resource or environmental statutes provide for higher penalties than the Oil and Gas Act, they provide “strict liability” for civil penalties (i.e., a violator is subject to a penalty for any violation regardless of knowledge or intent), and the penalties can be assessed administratively (i.e., by the agencies, not the courts).

Clearly, New Mexico’s oil and gas statute needs to be revised to return to OCD the ability to assess administrative penalties, and increase penalty amounts to at least match other oil and gas producing states and other agencies within New Mexico. Otherwise, there will continue to be little motivation for oil and gas operators to adhere to New Mexico’s oil and gas rules.