

State of Colorado  
Oil and Gas Conservation Commission

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Document Number:  
401562363  
Date Issued:  
03/05/2018  
Date Resolved:  
03/10/2021

## NOTICE OF ALLEGED VIOLATION - RESOLVED

Per Rule 522, the Director has reasonable cause to believe that a violation of the Act, or of any Commission rule, order, or permit has occurred, the Director will require the operator to remedy the violation and may commence an enforcement action seeking penalties by issuing a Notice of Alleged Violation (NOAV). Per Rule 523, an operator who violates the Act, or a Commission rule, order, or permit may be subject to a penalty imposed by Commission order.

### OPERATOR INFORMATION

OGCC Operator Number: 10071	Contact Name and Telephone:
Name of Operator: HIGHPOINT OPERATING CORPORATION	Name: Matt Barber
Address: 1099 18TH ST STE 2300	Phone: (303) 312-8188 Fax: ( )
City: DENVER State: CO Zip: 80202	Email: mbarber@billbarrettcorp.com

### Well Location, or Facility Information (if applicable):

API Number: 05- - -00	Facility or Location ID: 448950
Name: SANDY HILL	Number: 5-61-29
QtrQtr: NWNE Sec: 29	Twp: 5N Range: 61W Meridian: 6
County: WELD	

### ALLEGED VIOLATION

Rule: 34-60-121(1) CRS-b

Rule Description: Statutory Violation - Permit Violation

Initial Discovery Date: Was this violation self-reported by the operator? No

Date of Violation: Approximate Time of Violation:

Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 907.a.(3), Bill Barrett Corporation ("Operator") may propose plans for managing E&P waste through beneficial use, reuse, and recycling by submitting a written management plan to the Director for approval on a Sundry Notice ("Form 4"), if applicable. Pursuant to Operator's Form 4 (Document No. 401269265), approved May 5, 2017, for the Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location"), Operator will dispose of Exploration and Production ("E&P") waste as described in the approved Waste Management Plan (Document No. 401269296, "WM Plan").

Item No. 3. of the Material Handling section of the WM Plan states: "The cuttings will be transported to the land application site and evenly distributed in a lift not to exceed 3-inches. The soil will be disked to ensure proper incorporation. A water truck will be utilized if dust suppression is needed. The material shall remain stockpiled at the drilling location in an onsite berm until weather permits incorporation without interruption." The Offset Building Unit Mitigation section states: "The COGCC guidance of incorporating cuttings within 10 days of application will be followed."

The surface owner ("Complainant") of the adjoining land to the south of the Location submitted a complaint to COGCC on January 24, 2018, (Document No. 200445363, the "Complaint"). The Complaint stated that "They are not following the COGCC approved permit. The smell is awful. The truck traffic is much higher than stated in the permit. The mud is deeper than 3 inches. No mitigation strategies have been employed. There is frequently a pond of mud. Mud has oozed 30 feet onto my property and has killed my grass. Dirt and mud have blown onto my property as well."

COGCC Staff conducted an inspection of the Location on January 25, 2018, (Document No. 679700799), and observed that cuttings

were being stockpiled at the land application area and not on the drilling locations. The volume of cuttings stockpiled indicates that incorporation was not occurring within 10 days. COGCC Staff further observed debris on snow drifts indicating strong potential for nuisance from dust from the Location, and that there was no dust suppression equipment onsite.

By stockpiling drill cuttings on the Location and failing to incorporate the drill cuttings within 10 days, Operator failed to follow their approved WM Plan, violating Rule 907.a.(3), the approved Sundry and § 34-60-121.(1)(a), C.R.S.

Abatement or Corrective Action Required to be Performed by Operator:

Corrective Action Due Date: 03/15/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall incorporate or remove stockpiled drill cuttings. Operator shall discontinue use of the Location until all drill cuttings are incorporated. Operator shall apply dust suppression as needed to prevent dust blowing onto adjacent property.

Rule: 906.a.

Rule Description: Spills and Releases - General

Initial Discovery Date:

Was this violation self-reported by the operator? No

Date of Violation:

Approximate Time of Violation:

Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 906.a., Bill Barrett Corporation ("Operator") shall, immediately upon discovery, control and contain all spills/releases of E&P waste or produced fluids to protect the environment, public health, safety, and welfare, and wildlife resources. Operator shall investigate, clean up, and document impacts resulting from spills/releases as soon as practicable. COGCC 100-series Rules define "Spill" as any unauthorized sudden discharge of E&P waste to the environment, and "Release" as any unauthorized discharge of E&P waste to the environment over time.

The surface owner ("Complainant") of the adjoining land to the south of the Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location") submitted a complaint to COGCC on January 24, 2018, (Document No. 200445363, the "Complaint"). The Complaint stated that the Complainant had contacted Doug Dennison and Rusty Frishmuth [Operator's Environmental and Governmental Affairs Liaison and Environmental Health and Safety Manager], and that they [Operator] contacted Sandy Hill [Sandy Hill Land, LLC, the surface owner of the Location]. The Complaint further stated that "They [Operator] are not following the COGCC approved permit. The smell is awful. The truck traffic is much higher than stated in the permit. The mud is deeper than 3 inches. No mitigation strategies have been employed. There is frequently a pond of mud. Mud has oozed 30 feet onto my property and has killed my grass. Dirt and mud have blown onto my property as well."

In response to the Complaint, COGCC Staff conducted an inspection on January 25, 2018, (Field Inspection Report No. 679700799, submitted January 26, 2018; the "FIR"), and observed that drilling fluid had migrated off the Location onto Complainant's property (Spill/Release ID 454016, the "Spill"). COGCC Staff took photographs of the Spill showing that the drilling fluid had developed mudcracks and was beneath the snow drifts. These mudcracks indicate that the Spill had occurred long enough ago that it had time to dry before the snow fell. The most recent snowstorm occurred on January 21, 2018, so this Spill occurred prior to that date.

On February 8, 2018, Operator submitted an Initial & Supplemental Spill Report (Document No. 401538578, "Form 19"), stating they notified Sandy Hill Land, LLC, of the Spill and of the COGCC corrective actions from the FIR on or after January 26, 2018; and that "at the request of the landowner [the Complainant], no surface soil or vegetation was removed from the area, due to muddy conditions." Operator further indicated that samples were being taken on February 8, 2018, "on the impacted property to verify compliance with Table 910-1." Operator did not indicate any actions taken or intended to be taken to control or contain the Spill.

Operator has previously failed to prevent the migration of drilling fluids onto adjacent property. Spill/Release ID 452946 was released onto state land, and was reported to COGCC on November 4, 2017, after the State Land Board notified Operator on October 6, 2017, of the release (Document No. 401450400). In the January 2018 inspection, COGCC Staff photographed dried drilling mud remaining from this spill onto State Land Board land (Document No. 679700800, Photos 16 and 17).

The unauthorized discharge of drilling fluid onto the adjacent property constitutes a spill or release. Operator was notified of the spill/release not later than January 24, 2018, and failed to initiate control/containment measures immediately on discovery, violating Rule 906.a.

Abatement or Corrective Action Required to be Performed by Operator:

Corrective Action Due Date: 03/15/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall secure all E&P waste at the Location to prevent further offsite migration and unauthorized discharge of E&P waste onto adjacent lands. Operator shall discontinue use of the Location until both spills have been properly investigated and resolved with all documentation, including corrective actions necessary to prevent similar spills, submitted via Form 19.

Rule: 906.b

Rule Description: Spill Reporting

Initial Discovery Date: \_\_\_\_\_ Was this violation self-reported by the operator? No  
Date of Violation: \_\_\_\_\_ Approximate Time of Violation: \_\_\_\_\_  
Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 906.b.(1), Bill Barrett Corporation ("Operator") shall report a spill or release of E&P waste or produced fluids of one barrel or more that is spilled outside of berms or other secondary containment. Operator shall report such spill or release to COGCC verbally or in writing as soon as practicable, but no more than twenty-four hours after discovery (the "Initial Report"). If the Initial Report was not made by submitting a COGCC Spill/Release Report ("Form 19"), Operator must submit a Form 19 with the Initial Report information as soon as practicable but not later than 72 hours after discovery of the spill/release, and shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered. Pursuant to Rule 906.b.(3), in addition to the Initial Report to COGCC, Operator shall provide verbal notification to the affected Surface Owner within 24 hours after discovery of a spill/release reportable under 906.b.(1).

The surface owner ("Complainant") of the adjoining land to the south of the Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location") submitted a complaint to COGCC on January 24, 2018, (Document No. 200445363, the "Complaint"). Complainant stated they had notified Operator of a spill/release (Spill/Release ID 454016, the "Spill") and received no response, prompting Complainant to submit the Complaint.

In response to the Complaint, COGCC Staff conducted an inspection on January 25, 2018, (Document No. 679700799), and observed that drilling fluid had migrated off the Location onto Complainant's property. COGCC Staff took photographs of the Spill showing that the drilling fluid had developed mudcracks and was beneath the snow drifts. These mudcracks indicate that the Spill had occurred long enough ago that it had time to dry before the snow fell. The most recent snowstorm occurred on January 21, 2018, so the Spill occurred prior to that date.

On February 8, 2018, Operator submitted a Form 19 Initial & Supplemental Spill Report (Document No. 401538578), estimating the volume of drilling fluid spilled to be between one to five barrels. In this Form 19, Operator reported that their discovery of this spill occurred when they received Field Inspection Report No. 679700799 on January 26, 2018. Although Complainant indicated they notified Operator of the Spill prior to submitting the Complaint on January 24 and COGCC Staff has reason to believe the Spill occurred prior to January 21, a discovery date of January 26 means Operator should have provided initial notification of the Spill to the Complainant and COGCC no later than January 27, 2018; and should have submitted an initial Form 19 no later than January 30, 2018, and a supplemental Form 19 no later than February 5, 2018.

Operator failed to report the release of one barrel or more of drilling fluid onto adjacent property; Operator failed to provide COGCC with 24-hour notification of a spill/release, to submit an initial Form 19 within 72 hours of discovery, and to submit a supplemental Form 19 within 10 days of discovery, in violation of Rule 906.b.(1); and failed to notify the affected surface owner of the spill/release, in violation of Rule 906.b.(3).

Abatement or Corrective Action Required to be Performed by Operator: \_\_\_\_\_ Corrective Action Due Date: 04/05/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall submit a Form 27 Site Investigation and Remediation Workplan that includes:

- (1) Plans for remediation of the spilled drilling fluids on the Winick property;
- (2) Plans for remediation of the spilled drilling fluids on the Stand Land Board property;
- (3) Dates and the result of consultation with each Surface Owner;
- (4) A plan for the remediation of both spills to ensure compliance of the soil with Table 910-1 on both the Winick property and the State Land Board property; and
- (5) A schedule for completion of the proposed remediation.

Operator shall submit documentation describing an internal process to ensure future compliance with the Waste Management Plan (Document No. 401269296). Operator shall immediately implement this compliance process. Operator may submit this compliance process documentation with the Form 27, or with a separate Form 4 Sundry Notice.

Rule: 906.d

Rule Description: Spill Remediation

Initial Discovery Date: \_\_\_\_\_ Was this violation self-reported by the operator? No  
Date of Violation: \_\_\_\_\_ Approximate Time of Violation: \_\_\_\_\_  
Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 906.d.(2), Bill Barrett Corporation ("Operator") shall, determine and document the cause of a spill/release of E&P Waste or produced fluids and, to the extent practicable, identify and timely implement measures to prevent spills/releases due to similar causes in the future.

On November 4, 2017, Operator submitted an Initial & Supplemental Spill Report documenting an October 6, 2017, discovery date of a drilling fluid spill (Spill/Release ID 452946, "October 2017 Spill") from their Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location") onto adjacent property owned by Colorado State Land Board. (Document No. 401538578, "October 2017 Form

19"). In the October 2017 Form 19, Operator described the cause of the October 2017 Spill as "a result of a truck driver emptying load of drilling mud right up against perimeter berm that was right on the property boundary. Berm washed out and mud flowed off authorized location and onto state lands."

On January 24, 2018, the the surface owner ("Complainant") of the adjoining land to the south of the Location submitted a complaint to COGCC (Document No. 200445363, the "Complaint") of a spill onto Complainant's property from the Location: "Mud has oozed 30 feet onto my property and has killed by grass."

In response to the Complaint, COGCC Staff conducted an inspection on January 25, 2018, (Field Inspection Report No. 679700799, submitted January 26, 2018; the "FIR"), and observed that drilling fluid had migrated off the Location onto Complainant's property (Spill/Release ID 454016, "January 2018 Spill").

On February 8, 2018, Operator submitted an Initial & Supplemental Spill Report (Document No. 401538578, "January 2018 Form 19"). In the January 2018 Form 19, Operator described the cause of the January 2018 Spill as "a truck driver appeared to have dumped his entire load in one spot, with the drilling fluids have migrated from the southwestern portion of the land application site."

Operator failed to implement measures to prevent a truck driver emptying a load of drilling mud in one spot from causing a spill onto property adjacent to the location, in violation of Rule 906.d.(2).

Abatement or Corrective Action Required to be Performed by Operator:

Corrective Action Due Date: 03/15/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall secure all E&P waste at the Location to prevent further offsite migration and unauthorized discharge of E&P waste onto adjacent lands. Operator shall identify and implement measures to prevent spills/releases due to similar causes in the future.

Operator shall discontinue use of the Location until both spills have been properly investigated and resolved with all documentation, including corrective actions necessary to prevent similar spills, submitted via Form 19.

Rule: 907.a

Rule Description: General E&P Waste management Requirements

Initial Discovery Date: \_\_\_\_\_

Was this violation self-reported by the operator? No

Date of Violation: \_\_\_\_\_

Approximate Time of Violation: \_\_\_\_\_

Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 907.a.(1), Bill Barrett Corporation ("Operator") shall ensure the E&P waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources.

COGCC Staff conducted an inspection of the Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location") on January 25, 2018, (Document No. 679700799), and observed that cuttings were being stockpiled at the land application area. The volume of cuttings stockpiled indicates that incorporation was not occurring within 10 days, the minimum frequency indicated in COGCC's September 2014 Drill Cuttings Management Policy .

By stockpiling drill cuttings and drilling fluids on the location and failing to incorporate the drill cuttings and drilling fluids within 10 days, Operator failed to properly manage their E&P Waste, violating Rule 907.a.(1).

Abatement or Corrective Action Required to be Performed by Operator:

Corrective Action Due Date: 03/15/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall incorporate or remove stockpiled drill cuttings. Operator shall discontinue use of the Location until all drill cuttings are incorporated. Operator shall apply dust suppression as needed to prevent dust blowing onto adjacent property.

Rule: 907.d

Rule Description: Drilling Fluids

Initial Discovery Date: \_\_\_\_\_

Was this violation self-reported by the operator? No

Date of Violation: \_\_\_\_\_

Approximate Time of Violation: \_\_\_\_\_

Was this a discrete violation of obvious duration? No

Description of Alleged Violation:

Pursuant to Rule 907.d.(3). Bill Barrett Corporation ("Operator") may dispose of water-based bentonitic drilling fluids by land application as follows: The average thickness of water-based bentonitic drilling fluid waste applied shall be no more than three inches prior to incorporation. The waste shall be applied to prevent ponding or erosion and shall be incorporated as a beneficial amendment into the native soils within ten (10) days of application. The resulting concentrations shall not exceed those in Table 910-1.

The surface owner ("Complainant") of the adjoining land to the south of the Sandy Hill 5-61-29 Land Application Site (Facility ID 448950, "Location") submitted a complaint to COGCC on January 24, 2018, (Document No. 200445363, the "Complaint"). The Complaint stated that "They are not following the COGCC approved permit. The smell is awful. The truck traffic is much higher than stated in the permit. The mud is deeper than 3 inches. No mitigation strategies have been employed. There is frequently a pond of mud. Mud has oozed 30 feet onto my property and has killed my grass. Dirt and mud have blown onto my property as well."

COGCC Staff conducted an inspection of the Location) on January 25, 2018, (Document No. 679700799), and observed a pond created by the construction of a berm on the downhill side of an area where drilling fluids are discharged from trucks. The pond contained at least 1000 barrels of drilling fluid and measured approximately 200 feet long by 75 feet wide. The construction of the berm to build a pond to contain this volume of fluid indicates that incorporation was not occurring within 10 days, the minimum frequency required by Rule 907.d.(3). COGCC Staff also collected two soil samples from the Complainant's property. Analytical results (Document No. 401541619) from soil sample SS-1 contain total petroleum hydrocarbons - diesel range organics (TPH-DRO), arsenic, and electrical conductivity (EC) at levels greater than the allowable levels listed in Table 910-1 (Document No. 401541620).

Operator stored drilling fluid in a pond, allowed the average thickness of drilling fluid waste to exceed three inches, failed to incorporate drilling fluid within 10 days, and caused the resulting pollutant concentrations to exceed those in Table 910-1, in violation of Rule 907.d.

Abatement or Corrective Action Required to be Performed by Operator:

Corrective Action Due Date: 03/15/2018

**Proper and timely abatement does not preclude the assessment of penalties and an Order Finding Violation.**

Operator shall immediately remove drilling fluids from pond and dispose in accordance with Rule 907.d.(2) or incorporate on the land application site in accordance with Rule 907.d.(3)B.ii. Operator shall discontinue use of the Location until all drilling fluids have been removed or incorporated.

Operator shall also remediate the spill/release in accordance with Rules 906.c., 909 and 910, and in consultation with the affected surface owner(s).

## PENALTY

Penalties for violations alleged in this NOAV will be calculated pursuant to Rule 523, with daily penalties accruing pursuant to Section 34-60-121(1), C.R.S.

## ANSWER

Pursuant to Rule 522.d.(2), the operator must file an Answer to this NOAV within 28 days of its receipt, or a default judgement may be entered. An answer will, at a minimum, discuss the allegations contained in the NOAV, responding to each; identify corrective actions taken in response to the NOAV, if any; and identify facts known to the operator at the time that are relevant to the operator's response to the alleged violations. Hard copy answers are filed with the Commission Secretary at the Commission's Denver office and should also be emailed to [dnr\\_cogccenforcement@state.co.us](mailto:dnr_cogccenforcement@state.co.us).

## NOAV ISSUED

NOAV Issue Date: 03/05/2018

COGCC Representative Signature: \_\_\_\_\_

COGCC Representative: Kira Gillette

Title: NOAV Specialist

Email: [kira.gillette@state.co.us](mailto:kira.gillette@state.co.us)

Phone Num: (303) 894-2100x5165

## CORRECTIVE ACTION COMPLETED

Rule: 34-60-121(1)  
CRS-b

Rule Description: Statutory Violation - Permit Violation

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

Rule: 906.a.

Rule Description: Spills and Releases - General

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

Rule: 906.b

Rule Description: Spill Reporting

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

Rule: 906.d

Rule Description: Spill Remediation

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

Rule: 907.a

Rule Description: General E&P Waste management Requirements

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

Rule: 907.d

Rule Description: Drilling Fluids

Corrective Action Start Date: \_\_\_\_\_ Corrective Action Complete Date: \_\_\_\_\_

Has corrective action for this violation been performed as required? Yes

Description of Actual Corrective Action Performed by Operator

NOAV closed pursuant to Order 1V-692.

**FINAL RESOLUTION**

Cause #:	1v	Order #:	692	Docket #:	190100018
Enforcement Action:	Administrative Order of Consent			Final Resolution Date:	03/11/2019
Final Resolution Comments:					
NOAV closed pursuant to Order 1V-692.					

## ATTACHMENT LIST

View Attachments in Imaged Documents on COGCC website (<http://ogccweblink.state.co.us/>) - Search by Document Number.

<u>Document Number</u>	<u>Description</u>
401562460	NOAV CERTIFIED MAIL RECEIPT
401562506	NOAV COVER LETTER
401562526	NOAV ISSUED
401562970	NOAV IN PROCESS
401572418	NOAV CERTIFIED MAIL RETURN RECEIPT

Total Attach: 5 Files