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Utah

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UTAH



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I. Case Law

There were no notable judicial decisions by Utah courts concerning oil and gas development during the last year.

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II. Legislative & Regulatory Developments

A. Legislative Developments

There was no significant activity in Utah's 2021 General Assembly that directly impacts oil and gas development. That said, two recent enactments are worth a brief mention with respect to broader mineral development policy considerations: Senate Bill 133¹ and Senate Concurrent Resolution 008.²

S.B. 133 Modifies Severance Tax Administration

Senate Bill 133, effective May 5, 2011, amended various sections of the Utah Code to change the state's allocation and use of oil and gas severance tax revenue. Senate Bill 133 created a group of division-specific "Restricted Accounts"³ into which certain portions of severance tax revenue must be contributed.⁴ These annual allocations to each Restricted Account will then fund relevant projects administered by the applicable administrative body. For example, the share of state severance tax revenue to be allocated to the new "Division of Air Quality Oil, Gas and Mining Restricted Account" will be used "to pay the costs of programs or projects administered by the [Division of Air Quality] that are primarily related to oil, gas and mining."⁵

S.C.R. 008 Expresses State's Support for Mineral Development

In addition to the substantive amendments above, the Utah General Assembly adopted Senate Concurrent Resolution 008 in May 2021. This resolution formalizes legislative support for preserving the long-standing tradition of active and responsible fossil fuel development in Utah. The crux of S.C.R. 008 is its formal "reminder" to the federal government of its "legal obligation" to facilitate reasonable mineral development on public lands under the Mineral Leasing Act, Federal Land Policy and Management Act and related federal law.⁶

1. S.B. 133, 2021 Gen. Sess. (Utah 2021) (amending UTAH CODE ANN. § 40-6-2, *et seq.*).

2. S.C.R. 008, 2021 Gen. Sess. (Utah 2021).

3. *See* UTAH CODE ANN. §§ 19-2a-106 (creating the "Division of Air Quality Oil, Gas and Mining Restricted Account"), 19-5-126 (creating the "Division of Water Quality Oil, Gas and Mining Restricted Account"), 40-6-23 (creating the "Division of Oil, Gas and Mining Restricted Account").

4. *See id.* § 19-5-126(3)(a).

5. *See id.* § 19-2a-106(3)(a).

6. *See* S.C.R. 008, 2021 Gen. Sess. (Utah 2021).

B. Regulatory Updates

DOGM Updates Administrative Penalty Rules

Last year's update discussed the passage of Senate Bill 2020-148, which directed the Utah Division of Oil, Gas and Mining ("DOGM") to review its regulations governing the assessment and collection of administrative penalties.⁷ After rounds of public input, the DOGM's new and improved penalty enforcement rules were approved and made effective on May 27, 2021.

Under these procedures now in place,⁸ if a DOGM inspection or review uncovers a permit or rule violation, it "may issue a notice of violation to the owner and operator fixing a reasonable time, not to exceed 90 calendar days,⁹ for the abatement of the violation and providing opportunity for a hearing..."¹⁰ The process governing such a hearing before the DOGM is detailed in the revised Section R649-10-3.

If a notice of violation ("NOV") recipient performs sufficient abatement activities in the time and manner set forth in the NOV, the NOV will be terminated by DOGM and the party will not be subject to any administrative penalties.¹¹

If an NOV recipient does not timely resolve the violation, DOGM will then issue an enforcement order ("EO"), again detailing the violation(s), remedial action required and a reasonable time by which to comply.¹² Still, like the NOV stage, if the owner/operator cures the identified problem(s) in the time and manner required under an EO, the abated violation(s) will not give rise to any liability for DOGM penalties.¹³

7. See Jim Tartaglia, *Utah*, 6 Oil & Gas, Nat. Resources & Energy J. 289 (2020), <https://digitalcommons.law.ou.edu/onej/vol6/iss2/23>.

8. See UTAH ADMIN. CODE § R649-11-1, *et seq.* (2021); *see also id.* §§ R649-10-1, *et seq.* (regarding DOGM final order and hearing procedures).

9. *But see* UTAH ADMIN CODE § R649-11-2(1.5), which lists limited circumstances in which DOGM may find it appropriate to set an abatement period exceeding 90 days.

10. *Id.* § R649-11-2(1.1).

11. *Id.* § R649-11-2(1.4).

12. *See id.* § R649-11-2(2.1-2.2).

13. *See id.* § R649-11-2(2.5).

The failure to comply with an NOV and subsequent EO exposes an owner/operator to potentially substantial administrative penalties, which accrue daily.¹⁴ These monetary penalties that DOGM can enforce vary widely based on the severity and scope of the outstanding violation(s).¹⁵

14. For minor violations, penalties start accruing from the date that remedial action under the EO was due. *See id.* § R649-11-3(3.1). However, for violation(s) posing a potential of adverse impacts, the daily accrual dates back to the violation's discovery (on or before the first NOV). *See id.* § R649-11-3(3.2).

15. *See generally id.* § R649-11-3, which details the parameters of DOGM's monetary penalties.