

## ADMINISTRATIVE PENALTY AUTHORITY

Under the language of [the amended HB546 bill](#), which was signed by Governor Lujan Grisham, the Oil Conservation Division (OCD) will have new administrative authority to issue civil fines for violations, **including potential fines for violations that occur beyond the scope of knowingly and willingly on the part of the operator** effective Jan. 1, 2020.

The OCD will hold a rulemaking hearing later this year to create a schedule of penalty fee amounts for the range of potential violations. A new penalty fee schedule should dictate that minor violations receive smaller fines and help ensure some consistency of enforcement from among various inspectors.



Thus, after Jan. 1, 2020, the OCD will have authority to fine an operator up to **\$2,500 per day per violation, and up to \$10,000 per day after 30 days**. An operator can contest a civil penalty with the Oil Conservation Committee. **If a single violation accrues to \$200,000, an operator will be given the option to appeal the fine to the district court where the violation occurred** in order to ensure an impartial ruling.

IPANM remains in contact with the Oil Conservation Division and will work as a stakeholder to push for a reasonable penalty schedule so that minor violations receive minor fines, and that OCD doesn't use the authority as a weapon against industry or for political purposes.

IPANM stood in opposition to this bill during the 2019 New Mexico Legislative Session because it essentially gives the OCD the authority to fine civil penalties to operators for well violations. OCD will now have the administrative penalty authority it previously had up until 2009 (before [MARBOB ENERGY CORPORATION v. NEW MEXICO OIL CONSERVATION COMMISSION](#)). HB546 gives OCD the needed legislative authorization to resume penalty authority beginning in 2020.

IPANM's major concerns has always been that the Administrative Penalties Bill allows OCD to fine for violations beyond the scope of willingly and knowingly. Our concern is that smaller, independent producers could face exorbitant fines for circumstances beyond the control of the operator that would threaten solvency without an option for recourse.

IPANM was able to negotiate within the structure of a stakeholder group made up of NMOGA, industry representatives, the Oil Conservation Division, environmental groups and the bill's sponsor. These negotiations did eliminate initial drafts that gave OCD authority to bring 3rd Degree Criminal Penalties against operators. The negotiations also led to a reduction of fines thresholds down from \$15,000/day (\$30,000/day after 30 days) and no option to contest a fine in district court to \$2,500/day (\$10,000/day after 30 days) with an option to contest a fine in the district court where the violation occurred if the fine exceeds \$200,000.

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