

# LAW AND ORDER IN THE OIL AND GAS FIELDS



**A REVIEW OF THE INSPECTION AND  
ENFORCEMENT PROGRAMS  
IN FIVE WESTERN STATES**

## 2013 Update

Western Organization of Resource Councils

## **Acknowledgments**

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All views and opinions expressed in this report are those of WORC and do not necessarily reflect the views of WORC's funders. Any errors are the responsibility of WORC.

## **Western Organization of Resource Councils**

WORC is a regional network of grassroots community organizations that include 10,000 members and 38 local chapters. WORC helps its member groups succeed by providing training and coordinating issue work.

Our member organizations are: Dakota Resource Council, Dakota Rural Action, Northern Plains Resource Council, Oregon Rural Action, Powder River Basin Resource Council, and Western Colorado Congress.

WORC's mission is to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable environmental and economic communities that balance economic growth with the health of people and stewardship of their land, water, and air resources.

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# Introduction

The shale gas boom in the northeastern United States has focused the public's attention on the impacts of oil and gas production. Hydraulic fracturing or "fracking" has become a household word. There is a growing number of reports of leaks of gas and chemicals into groundwater, as well as spills and leaks at the surface, and intentional venting and flaring of gases into the atmosphere. These reports illustrate just how dirty and dangerous oil and gas production is.

Oil and gas companies dismiss these reports, and state regulators claim their agencies are appropriately regulating the industry. Together, they reject the need for federal oversight or standards. The states' own data tell a different story, however.

In 2004, WORC published *Law and Order In the Oil and Gas Fields*, one of the first detailed studies of state and federal oil and gas inspection and enforcement programs. That report documented the failure of the Bureau of Land Management (BLM) and state oil and gas agencies in Colorado, Montana, New Mexico, North Dakota and Wyoming to balance their efforts to speed permitting with an equally strong emphasis on inspecting oil and gas operations for safety and compliance with public health and environmental requirements.

WORC updated the *Law and Order* report in 2009, and numerous other public interest organizations, news media and state and federal governmental entities have conducted similar research, all with similar findings.

The Deepwater Horizon explosion and spill in the Gulf of Mexico in the spring of 2010 drove home just how high the costs of irresponsible drilling and oversight can be. After this catastrophic explosion and spill, the public demanded change, including more inspections. Some reforms were made to the Department of Interior's offshore oil and gas program but concerns about that program's effectiveness remain. In February of 2011, the Government Accountability Office added the federal oil and gas program to its list of programs at high risk for waste, fraud, abuse, mismanagement or in need of broad reform.

This 2013 update of WORC's inspection and enforcement research has documented incremental improvements in some areas, but these improvements barely keep up with the oil and gas industry's expansion. Our overall findings are unchanged – state and federal oil and gas inspection and enforcement programs are still consistently understaffed and seldom take enforcement actions. When enforcement actions are taken, fines and penalties are almost always trivial.

Incremental efforts to add one or two or three inspectors are simply not enough; a paradigm shift is needed. There is no reason why the regulation of an industry whose top five companies made \$137 billion in profits in 2011 should remain chronically underfunded and understaffed. Oil and gas booms are not surprises. In fact, oil and gas agency officials often act as cheerleaders, promoting plans for new development. Yet, every agency we have researched has, for 13 years, failed to plan for and implement a personnel increase that would afford appropriate resources to review permit applications, inspect development and enforce the law. Instead, bureaucrats, companies and many researchers seem to accept that regulatory agencies will never have the resources or personnel required for robust inspection and enforcement programs.

The message to oil and gas companies is clear, as reflected in the headline of a November 2011 Greenwire article: "Puny fines, scant enforcement leave drilling violators with little to fear."

Industry analysts predict that the record growth in U.S. oil and gas drilling and production will continue. Given the loopholes in many environmental laws and a growing track record of spills, leaks, contamination and public health problems, the public is right to be gravely concerned.

As with our previous reports, it is our hope that this updated report will inspire federal and state policy makers to fix this broken system by fully funding inspection and enforcement programs to ensure those standards are consistently applied.

## Major Findings

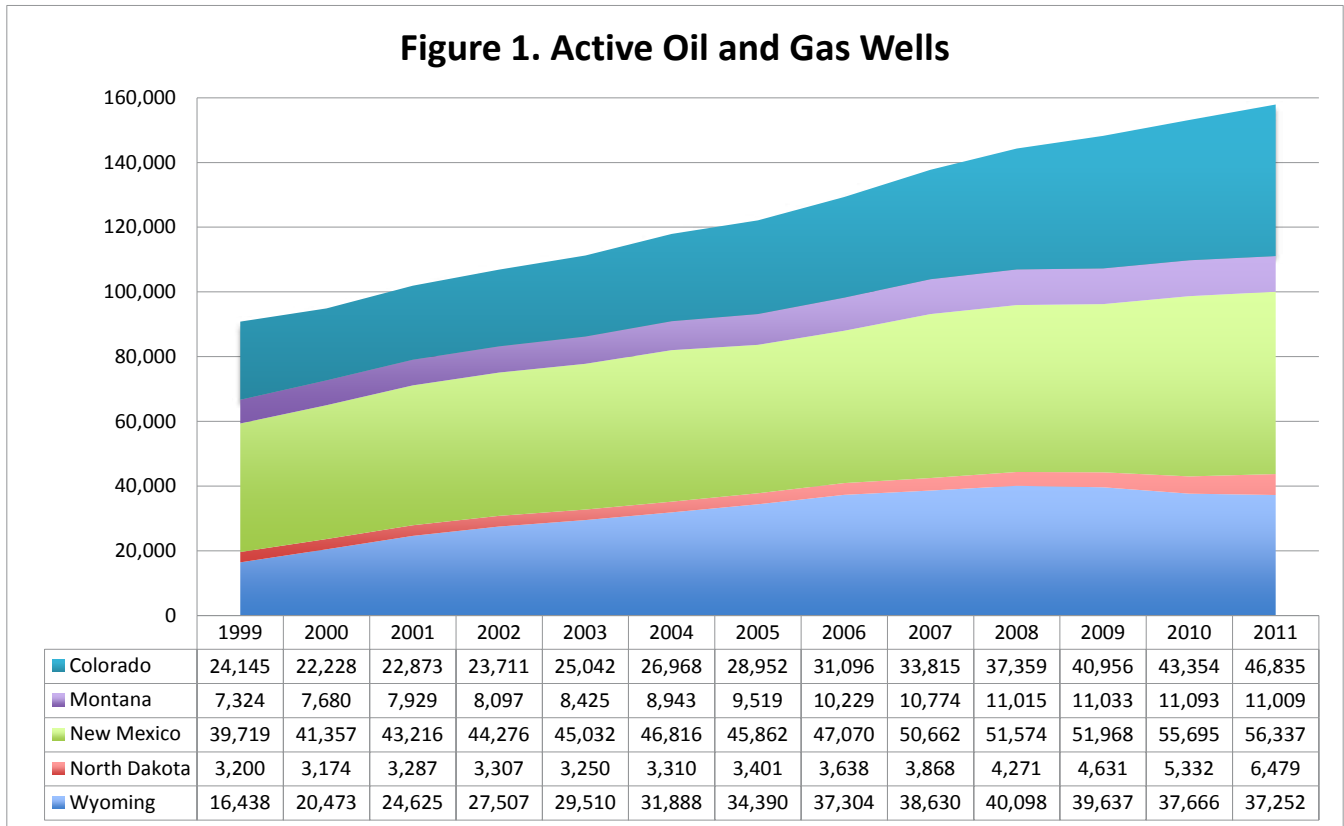
1. Oil and gas activity continues to increase in the West on both public and private lands and public and private mineral holdings.
2. The number of inspectors continues to decline relative to the number of active wells in most states, although this number increased for the BLM from 2006 until 2011. As a result, all state agencies studied except for the North Dakota Oil and Gas Division (ND OGD) have very high ratios of active wells to inspectors, as does the BLM despite the increased inspection resources.
3. All state agencies studied except for the ND OGD increased the number of inspections conducted from 2004 to 2011.
4. No state agency except for the ND OGD has enough inspectors to inspect all active wells at least once each year, nor does the BLM. Of particular concern are the Farmington, New Mexico and Lander, Wyoming BLM Field Offices, which would require 11.1 and 9.7 years respectively to inspect all active wells at current inspection rates.
5. Individual inspectors in all state agencies and the BLM each conducted more than 500 inspections on average in 2011, with state agency inspectors in the Colorado Oil and Gas Conservation Commission (COGCC), the New Mexico Oil Conservation Division (NM OCD) and the ND OGD conducting more than 1,000 inspections per year. Within the BLM Field Offices studied, the Colorado River Valley, Colorado; Dickinson, North Dakota; and Buffalo, Cody and Worland, and Pinedale, Wyoming Field Offices had particularly high numbers of inspections per inspectors. The ratios documented raise questions about the thoroughness and usefulness of these inspections.
6. All state agencies for which data is available and the BLM continue to take very few enforcement actions compared to the number of wells and inspections conducted and issue few fines or penalties.
7. Policies that establish maximum amounts of fines or penalties are outdated, and prevent regulators from issuing fines or penalties in amounts sufficient to deter noncompliance.
8. Availability of public information remains uneven. The COGCC and the NM OCD provide significant inspection and enforcement information on agency websites. The Wyoming Oil and Gas Conservation Commission (WOGCC) is the only agency studied that does not even track the number of inspections conducted, and the enforcement information it posts online is buried in Commission orders and difficult to access. The Montana Board of Oil and Gas Conservation (MT BOGC), the ND OGD and the BLM post little or no information on their websites. Much of the inspection and enforcement information posted on the ND OGD and WOGCC's websites is only in individual files and very labor intensive to aggregate to allow analysis of the agencies' inspection and enforcement track records.
9. Of the agencies studied, only the COGCC, MT BOGC and NM OCD track and report citizen complaints and agency responses to those complaints.

## Recommendations

1. All oil and gas agencies should adopt inspection goals and strategies that ensure all wells are inspected at least once per year, all complaints are promptly investigated, and that high-risk operations, operators and sites as well as those found to be out of compliance are inspected more frequently. The BLM's Inspection and Enforcement Strategy is one such model, and should be fully implemented, including the updates required to the Automated Fluid Minerals Support System database.
2. To ensure that inspectors have the time required for thorough inspections, each full time oil and gas inspector should be responsible for no more than 300 wells, and be required to conduct no more than 500 inspections per year.
3. Each oil and gas agency and the BLM should budget for the number of inspectors needed to fulfill their inspection goals, including the ability to pay the salary range needed to attract and retain professionals. Agencies should have the authority to implement an annual inspection fee to fully fund inspection and enforcement programs.
4. State agencies and the BLM should have clear policies and guidelines that instruct inspectors regarding when and how to take enforcement actions, including the time allowed to come into compliance and how to follow up on violations when they are not resolved within the time period allowed.
5. All states and the federal government should review and update their fine and penalty structures to ensure clear authority for agencies to issue fines and penalties, reduce discretion, and ensure fines and penalties are sufficient to deter future violations.
6. Each oil and gas agency should document the number of inspections conducted, the number and type of enforcement actions taken, the number and amount of fines and penalties, and the complaints made and agency response, and make this information easily available to the public on the agency's website as individual files and in the aggregate.
7. All agencies should educate the public regarding proper oil and gas operating procedures and common violations, and should encourage the public to report perceived violations. The agencies should establish easy-to-access means to report violations, and provide for anonymity where beneficial.
8. Where agencies either do not have the authority to implement the recommendations listed above, or where agency authority is not clear, legislators, including Congress, should take prompt action to grant or clarify agency authority, as well as ask for annual reports on inspection and enforcement programs.

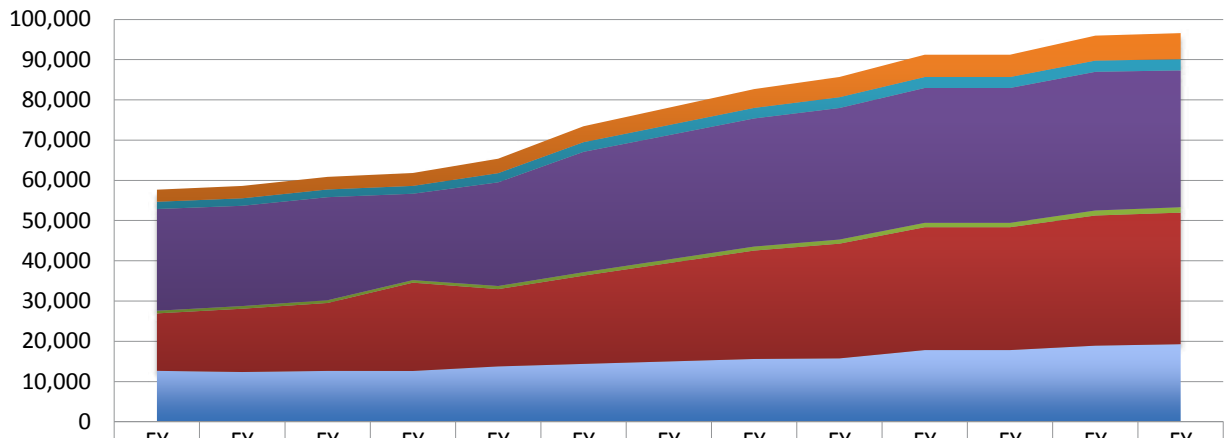
# Oil and Gas Drilling Activity

Oil and gas drilling activity in the Rocky Mountain West and Northern Plains has increased significantly over the past 13 years, rising 74 percent across the five states studied (Figure 1).



The vast majority of oil and gas wells in this region are located on federal lands or private lands overlying federally owned minerals (Figure 2). These wells are managed by the Bureau of Land Management (BLM).

**Figure 2. Active Federal Oil and Gas Wells**



	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Colorado	3,006	3,076	3,137	3,205	3,595	3,957	4,315	4,673	5,030	5,543	5,543	6,203	6,482
Montana	1,801	1,858	1,913	1,949	2,285	2,405	2,514	2,623	2,685	2,727	2,727	2,792	2,780
New Mexico	25,288	24,927	25,617	21,478	25,768	29,924	30,885	31,846	32,694	33,523	33,523	34,467	34,018
North Dakota	658	664	680	634	773	849	922	995	1,024	1,088	1,088	1,250	1,340
Wyoming	14,280	15,734	16,891	21,950	19,217	21,940	24,445	26,949	28,517	30,542	30,542	32,355	32,711
Other States	12,654	12,361	12,635	12,619	13,751	14,377	14,990	15,602	15,751	17,814	17,814	18,912	19,275



# Inspection and Enforcement Requirements

Most state agencies surveyed for this report do not have detailed inspection and enforcement goals, strategies, policies or guidelines.

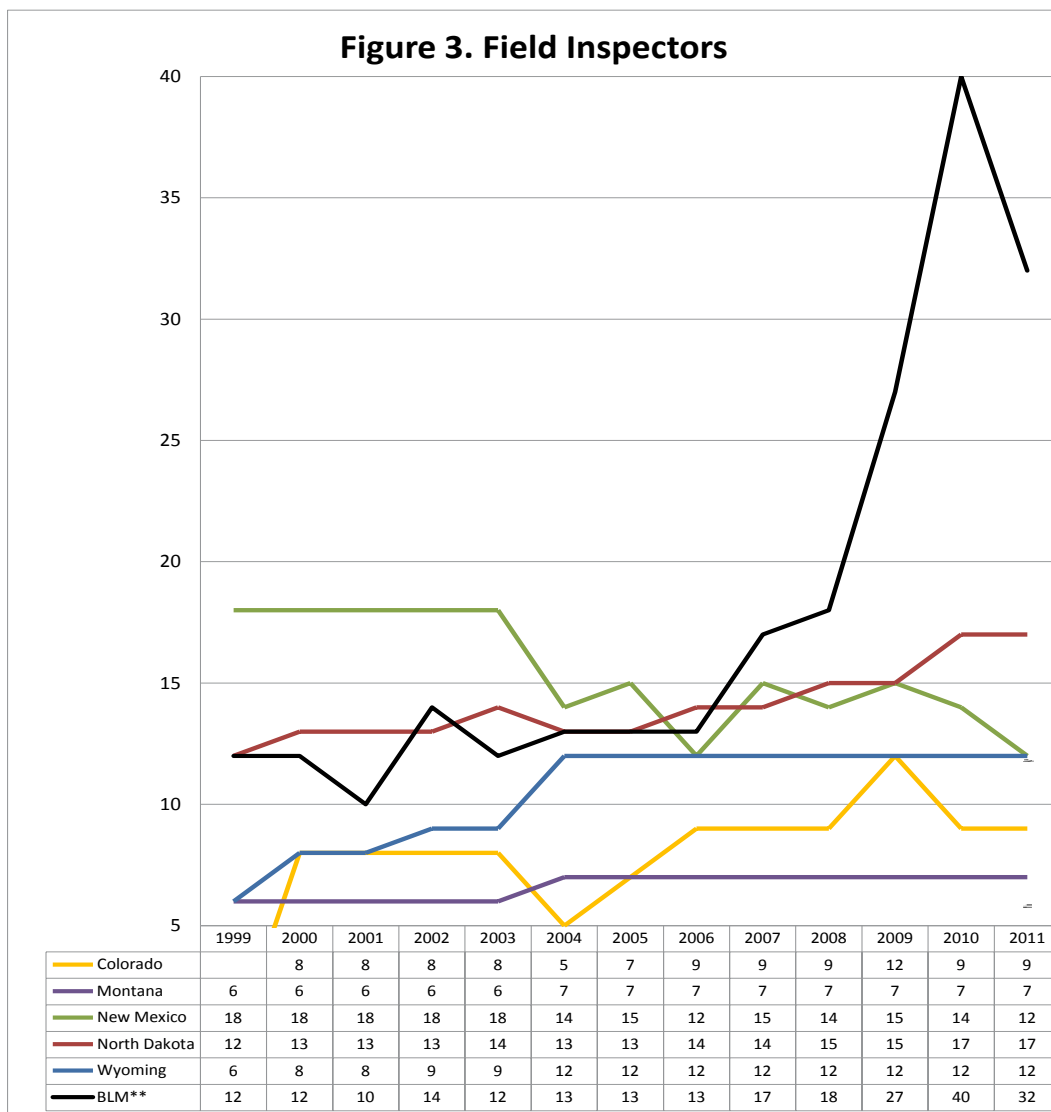
The BLM's National Oil and Gas Inspection and Enforcement Strategy provides guidance to ensure orderly and consistent implementation of inspection procedures. In 2011, the BLM updated the Strategy to a risk-based approach with clear criteria and a weighting system that identifies inspection priorities. The risk-based Strategy considers track records for rigs, rig contractors, cement contractors, operators and wells and other factors when deciding how frequently inspections should occur. The BLM's Washington Office establishes a minimum risk factor for each type of inspection, and all cases above that risk factor are to be inspected. Field Offices that do not conduct all required inspections with current inspector levels are required to request additional funding.

Unfortunately, the new strategy will not apply to environmental, drilling, abandonment and workover inspections until the Automated Fluid Minerals Support System database the BLM has used since 1997 to track oil and gas information on public and Indian lands can be updated to include the additional information required to calculate risk factors. Instead, these inspections will continue to be planned according to the BLM's old Inspection and Enforcement Strategy, which designates High and Low Priority Inspections based on criteria that are more subjective and less comprehensive.

# Inspection and Enforcement Resources

The numbers of inspectors employed by state agencies in the five states studied have generally increased little, if at all (Figure 3), especially when compared to the increases in the number of wells and permits issued.

The BLM environmental inspectors have multiple responsibilities and, in most cases, spend much of their time on other activities. Therefore, the number of full-time equivalents<sup>1</sup> (FTEs) spent on inspection and enforcement activities is a better measure of actual inspection resources than the number of inspectors. This number increased significantly from FY 2006 to 2010, but declined in FY 2011 (Figure 3).

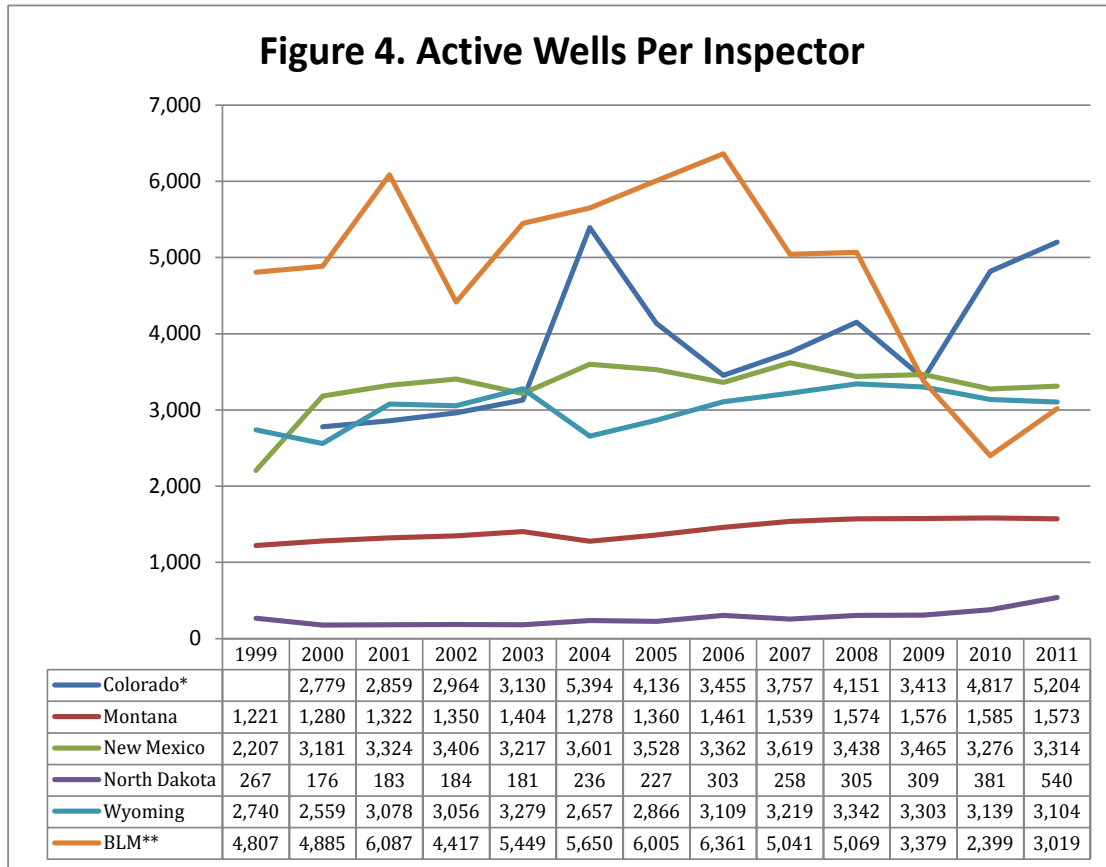


\*Colorado data for 1999 is unavailable.

\*\*BLM Inspectors were calculated by FTE, as described in the accompanying narrative.

<sup>1</sup> BLM tracks the total number of “workmonths” spent on environmental inspections, which is the equivalent of the amount of time a full-time employee would work in a month, and uses a base of 12 workmonths per full-time equivalent (FTEs). We divided the number of workmonths BLM reported each year by 12 to calculate the number of FTEs conducting oil and gas inspections each year.

A comparison of the number of active wells and level of inspection resources reveals that, for most agencies, oil and gas activity is growing faster than inspection resources. The BLM and all state agencies have overwhelming ratios of wells to inspectors, with the possible exception of the North Dakota Oil and Gas Division (ND OGD). It is of particular concern that these ratios are so high in Colorado, New Mexico, Wyoming and for the BLM, and increasing in Colorado and North Dakota (Figure 4).

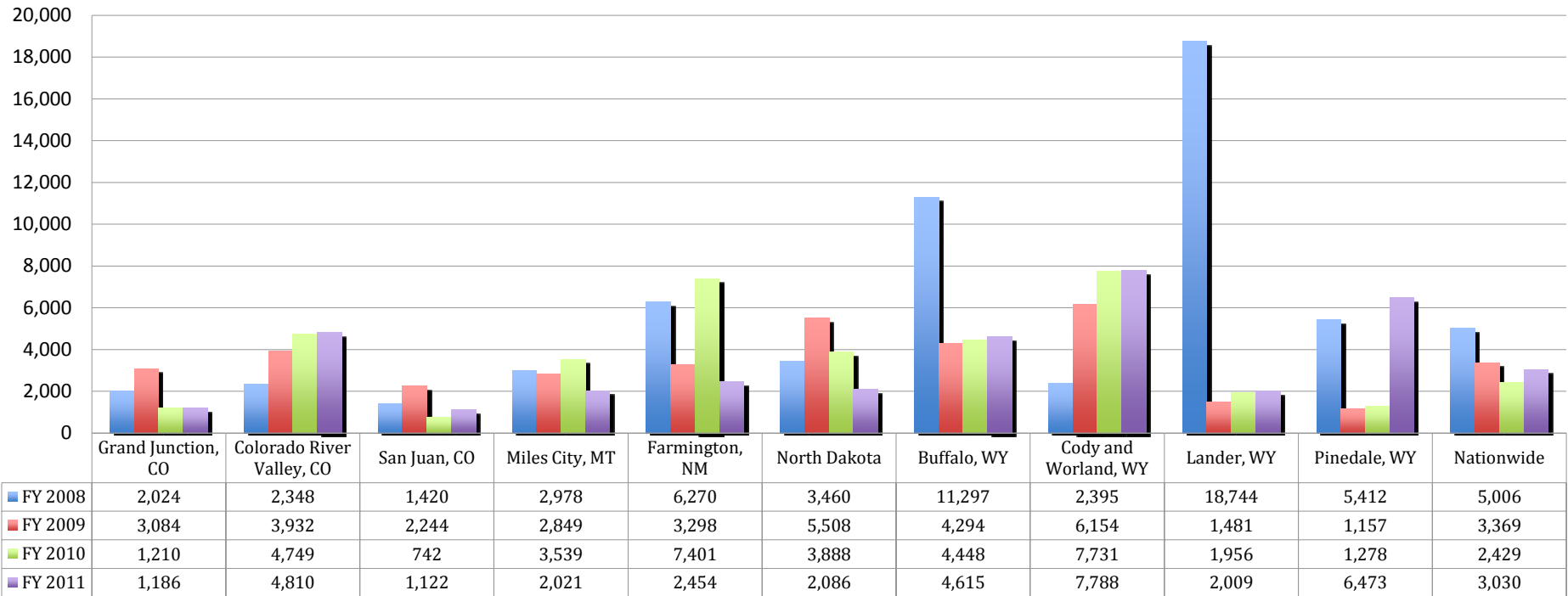


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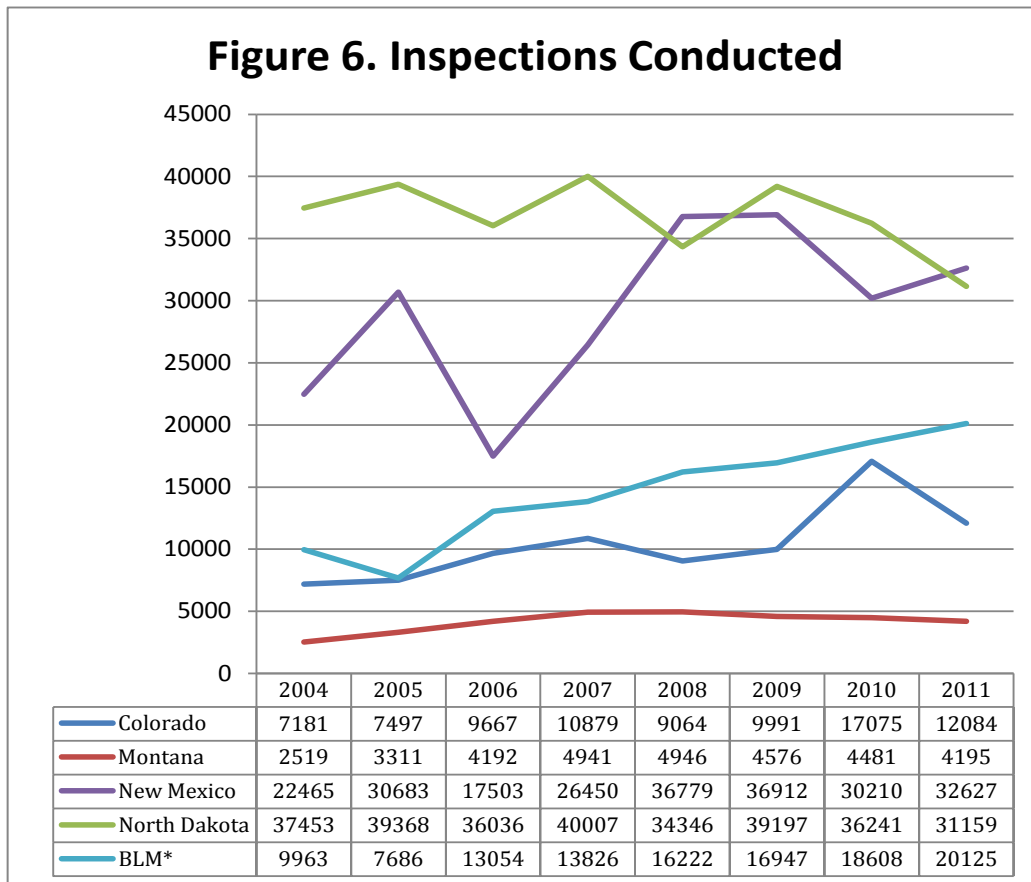
Many of the BLM Field Offices studied have even higher ratios of active wells to environmental inspector FTEs than the BLM nationwide. In Fiscal Year 2011, the Colorado River Valley, Colorado and Buffalo, Cody and Worland, and Pinedale, Wyoming Field Offices had particularly high numbers of active wells compared to the number of environmental inspector FTEs (Figure 5).

**Figure 5. Active Wells Per Environmental Inspector FTE - BLM Field Offices**



# Inspection Activity

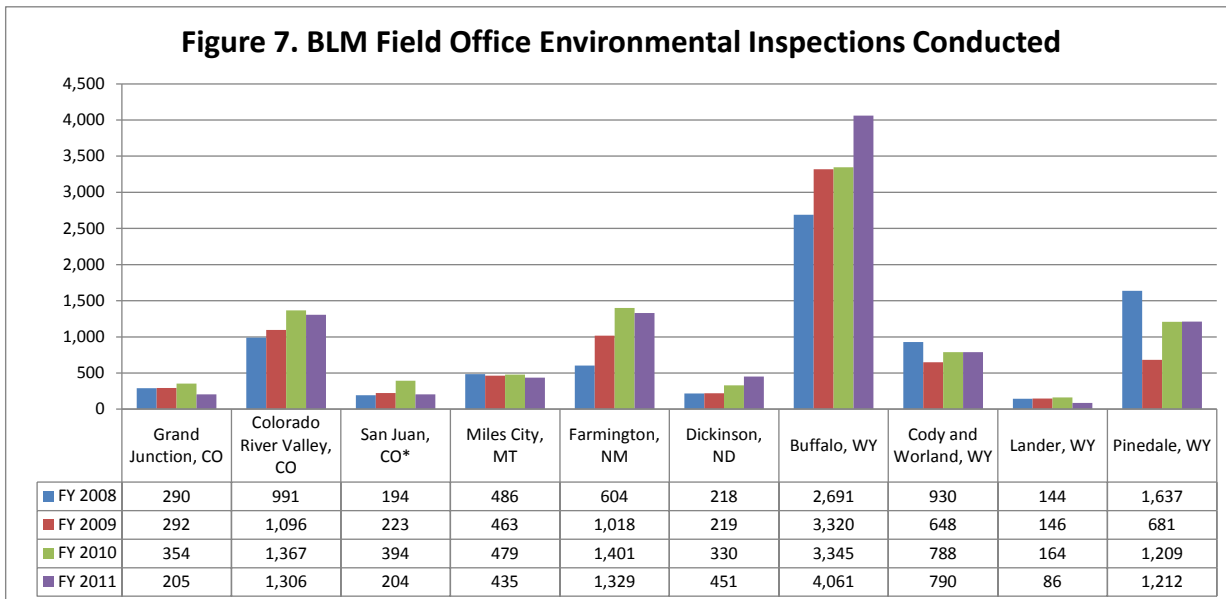
Of the five state agencies studied for this report, all but the Wyoming Oil and Gas Conservation Commission (WOGCC) track the number of inspections conducted each year. The BLM<sup>2</sup> and each of the other four state oil and gas agencies experienced overall growth in the number of inspections conducted each year over the time period studied, except for the ND OCD, which fluctuated but experienced a 17 percent decrease in inspections between 2004 and 2011 (Figure 6).



*\*BLM Inspectors were calculated by FTE, as described in the accompanying narrative.*

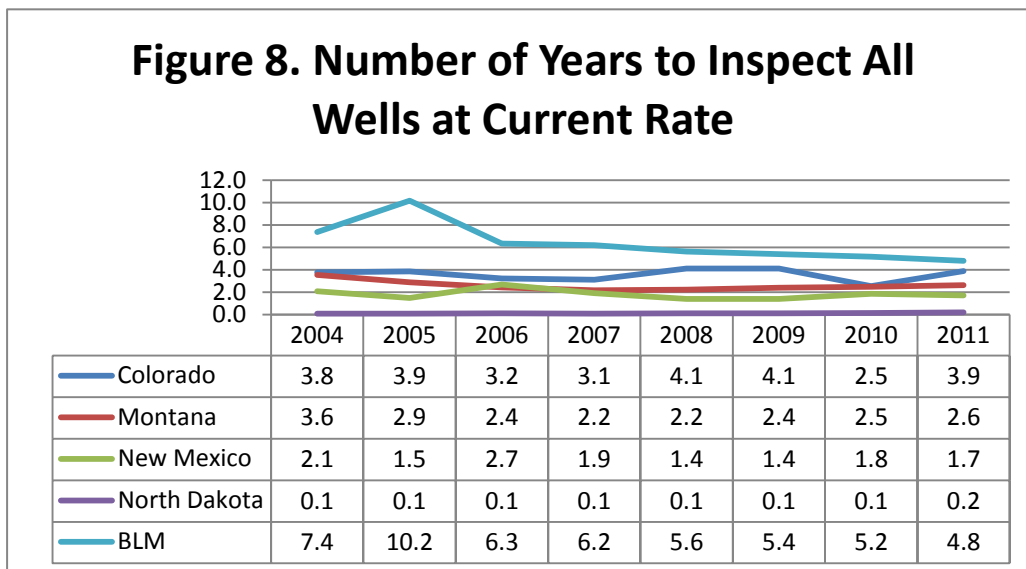
<sup>2</sup> Because BLM's environmental inspectors have primary responsibility for conducting environmental, drilling and workover inspections, and because all of these inspections help ensure environmental protection, we have included all of these types of inspections in the category we refer to as "environmental inspections" throughout the report.

The trends in the number of these environmental inspections conducted varied significantly between BLM Field Offices (Figure 7).



\*San Juan, CO refers to the San Juan/Durango/Tres Rios Field Office, Colorado.

Based on current inspection rates, only the ND OGD has the capacity to inspect all producing wells at least once each year. The BLM has consistently improved since 2005, but requires more time to inspect all federal wells (Figure 8).

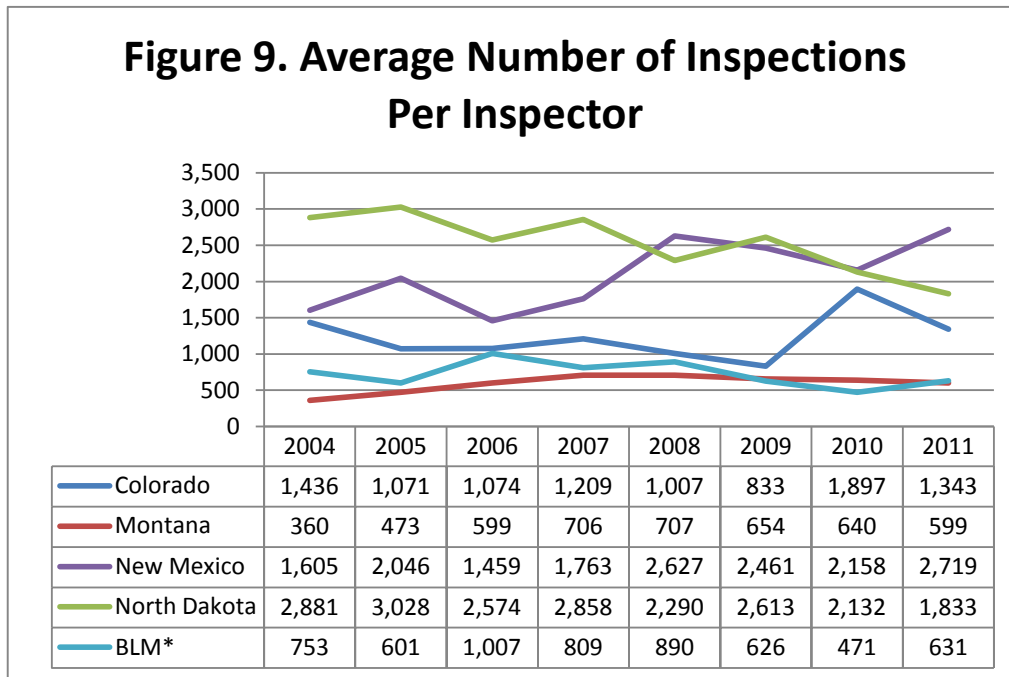


None of the BLM Field Offices studied has the capacity to inspect all active wells at least once each year. The Farmington, New Mexico and Lander, Wyoming Field Offices have significantly less time allocated to inspections compared to the number of active wells they are responsible for than the other BLM Field Offices studied (Table 1).

<b>Table 1. Number of Years to Inspect All Wells At Current Rate</b>				
<b>BLM Field Office</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
Grand Junction, CO	1.7	1.8	1.4	2.4
Colorado River Valley, CO	1.3	1.4	1.3	1.5
San Juan, CO	1.8	1.7	0.9	1.8
Miles City, MT	2.6	2.8	2.8	3.1
Farmington, NM	24.2	14.6	10.6	11.1
Dickinson, ND	4.0	4.2	2.9	2.3
Buffalo, WY	4.1	3.6	3.7	3.1
Cody and Worland, WY	2.8	4.0	3.3	3.3
Lander, WY	5.4	5.5	5.0	9.7
Pinedale, WY	2.2	5.9	3.7	4.0
Nationwide	5.6	5.4	5.2	4.8

A number of factors influence how many inspections an inspector can conduct in a given period of time. For example, different amounts of time are required for a thorough inspection at different stages in the development of an oil and gas site, and some sites require more travel time than others.

Nonetheless, there is significant variation in the number of inspections conducted by each inspector in the states studied. Inspectors in all states and the BLM conducted over 500 inspections in 2011, and inspectors in Colorado, New Mexico and North Dakota conducted more than twice that (Figure 9).

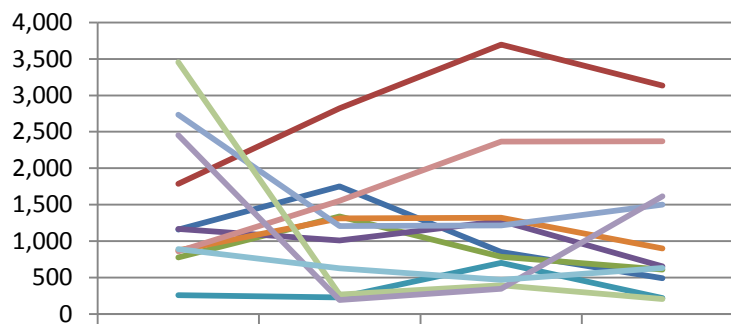


*\*BLM Inspectors were calculated by FTE, as described in the accompanying narrative.*



There are also significant variations between BLM Field Offices in the average number of inspections conducted by each FTE. Inspectors in the Colorado River Valley, Colorado and Buffalo, Cody and Worland, and Pinedale, Wyoming Field Offices conduct significantly more inspections per inspector on average than inspectors in other Field Offices (Figure 10).

**Figure 10. Average Inspections Per BLM Inspector FTE**



	FY 2008	FY 2009	FY 2010	FY 2011
Grand Junction, CO	1,160	1,752	850	492
CO River Valley, CO	1,786	2,822	3,695	3,134
San Juan, CO	776	1,338	788	612
Miles City, MT	1,166	1,010	1,277	653
Farmington, NM	259	226	701	222
Dickinson, ND	872	1,314	1,320	902
Buffalo, WY	2,737	1,207	1,216	1,499
Cody and Worland, WY	858	1,555	2,364	2,370
Lander, WY	3,456	270	394	206
Pinedale, WY	2,456	195	345	1,616
Nationwide	890	626	471	631

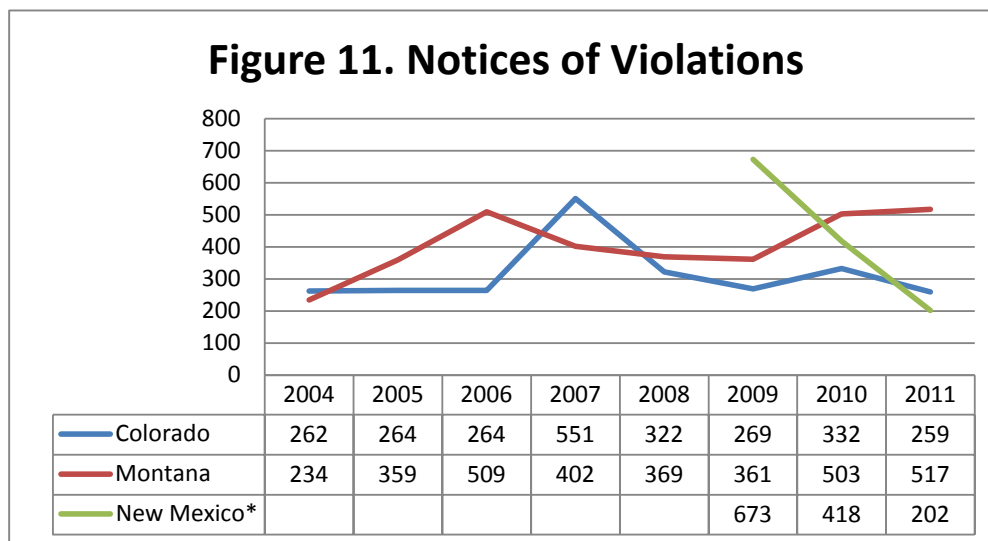
# Violations and Enforcement Actions

When violations occur, state oil and gas agencies and the BLM have the authority to issue Notices of Violation (NOVs) or Incidences of Noncompliance (INCs) respectively, impose fines or penalties, and issue orders to shut down operations, although this authority is seldom used.

The number of enforcement actions taken is the best indication of the level of non-compliance, although many agencies acknowledge that they only take enforcement action as a last resort. For example, in 2011, Montana’s Legislative Audit Committee released a performance audit of the Montana Board of Oil and Gas Conservation’s (MT BOGC) regulatory program, finding the board “has fostered a culture of working with the industry and seeking compliance through collaboration.” According to the audit, the Board gives operators at least four opportunities to come into compliance before taking enforcement action, through meetings, phone calls and letters. Using this approach, at least 65% of recorded violations were eventually resolved, but the audit raised concerns that mandated timelines are not consistently applied, particularly timelines for prompt spill cleanup. The audit recommended adoption of a formal policy that provides guidelines for corrective action and specifies the time to come into compliance, including when follow up inspections should be conducted.

Every oil and gas agency studied gives regular, detailed accountings of permits issued, wells drilled and oil and gas produced. Not all agencies track violations, enforcement actions and the number of penalties assessed against oil and gas operators, however, and others do not make information regarding violations and enforcement actions readily available to the public.<sup>3</sup>

The number of NOVs issued by state agencies for which information was available was low (Figure 11), especially when compared to the numbers of wells and inspections.

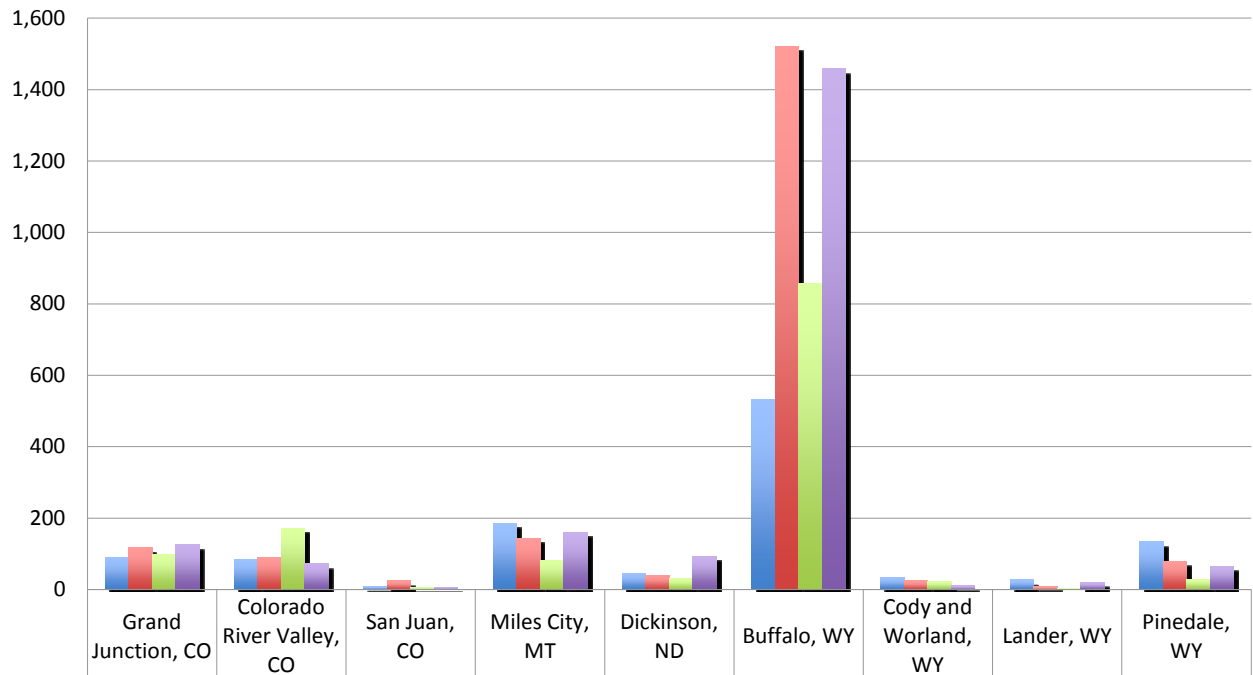


\*New Mexico data for years 2004-2008 were unavailable.

<sup>3</sup> The Colorado Oil and Gas Conservation Commission posts enforcement data in its online Colorado Oil and Gas Information System (COGIS). The Montana Board of Oil and Gas Conservation provided information in response to a request. The New Mexico Oil Conservation Division tracks this information in a database, but does not make it publicly available. Limited New Mexico data are from “Breaking All the Rules: The Crisis in Oil and Gas Regulatory Enforcement”, Earthworks, September 25, 2012. The North Dakota Oil and Gas Division records enforcement actions in individual well files, which can only be accessed in the Bismarck office or through subscription service. In Wyoming, violations not resolved at the staff level are taken before the Wyoming Oil and Gas Conservation Commission and posted as “Show Cause” hearings on the Commission’s website, but review and analysis of these individual files would require more resources than were available. The Bureau of Land Management Field Offices record enforcement data in Oil and Gas Inspection and Enforcement Quarterly Reports, which WORC received through a Freedom of Information Act request.

There was wide variation among BLM Field Offices in the number of INCs issued (Figure 12).

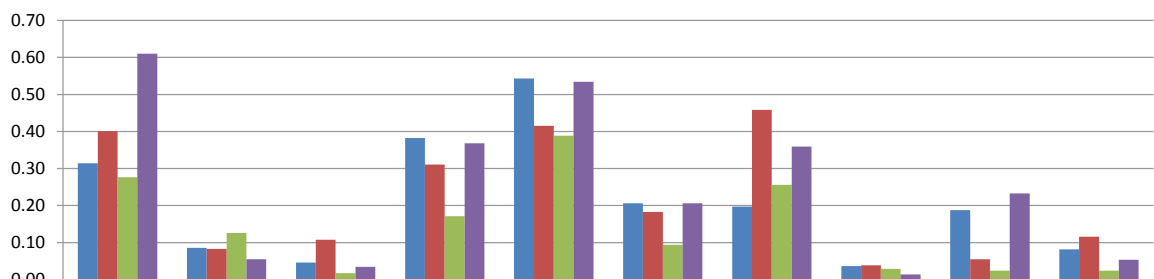
**Figure 12. Incidences of Noncompliance**



FY 2008	91	85	9	186	45	531	34	27	134
FY 2009	117	91	24	144	40	1,522	25	8	79
FY 2010	98	172	7	82	31	857	23	4	29
FY 2011	125	72	7	160	93	1,458	11	20	65

The Buffalo, Wyoming Field Office stands out as issuing significantly more INCs than any other Field Office, but when the number of INCs issued is compared to the number of inspections conducted, it is the Colorado River Valley and San Juan/Durango/Tres Rios Field Offices in Colorado; and the Cody and Worland, Lander and Pinedale Field Offices in Wyoming that stand out as having much lower rates of enforcement action than other Field Offices (Figure 13).

**Figure 13. Incidences of Noncompliance Issued Per Inspection**



FY 2008	0.31	0.09	0.05	0.38	0.54	0.21	0.20	0.04	0.19	0.08
FY 2009	0.40	0.08	0.11	0.31	0.42	0.18	0.46	0.04	0.05	0.12
FY 2010	0.28	0.13	0.02	0.17	0.39	0.09	0.26	0.03	0.02	0.02
FY 2011	0.61	0.06	0.03	0.37	0.53	0.21	0.36	0.01	0.23	0.05

## Regulator Asks Company to Investigate Itself

One [of the fines issued by the Colorado Oil and Gas Conservation Commission in 2012] was, at the time, the largest fine in the history of the agency, \$423,300 against Williams Production RMT Co. for poisoning the water supply of Ned Prather's hunting cabin near DeBeque, Colo.

One day in May 2008, Prather arrived at his cabin and gulped down a cup of water from the kitchen sink. Right away, he told The Denver Post, his throat burned, his head throbbed and he felt like he was suffocating. His wife drove him to the hospital. Tests would later show the water had benzene and related chemicals at a concentration 20 times the safety limit.

State officials asked Williams to lead a group of local drillers with operations in the area to investigate whether drilling had contaminated Prather's water.

Prather's lawyer, Richard Djokic, compared the practice to letting the suspects investigate a murder.

"Imagine you have a body on the ground here, and we're all standing around holding guns," Djokic told the Post. "A cop comes and says, 'Figure out amongst yourselves who did this and let me know.'"

The result of Williams' investigation of itself: Williams didn't do it. After drilling monitoring wells and conducting tests, Williams maintained its operations had nothing to do with fouling Prather's well.

Before finishing the case, the commission hired its own consultants to test the water, building on the monitoring wells paid for by the companies. It spent at least \$129,000 on the services of four environmental contractors and two chemistry laboratories, in addition to hundreds of hours of staff time.

More than two years later, commission staff recommended fining Williams \$498,000.

But when the case was resolved in July 2010, staff recommended reducing that by 15 percent because the company "demonstrated a prompt, effective and prudent response" and coordinated the company-funded probe, spending about \$1.3 million, and spent \$8.5 million to improve its water-management operations in the area. The company agreed to settle the case, though it admitted to nothing.

Williams' parent company brought in profits of \$2.6 billion in 2008. According to securities filings covering the period of Prather's fateful gulp, the company brought in profits of more than \$423,000 in two hours of operations.

David Neslin, director of the commission, noted that the money Williams spent on the investigation outstripped any economic benefit that the company gained from the violations. The fine, he said, was the result of an extensive process, including negotiations, consultation with top managers and, finally, a public airing before the commission.

"Settling these matters is not an exact science," Neslin said.

Tests done on Prather, 63, didn't show permanent damage. But he already had health problems, such as shaking in his hands and head, and they've gotten worse.

-- Excerpt from "Puny Fines, scant enforcement leave drilling operators with little to fear",  
Mike Soraghan, Greenwire, November 14, 2011

## Fines and Penalties

State oil and gas agencies and the BLM also have the authority to issue fines and penalties for violations, but not all agencies track this information or make it available to the public.<sup>4</sup> The data that are available reveal that fines and penalties are seldom issued and, when they are, the amounts are trivial (Table 2).

The sudden drop in the number and amount of penalties issued in New Mexico follows a November 2009 New Mexico Supreme Court ruling that the NM OCD does not have the authority to administratively assess penalties for violations. Since then, the state Attorney General's office must bring suit in district court on behalf of OCD to establish liability and assess a penalty. To date, efforts to pass legislation addressing this ruling and updating the state's maximum penalties have been unsuccessful.

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Colorado</b>	\$494,000 (15)	\$264,300 (12)	\$88,600 (13)	\$478,300 (11)	\$168,000 (6)	\$1,200,000 (10)	\$3,000,000 (22)
<b>Montana</b>	NA	NA	\$1,880 (7)	\$1,000 (5)	\$6,070 (8)	\$10,000 (6)	NA
<b>New Mexico</b>	\$130,500 (38)	\$224,000 (64)	\$559,750 (72)	\$504,250 (55)	\$735,500 (20)	\$14,000 (5)	\$50,000 (1)
<b>Wyoming</b>	NA	NA	NA	NA	\$15,500 (NA)	NA	NA

<sup>4</sup> *The Colorado Oil and Gas Conservation Commission reports on fines and penalties in its annual reports to the Colorado Water Quality Control Commission/Water Quality Control Division, which are posted on the COGCC's website. The Montana Environmental Quality Council has published some enforcement data for the Board of Oil and Gas Conservation in its annual Compliance and Enforcement reports. The New Mexico Oil Conservation Division does not post this information on its website, but supplied it to WORC. The North Dakota Oil and Gas Division told WORC that it does not track total fines and penalties. This information is tracked in Administrative Complaint Orders, but review and analysis of these individual files would require more resources than were available. The Wyoming Oil and Gas Conservation Commission does not track total fines and penalties. This information is posted as "Show Cause" hearings on the Commission's website, but review and analysis of these individual files would require more resources than were available. Information for the WOGCC for one year was reported in "Puny fines, scant enforcement leaves drilling operators with little to fear", Mike Soraghan, Greenwire, November 14, 2011.*

The BLM issues even fewer penalties and assessments. with the exception of the Buffalo, WY office, than the state agencies studied, and for lesser amounts (Table 3).

<b>Table 3. BLM Civil Penalties and Assessments – Amount and Total Number</b>				
	FY 2008	FY 2009	FY 2010	FY 2011
Grand Junction, CO	\$2,750 (4)	\$0 (0)	\$1,250 (3)	\$500 (2)
Colorado River Valley, CO	\$0 (0)	\$250 (1)	\$0 (0)	\$0 (0)
San Juan, CO	\$750 (3)	\$500 (2)	\$1,250 (4)	\$5,250 (2)
Miles City, MT	\$1,000 (4)	\$250 (1)	\$3,000 (9)	\$500 (1)
Farmington, NM	NA	NA	NA	NA
Dickinson, ND	\$750 (3)	\$250 (1)	\$500 (2)	\$40,000 (8)
Buffalo, WY	\$55,000 (192)	\$77,750 (170)	\$518,250 (73)	\$41,300 (97)
Cody and Worland, WY	\$1,500 (6)	\$5,000 (1)	\$0 (0)	\$0 (0)
Lander, WY	\$750 (3)	\$1,250 (5)	\$0 (0)	\$750 (3)
Pinedale, WY	\$1,250 (5)	\$4,000 (3)	\$0 (0)	\$0 (0)

Specific policies vary, but all establish maximum fines that are set at levels so low (Table 4) they are unlikely to deter violations in an industry where it can cost \$5 to \$10 million just to drill a well.

<b>Table 4. Maximum Fine Policies</b>	
Colorado: Colo. Rev. Stat. 34-60-121	Maximum fine is \$500 - \$1,000 per violation per day. The maximum total fine for violations that do not have adverse effects on public health/welfare/resources is \$10,000 regardless of the number of days of continued violation. For violations that affect public health/welfare/resources the total may exceed \$10,000.
Montana: MCA 82-11-147 and 149	Minimum civil penalty is \$75 per violation per day and maximum is \$10,000 per violation per day, up to a maximum of \$125,000 per violation. A court may grant such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.
New Mexico: N.M. Stat. 70-2-31	Maximum civil penalty is \$1,000 per violation per day, or \$5,000 for knowing and willful violations.
North Dakota: N.D.C.C. 38-08-16 and 38-08.1-07	Maximum civil penalty is \$12,500 per offense per day, or \$1,000 per offense per day for failure to plug drill holes.
Wyoming: Wyo. Stat. Ann. 30-5-119	Maximum civil penalty is \$5,000 per violation per day that a violation continues, or \$10,000 per day for knowing and willful violations.
BLM: 43 CFR 3160	Maximum assessment is \$500 per major violation per day, \$250 per minor violation per day, or \$1,000 per day per operator per lease. If a violation is not corrected within at least 20 days, the operator is liable for a civil penalty of up to \$500 per violation per day.

# Public Participation

Strong citizen engagement in oversight of oil and gas development is critical to ensure that it is done right. Oil and gas field citizens have insights and information that can be helpful to agencies but, in order to be effective, they must have access to information and their participation must be valued. Unfortunately, many regulatory agencies do not appear to recognize the benefits of public knowledge and participation.

## Public Access to Information

Although several states have made more information available to the public since WORC began researching oil and gas inspection and enforcement in 2004, these efforts are still uneven. There are still major gaps in the information that is recorded, compiled, publicly available and easily accessible. For example, the WOGCC reports that it does not keep track of the number of inspections it conducts, much less make this information available to the public.

## Citizen Complaints

Record keeping is one indication that agencies treat complaints seriously, and gives citizens confidence that their concerns have been heard and are being investigated.

Of the agencies WORC surveyed, only the Colorado Oil and Gas Conservation Commission (COGCC) and the NM OCD track complaints by citizens and agency responses to those complaints.

In April 2012, the ND OGD finalized new rules that limit its accountability to citizens. Any citizen can make a complaint upon observing a violation but, under the new rules, the OGD must reply in writing only to a surface owner or lessee, royalty owner, mineral owner, or local, state or federal official who reports a violation in writing. In these cases, the OGD must explain whether the complaint will be investigated, or explain the decision, and the complainant may appeal a decision not to investigate to the state's Industrial Commission. Others no longer have the right to expect a response.

# Findings and Recommendations

## Major Findings

1. Oil and gas activity continues to increase in the West on both public and private lands and public and private mineral holdings.
2. The number of inspectors continues to decline relative to the number of active wells in most states, although this number increased for the BLM from 2006 until 2011. As a result, all state agencies studied except for the North Dakota Oil and Gas Division (ND OGD) have very high ratios of active wells to inspectors, as does the BLM despite the increased inspection resources.
3. All state agencies studied except for the ND OGD increased the number of inspections conducted from 2004 to 2011.
4. No state agency except for the ND OGD has enough inspectors to inspect all active wells at least once each year, nor does the BLM. Of particular concern are the Farmington, New Mexico and Lander, Wyoming BLM Field Offices, which would require 11.1 and 9.7 years respectively to inspect all active wells at current inspection rates.
5. Individual inspectors in all state agencies and the BLM each conducted more than 500 inspections on average in 2011, with state agency inspectors in the Colorado Oil and Gas Conservation Commission (COGCC), the New Mexico Oil Conservation Division (NM OCD) and the ND OGD conducting more than 1,000 inspections per year. Within the BLM Field Offices studied, the Colorado River Valley, Colorado; Dickinson, North Dakota; and Buffalo, Cody and Worland, and Pinedale, Wyoming Field Offices had particularly high numbers of inspections per inspectors. The ratios documented raise questions about the thoroughness and usefulness of these inspections.
6. All state agencies for which data is available and the BLM continue to take very few enforcement actions compared to the number of wells and inspections conducted and issue few fines or penalties.
7. Policies that establish maximum amounts of fines or penalties are outdated, and prevent regulators from issuing fines or penalties in amounts sufficient to deter noncompliance.
8. Availability of public information remains uneven. The COGCC and the NM OCD provide significant inspection and enforcement information on agency websites. The Wyoming Oil and Gas Conservation Commission (WOGCC) is the only agency studied that does not even track the number of inspections conducted, and the enforcement information it posts online is buried in Commission orders and difficult to access. The Montana Board of Oil and Gas Conservation (MT BOGC), the ND OGD and the BLM post little or no information on their websites. Much of the inspection and enforcement information posted on the ND OGD and WOGCC's websites is only in individual files and very labor intensive to aggregate to allow analysis of the agencies' inspection and enforcement track records.
9. Of the agencies studied, only the COGCC, MT BOGC and NM OCD track and report citizen complaints and agency responses to those complaints.



## Recommendations

1. All oil and gas agencies should adopt inspection goals and strategies that ensure all wells are inspected at least once per year, all complaints are promptly investigated, and that high-risk operations, operators and sites as well as those found to be out of compliance are inspected more frequently. The BLM's Inspection and Enforcement Strategy is one such model, and should be fully implemented, including the updates required to the Automated Fluid Minerals Support System database.
2. To ensure that inspectors have the time required for thorough inspections, each full time oil and gas inspector should be responsible for no more than 300 wells, and be required to conduct no more than 500 inspections per year.
3. Each oil and gas agency and the BLM should budget for the number of inspectors needed to fulfill their inspection goals, including the ability to pay the salary range needed to attract and retain professionals. Agencies should have the authority to implement an annual inspection fee to fully fund inspection and enforcement programs.
4. State agencies and the BLM should have clear policies and guidelines that instruct inspectors regarding when and how to take enforcement actions, including the time allowed to come into compliance and how to follow up on violations when they are not resolved within the time period allowed.
5. All states and the federal government should review and update their fine and penalty structures to ensure clear authority for agencies to issue fines and penalties, reduce discretion, and ensure fines and penalties are sufficient to deter future violations.
6. Each oil and gas agency should document the number of inspections conducted, the number and type of enforcement actions taken, the number and amount of fines and penalties, and the complaints made and agency response, and make this information easily available to the public on the agency's website as individual files and in the aggregate.
7. All agencies should educate the public regarding proper oil and gas operating procedures and common violations, and should encourage the public to report perceived violations. The agencies should establish easy-to-access means to report violations, and provide for anonymity where beneficial.
8. Where agencies either do not have the authority to implement the recommendations listed above, or where agency authority is not clear, legislators, including Congress, should take prompt action to grant or clarify agency authority, as well as ask for annual reports on inspection and enforcement programs.

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