

# SEC Correspondence: A Minefield of Information

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**for SPEE European Chapter**

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# Disclaimer

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All factual statements come from public data previously released/published/presented. The full public data should be reviewed and conclusions taken in context.

Opinions expressed are the speaker's alone and do not necessarily represent the views of Rockflow Resources Ltd

All Reserve and Resource Estimates carry a degree of risk and uncertainty

The information conveyed in the following presentation represents informed opinions about certain laws, regulations and interpretations but should not be considered as advice or counsel about any specific provision or topic. The applicability of the guidance provided herein should be considered on a case by case basis.

# Outline

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- SEC: Background and structure
- Rules and where to find them
- Other sources of SEC information
- What Comment Letters can and cannot demonstrate
- Examples of SEC investigations

# SEC: Background

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- Created in 1934 to:
  - Protect investors;
  - maintain fair, orderly, and efficient markets; and
  - facilitate capital formation.
- Monitors 35,000 companies in US
- 4,200 Employees
- Nominally 5 Commissioners – all lawyers
- Petroleum Engineers in 2004?
- Petroleum Engineers in 2019?



# Where to find data on the SEC rules

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- Rule: 17 CFR 210.4-10 of Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934 – is really a list of 32 oil and gas definitions.
  - Or Search for Title 17, Chapter II, Part 210.4-10 of the Code of Federal Regulations within <https://www.ecfr.gov>
- Many prefer the Modernization of O&G Reporting, with some explanation:
  - <https://www.sec.gov/rules/final/2008/33-8995.pdf>
- Also Compliance and Disclosure Interpretations:
  - <https://www.sec.gov/divisions/corpfin/cfguidance.shtml>
- Apart from SPEE website:
  - <https://secure.spee.org/resources/reserves-definitions-committee-rdc>

## Other SEC data

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- Electronic Data Gathering and Retrieval System (EDGAR):
  - <https://www.sec.gov/edgar/searchedgar/companysearch.html>
- Or: Ryder Scott SEC Seeker (registration is free) but annual reports and comment letters only:
  - <https://seeker.ryderscott.com/>

# SEC EDGAR Search Example

**EDGAR Search Results**

SEC Home » Search the Next-Generation EDGAR System » Company Search » Current Page

**ABRAXAS PETROLEUM CORP CIK#: 0000867665 (see all company filings)**

SIC: 1311 - CRUDE PETROLEUM & NATURAL GAS  
 State location: TX | State of Inc.: NV | Fiscal Year End: 1231  
 (Assistant Director Office: 4)  
 Get **insider transactions** for this issuer.

Business Address: 18803 MEISNER DRIVE, SAN ANTONIO TX 78258, 2104904788  
 Mailing Address: 18803 MEISNER DRIVE, SAN ANTONIO TX 78258

Filter Results: Filing Type: 10-k, Prior to: (YYYYMMDD), Ownership?  include  exclude  only, Limit Results Per Page: 40 Entries, Search, Show All

Items 1 - 31 [RSS Feed](#)

Filings	Format	Description	Filing Date	File/Film Number
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-18-000014 (34 Act) Size: 11 MB	2018-03-16	001-16071 18694967
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-17-000031 (34 Act) Size: 11 MB	2017-03-16	001-16071 17692969
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-16-000100 (34 Act) Size: 11 MB	2016-03-15	001-16071 161507041
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-15-000013 (34 Act) Size: 15 MB	2015-03-13	001-16071 15698776
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-14-000017 (34 Act) Size: 19 MB	2014-03-17	001-16071 14697249
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-13-000012 (34 Act) Size: 16 MB	2013-03-18	001-16071 13696862
10-K	<a href="#">Documents</a> <a href="#">Interactive Data</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-12-000010 (34 Act) Size: 9 MB	2012-03-15	001-16071 12692303
10-K/A	<a href="#">Documents</a>	<b>[Amend]</b> Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-11-000047 (34 Act) Size: 1 MB	2011-10-13	001-16071 111139816
10-K	<a href="#">Documents</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-11-000008 (34 Act) Size: 3 MB	2011-03-16	001-16071 11692607
10-K	<a href="#">Documents</a>	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0000867665-10-000011 (34 Act) Size: 2 MB	2010-03-18	001-16071 10689860



# Use of SEC Seeker for text search example

The screenshot shows the SEC Seeker web application interface. At the top, there is a navigation bar with links for 'GEOSCIENTISTS', 'PETROLEUM ENGINEERS', and 'TECHNICAL ANALYSTS', along with 'HELP', 'CONTACT US', and 'LOGOUT'. The main content area is titled 'Document Search' and includes a search form with the following fields:

- Company Name:** A dropdown menu with 'All Companies' selected. Other options include Abraxas Petroleum Corporation, Adams Resources & Energy, Inc., Advantage Oil & Gas Ltd., and Alabama Gas Corp.
- Filing Year:** A dropdown menu with '2011' selected. Other options include 2015, 2014, 2013, and 2012.
- Document Type:** A dropdown menu with 'All Types' selected. Other options include 10-K, 10-Ka, 20-F, and 20-Fa.
- Text Search...:** A text input field containing the search query: "minor compared to the cost of a new well".

Below the search form, there is a 'SEARCH HELP' section with instructions: 'Enter phrases in quotations; Use Wildcard and Boolean Operators for advanced searches. Click for Detailed Search Help'. There are 'Search' and 'Clear Filters' buttons. Below the search form, there is a field for 'Would you like to save this search? Search Name:' with an input box and a save icon.

A message indicates: '\* Your search has returned 158 rows. Only the first 100 are showing'. Below this is a table of search results:

Rank	Company Name	Filing Year	Filing Period	Document Type	Filing Date	Related Docs	Save	Download
13	Miller Energy Resources, Inc.	2011	0430	Comment Letter Corresp	6/21/2012	<a href="#">View Detail</a>		<input type="checkbox"/>
14	Vaalco Energy Inc	2011	1231	Comment Letter Corresp	1/22/2013	<a href="#">View Detail</a>		<input type="checkbox"/>
17	United American Petroleum Corp.	2011	1231	10-Ka	4/25/2013	<a href="#">View Detail</a>		<input type="checkbox"/>
130	Tri-Valley Corporation	2011	1231	10-Ka	5/15/2012	<a href="#">View Detail</a>		<input type="checkbox"/>
133	Chesapeake Granite Wash Trust	2011	1231	10-K	3/30/2012	<a href="#">View Detail</a>		<input type="checkbox"/>



# Why be concerned with the SEC?

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- Dozens of litigations since 2004 for oil and gas companies
- Many litigations are “Offering Frauds”, with material misrepresentations, enticing people to buy shares
- Couple of Insider Trading cases in 2018
- One case of a company *under*-reporting flow rate estimates – led to a fine of \$525 million
- SEC can challenge the company and key individuals. SEC can issue subpoenas for documents and people.
- And you may still be liable to the Department of Justice and/or Civil Actions



# Where to find SEC data on investigations

- View Enforcements: Litigations and Administrative Proceedings:

The screenshot displays the SEC.gov website's Enforcement page. The browser's address bar shows the URL <https://www.sec.gov/litigation.shtml>. The page features the SEC logo and a navigation menu with 'ENFORCEMENT' selected. A dropdown menu is open under 'ENFORCEMENT', listing categories such as 'Litigation Releases', 'Administrative Proceedings', 'Opinions and Adjudicatory Orders', 'Accounting and Auditing', 'Trading Suspensions', and 'How Investigations Work'. The main content area includes a 'Search Litigation Materials' section with a search box and a 'Search' button. A 'Quick Links' sidebar on the right contains links for 'Administrative Proceedings' and 'Documents by Case'. The browser's search bar contains the text 'sec edgar'.

# Avenues of investigation

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- SEC regularly send out comment letters of topics of interest to them (aka “hot buttons”).
- SEC can send out specific questions arising from statements in annual/quarterly reports, particularly major changes.
- Any interested person could register a complaint concerning a company, which could initiate an investigation.
- The SEC has a large team of accountants/data analysts scouring through annual/quarterly reports looked for anomalous trends.
- SEC can initiate an internal investigation, resulting in Administrative Proceedings\*.
- SEC can initiate a judicial enquiry, often via a Complaint\* leading to a Litigation Release\*.

[\*which get published on the SEC site]

# Can you rely on these sources of information?

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- C&DI's:
  - *“These staff interpretations provide guidance to those who must comply with the federal securities laws. However, because they represent the views of the staff, they are not legally binding.”*
  - *“These interpretations reflect the views of the staff of the Division of Corporation Finance. They are not rules, regulations, or statements of the Commission. The Commission has neither approved nor disapproved these interpretations. These positions do not necessarily discuss all material information necessary to reach the conclusions stated, and they are not binding due to their highly informal nature. Accordingly, these positions are intended as general guidance and should not be relied on as definitive.”*
- Similar sentiments in Powerpoint disclaimers
- Comment Letters often finish with:
  - *“We have completed our review of your filings. We remind you that our comments or changes to disclosure in response to our comments do not foreclose the Commission from taking any action with respect to the company or the filings and the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.”*

# SEC Comment Letters

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- May have 4-8 letters to and from SEC and oil company
- Ending maybe similar to:
  - “We have completed our review of your filings and do not have any further comments at this time.”
- You may have a problem when:
  - Correspondence extends beyond 12 months, and incorporates next year’s report
  - SEC sign and cc: General Counsel
- You really do have a problem if SEC issue a “Wells Notice” (named after John Wells – not O&G specific)

# SEC Reserves investigations

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- Shell 2004: LR-18844
- El Paso 2008: LR-20642
- Miller Energy 2016: AP 33-10002, -89/90/91 (& PR 2017-142)
- Penn West Petroleum 2018: LR-24195
- Norstra Energy Inc 2015: LR-23290
- Centor Energy Inc 2018: LR-24209
- Plus 20-30 “Offering Frauds”

# Case Study: Penn West Petroleum

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- \*\*\* Case ongoing \*\*\*
- In July 2014, Penn West reported that it would restate its financial statements from 2012-2014.
- SEC allege that Penn West reclassified Opex as Capex (or royalties), resulting in lower Opex and increasing company's assets, although this seems to have been admitted.
- Correction led to 16-20% increase in reported Opex by Penn West's estimates.
- No connection with Reserves via ELT suggested.

# Norstra Energy

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- Microcap company
- SEC complained that Norstra's CEO made misleading claims to raise capital e.g.
  - “10,097 acres could hold as much a [sic] 8.5 billion barrels of original oil in place.” – acreage not yet acquired.
  - “SUCCESS RATE- 99% of all new wells drilled in the Bakken are profitable.”
  - Lack of clarity that values for STOIP are significantly greater than recoverable volumes
  - The Reserves Report was a “rough calculation” of STOIP by a Geologist, who asked for corrections and disclaimers to be added when he saw his numbers made public. Website with claims was not changed for 6 months.
- Norstra fined \$3.1 million, two individuals fined \$50k & \$40k in 2016



# Case Study: Miller Energy

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- Miller Energy bought some Alaskan assets from a company in bankruptcy in 2009 for under \$5 million, in a competitive bid.
- Miller announced an increase in value of the company by \$480 million in 2010.
- SEC investigated. Comment letters and Administrative Proceedings.
- SEC found (by Jan 2016):
  - Asset value overstated. Miller used PV-10 as a measure of fair market value.
  - Miller double counted \$110 million of fixed assets, which were included within the PV-10 calculation.
  - Miller misled the Petroleum Consultancy, who performed the Reserves report, with knowingly low Opex and Capex estimates.
- SEC fined Miller \$5 million, 2 directors \$125k ea., and effectively disbarred two accountant auditors for 2-3 years (Via AICPA).

# Case Study: Centor Energy Inc

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- In Dec 2013, Centor signed an SPA for a 55% interest of a shale oil opportunity with 1C/2C/3C of 1.1-1.2-1.5 bn stb (gross)
  - SEC complained that a presentation to shareholders was misrepresenting the 1.1+ bn stb as the Centor (net) share.
  - Furthermore the resource assessment was stated to be independent, but in fact performed by the guy who retained the 45% remaining share.
  - Claim upheld, Centor director fined ~\$31k (July 2018)
1. SEC filed charges about misleading statements in a PowerPoint presentation – (8-K filings appear correct)
  2. SEC filed charges about an asset with Contingent Resources – hence SEC are not only interested in 1P Reserves, when C.R. are material to the company in question.

# Conclusions

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- SEC has the power to investigate and rule any company listed in the US.
- Investigations can lead to fines for a company, for individuals, and effective disbarment.
- Most SEC Comment letters finish with no further action.
- Some Comment letters require an amendment to annual/quarterly reports.
- And then again...
- Beware of what you tweet!



Thank you

Any Questions?

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