



**COLORADO**

**Energy & Carbon Management  
Commission**

Department of Natural Resources

# **COLORADO ENERGY AND CARBON MANAGEMENT COMMISSION**

## **ENFORCEMENT GUIDANCE AND PENALTY POLICY**

**Revised January 17, 2024**

## INTRODUCTION

The mission of the Colorado Energy and Carbon Management Commission (“ECMC” or “Commission”) is to regulate the development and production of Colorado’s natural resources while protecting public health, safety, and welfare, including the environment and wildlife resources.

This *Enforcement Guidance and Penalty Policy* (“Guidance”) describes ECMC’s enforcement policies to provide stakeholders with a clear roadmap as to how and when the Commission will enforce the Statute and Rules that guide oil and gas development.

A strong enforcement program plays a pivotal role in ensuring responsible oil and gas development. To achieve this goal, ECMC Staff works together with operators to ensure they are complying with the governing statute and Rules through outreach, corrective actions, warning letters, and Notices of Alleged Violation.

Penalties are a part of any strong enforcement program. The Commission's enforcement and penalty program is designed to deter violations and encourage compliance. This Guidance describes how the Commission Rules guide and inform the penalty program and explains how the Commission assesses penalties against operators who are out of compliance.

Part A of this Guidance describes the Commission’s policies, practices, and procedures for issuing and resolving Corrective Action Required Inspection Reports, Warning Letters, and Notices of Alleged Violation.

Part B describes the Commission’s policies, practices, and procedures for determining penalty amounts.

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## **Part A ECMC Enforcement Guidance**

### **I. Guidance Disclosure**

The purpose of this guidance document is to inform all interested stakeholders of the Commission’s interpretation of, and expectations concerning, the Rules discussed herein. This document does not contain rules or binding procedures. Interpretative rules or general statements of policy are not binding as rules under the Administrative Procedure Act. § 24-4-103(1), C.R.S. Nothing in this document creates any substantive or procedural right enforceable by, or in favor of, any person or entity. The Commission reserves the right to vary its activities from this *Enforcement Guidance and Penalty Policy* at any time and in its discretion. The Commission may update this *Enforcement Guidance and Penalty Policy* from time to time.

### **II. Introduction**

The Colorado Oil and Gas Conservation Act, §§ 34-60-101 to 139, C.R.S. (2023) (the “Act”) authorizes the Commission to enforce the Act, Commission Rules of Practice and Procedure, 2 C.C.R. 404-1 (“Rule” or “Rules”), orders, and permits. § 34-60-121, C.R.S. The enforcement guidance in this section explains how the Commission will exercise these enforcement powers.

The Act authorizes the Director to enforce the Rules of the Commission. § 34-60-105.5(2)(b), C.R.S. Enforcement Staff<sup>1</sup> acts for and with the authority of the Director in enforcement actions. When Enforcement Staff commences an enforcement action in which it seeks penalties, it issues a Notice of Alleged Violation (“NOAV”). The NOAV identifies the statutory and/or regulatory provisions allegedly violated, as well as the facts alleged to constitute the violation. Penalties may be imposed only by Commission Order after a hearing, or by Commission approval of an Administrative Order by Consent (“AOC”) agreed to by the operator and Enforcement Staff.

In the event a violation is significantly less serious, Enforcement Staff may elect to issue a Warning Letter or a Corrective Action Required Inspection Report. Less serious violations are limited to violations that (1) do not pose significant actual or threatened injury to the public health, safety, and welfare, including the environment and wildlife resources, (2) do not cause waste, (3) do not damage correlative rights, and (4) are not part of a pattern of violations by the operator.

A Warning Letter or Corrective Action Required Inspection Report requires an operator to correct a less serious violation within a specified time. If the operator complies within the prescribed time and returns to compliance, Enforcement Staff will close the matter without issuing an NOAV and without seeking a penalty. If the operator does not correct

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<sup>1</sup>This guidance document generally refers to “Enforcement Staff” where the Rules and the Act refer to “the Director” in prosecuting enforcement actions. The Rules and the Act also govern the way in which Hearing Officers and the Commission itself may resolve enforcement actions. Rather than list each entity in this document, “Enforcement Staff” will be used throughout.

the violation within the time prescribed, the Director may issue an NOAV and seek a penalty.

### **III. Warning Letters, Corrective Action Required Inspection Reports, and NOAVs**

When Enforcement Staff has reasonable cause to believe that a violation of the Act, Commission Rule, order, or permit has occurred, Enforcement Staff will require the operator to remedy the violation and may issue a Warning Letter, Corrective Action Required Inspection Report, or an NOAV.

“Reasonable cause” must be supported, at a minimum, by circumstances sufficiently strong to justify a belief that a violation may have occurred or is occurring. This may include physical evidence, analytical data, reports or forms, or the absence of required forms or reports. Reasonable cause may arise upon Commission Staff’s own investigation and initiative, upon a third-party complaint, or as a result of any other reliable information available to Enforcement Staff.

Generally, Warning Letters or Corrective Action Required Inspection Reports are reserved for less serious violations; they do not carry the threat of a penalty. Upon issuance of an NOAV, however, Enforcement Staff will usually seek a penalty.

#### *A. Warning Letter or Corrective Action Required Inspection Report*

A Warning Letter or Corrective Action Required Inspection Report will describe the alleged violation and the corrective actions required to remedy the violation and return to compliance. The Warning Letter or Corrective Action Required Inspection Report will also provide a deadline by which the operator must complete the corrective action. Commission Staff are typically available to discuss the details of a Warning Letter or Corrective Action Required Inspection Report with the operator. An operator can facilitate the resolution of a violation by timely providing proof that corrective actions have been completed.

It may be appropriate to address a violation through a Warning Letter or Corrective Action Required Inspection Report instead of an NOAV if all of the following factors exist:

1. The violation did not and will not result in an actual or a threat of significant adverse impacts to public health, safety, or welfare, including the environment and wildlife resources, significant waste of resources, or significant harm to correlative rights;
2. Corrective action can bring the operator into compliance quickly;
3. The operator has a good compliance history;
4. The violation is not part of a pattern of violations by the operator; and
5. The operator has not received a recent Warning Letter or Corrective Action Required Inspection Report for a similar violation under similar circumstances.

Even if all of the above factors are present, Enforcement Staff retains the discretion to issue an NOAV instead of a Warning Letter or Corrective Action Required Inspection Report.

Occasionally, a Warning Letter or Corrective Action Required Inspection Report may be modified or withdrawn in whole or in part if Staff become aware of new facts and circumstances. A new Warning Letter or Corrective Action Required Inspection Report will not be issued when an operator has been previously warned about the same or materially similar violations. Repeat violations are evaluated on an operator, or per-well, per-location, basis and remain in the sound discretion of Enforcement Staff.

If the actual or threatened impact of a violation is major, Enforcement Staff will issue an NOAV. Generally, in such circumstances, Commission Staff will also submit an inspection report as a means of documenting that a serious violation has occurred and to provide important details regarding the violation.

#### *B. Notice of Alleged Violation*

A Notice of Alleged Violation is a written document that alleges an operator or other person or entity is in violation of the Act, Commission Rules, orders, or permits. Enforcement Staff may issue an NOAV based upon Staff's inspection or investigation, in response to a citizen complaint (Form 18, Complaint Report) pursuant to Rule 222, or upon other reliable information provided to the Commission.

Enforcement Staff may issue an NOAV and seek penalties for any violation. Some factors Enforcement Staff may consider when deciding whether to issue an NOAV include, but are not limited to, whether:

1. The operator violated a Class 3 Rule;
2. The violation resulted in a significant threatened or actual adverse impact to public health, safety, or welfare, including the environment and wildlife resources;
3. The violation is committed by an operator that was previously warned by the Director about a similar violation;
4. A violation that occurs after an operator receives a Warning Letter or Corrective Action Required Inspection Report and fails to complete the required corrective action(s) within the prescribed time;
5. The operator exhibits a pattern of violations;
6. The operator's conduct is one of gross negligence or knowing and willful misconduct that results in an egregious violation; or
7. Enforcement Staff otherwise determines that a Warning Letter or Corrective Action Required Inspection Report is inappropriate.

This is not an exhaustive list of circumstances in which Enforcement Staff will issue an NOAV and assess a penalty. Enforcement Staff retains full discretion to issue an NOAV and seek a penalty for any violation.

Additionally, Enforcement Staff commences the enforcement process when it issues and serves an NOAV on the operator. Rule 523.a. Generally, during the enforcement process, Enforcement Staff will seek a penalty to be assessed against the violating operator. Commission Staff calculates the penalty amount based on the Act, Commission Rule 523, and with reference to the Penalty Policy in Part B of this Guidance.

#### 1. Contents and Service of an NOAV

An NOAV must identify each provision of the Act, Commission Rule, order, or permit allegedly violated as well as a plain and short statement of the facts alleged to constitute each violation. § 34-60-121(4), C.R.S. The NOAV may include required corrective actions and an abatement schedule to complete the corrective actions. § 34-60-121(4), C.R.S.; Rule 525.c.(1).

When preparing an NOAV, Commission Staff will allege all violations supported by the facts and circumstances known at the time of issuance. Enforcement Staff independently evaluates each alleged violation and may consolidate or eliminate violations based on the available evidence.

An NOAV must be served in person or by certified mail. § 34-60-121(4), C.R.S.; Rule 522. However, Enforcement Staff will usually request that an operator waive service by certified mail and accept service via electronic mail. The operator has the right to refuse electronic service, in which case Staff will send the NOAV via certified mail. NOAVs are mailed to the address the operator has on file with the Commission, pursuant to Rule 205. It is important and legally required that operators keep this address up-to-date with the Commission to ensure that all NOAVs are timely received. § 24-4-105(2)(a), C.R.S.; Rule 205. Operators are required to file an answer to an NOAV under Rule 523.c.(2). At a minimum, an answer must respond to and discuss each of the allegations contained in the NOAV; identify any corrective actions taken in response to the NOAV; and identify facts known to the operator at the time the violation occurred that are relevant to the operator's response.

#### **IV. Resolution of an NOAV**

An NOAV is typically resolved in one of three ways: (1) an Administrative Order by Consent; (2) an Order Finding Violation; or (3) rescission of the NOAV. NOAVs are most commonly resolved through Administrative Orders by Consent ("AOC") or Orders Finding Violation ("OFV"). Enforcement Staff rarely rescinds an NOAV.

Some enforcement matters cannot be resolved through an AOC. Cases must proceed to an OFV hearing where Enforcement Staff alleges: (1) the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation; (2) the violation resulted in the death or serious injury of a person; (3) the operator has engaged in a pattern of violations; or (4) the Commission sets an OFV hearing pursuant to Rule 510.f.(3).

##### *A. Administrative Orders by Consent*

Enforcement Staff most commonly resolves NOAVs through AOCs. An AOC is a written agreement negotiated between an operator and Enforcement Staff. AOCs are subject to final approval by the Commission. Operators are encouraged to actively engage with Enforcement and Technical Staff to resolve the violations alleged in the NOAV (see Rule 525.c.(3)). Commission Staff will respond to operator questions promptly and encourage good faith negotiations and compliance efforts in any way they can.

Most often, the negotiation will focus on the penalty amount, corrective actions, and remediation required for the operator to return to compliance and address any adverse impacts arising from the violation.

## 1. Penalty Assessment

The penalty amount sought in an enforcement action is determined based on the Act, Rule 525, and with reference to the Penalty Policy in Part B of this Guidance. Calculating a penalty is a multi-step process described in more detail in Part B of this Guidance. However, this section will provide a brief overview.

First, a “daily penalty” amount is determined for every violation identified in an NOAV. Presumptive daily penalty amounts are set forth in the Penalty Schedule in Rule 525.c.(1) and Part B, Section III, below. The Penalty Schedule considers (1) the class of the Rule violated (see Appendix A) and (2) the degree of threatened or actual adverse impact to public health, safety, or welfare, including the environment and wildlife resources, resulting from the violation.

Second, Enforcement Staff determines the duration of the violation. The duration is the number of days the violation was ongoing, beginning from when the violation was discovered or should have been discovered. The duration ends when the operator has commenced corrective actions to the Director’s satisfaction.

Third, for each violation, the daily penalty is multiplied by the duration of that violation. Finally, the penalty amounts for each violation are added together to arrive at a total penalty.

The penalty amount for each violation may be adjusted up or down based on whether the Duration Matrix, or aggravating or mitigating factors, apply. These concepts are discussed in Part B.

The steps of the penalty assessment may vary when issuing “batch” NOAVs. This concept is discussed in more detail in Part B, Section 5, below.

## 2. Corrective Actions

Corrective actions are case and location specific. Operators must remedy violations as expeditiously as practicable under the circumstances, and corrective actions should reflect this. Any adverse impacts to public health, safety, welfare, the environment, or wildlife arising from the violations must be corrected and remediated as soon as possible.

Typically, Enforcement Staff sets forth required corrective actions and an abatement schedule in the NOAV. In many cases, the corrective actions needed for an operator to return to compliance are obvious. For example, if an operator failed to submit its Form 7, Operator's Monthly Report of Operations, Enforcement Staff will require the operator to submit that report. Or, if an operator left unused equipment at a well site, the operator will be required to remove it. In such cases, negotiations between the operator and Enforcement Staff can be relatively straightforward.

In other cases, returning to compliance or remediating adverse impacts are more complicated. For example, Enforcement Staff may require an operator to complete a site investigation and a remediation work plan pursuant to Rule 913. This may be an iterative process requiring investigation and more thorough corrective actions than those initially included in the NOAV.

### 3. Final Approval of an AOC

Once Enforcement Staff and an operator have executed an AOC, it is subject to the Commission's final approval. § 34-60-121(1)(b), C.R.S.; Rule 523.d. Before proceeding to the Commission, the matter is scheduled for a review hearing before a Hearing Officer. The Hearing Officer reviews the AOC and either approves the agreement as executed; or rejects the agreement, provides their bases for doing so, and directs the parties to resume negotiations.

If the Hearing Officer approves the AOC, they will issue a Recommended Order memorializing this approval. This Recommended Order, with the AOC attached as an exhibit thereto, is then placed in the Commission's portfolio for an upcoming regularly scheduled Commission meeting. At that meeting, the Commission may ask questions of the parties regarding the Recommended Order/AOC, deny the Recommended Order/AOC and direct the parties to resume negotiations, or take no action. If the Commission takes no action on the Recommended Order/AOC, it becomes final agency action if no exceptions are filed within 20 days after the Hearing Officer serves the Recommended Order/AOC on the parties. Rule 520.b.

As noted above, if the Commission denies the Recommended Order/AOC, the matter is remanded to Enforcement Staff for further proceedings. Typically Enforcement Staff and the operator will seek to renegotiate settlement terms consistent with the Commission's input. If Enforcement Staff and the operator fail to reach an agreement on a revised AOC consistent with the Commission's direction, the matter will be referred to a Hearing Officer who will convene a pre-hearing conference, set a pre-hearing schedule, and docket the matter for an Order Finding Violation ("OFV") hearing. Rules 510.f.(1) and 523.e.(2).

It is important to note that if an enforcement action arises out of a complaint, the complainant has specific rights and responsibilities under the Rules that modify the procedure described above. The complainant enforcement process is described in detail in Section V, below.

## *B. Orders Finding Violation*

If Enforcement Staff and an operator cannot reach an agreement, the case will proceed to a contested OFV hearing. Additionally, Rule 523.d.(2). requires that the parties proceed to an OFV hearing when Enforcement Staff alleges that the operator is responsible for gross negligence or knowing and willful misconduct resulting in an egregious violation, has engaged in a pattern of violations, or that the alleged violation resulted in the death of or serious injury to a person.

Hearing Officers may preside over OFV hearings. However, either party may file a motion to have the case removed to the Commission.

An OFV hearing is an adjudicative administrative hearing. It is a *de novo* proceeding, meaning the Hearing Officer or Commission will hear the entire case and make a decision based on the evidence in the record. Absent a stipulation or other arrangement, neither the operator nor Enforcement Staff are bound by terms, conditions, nor penalty amounts offered during settlement negotiations or otherwise discussed prior to the hearing. Prior to the hearing, the Hearing Officer will issue a case management order which will govern the case.

The Hearing Officer or Commission will consider written and oral statements, testimony, arguments, and evidence entered into the record and then deliberate and make findings. If a Hearing Officer is presiding over the case, they will issue a Recommended Order. The Recommended Order process is the same as described above for AOCs.

Hearing procedures, as well as the rules, regulations, and laws governing hearings will be discussed in more detail in Section V, below.

### 1. Exceptions

Pursuant to § 34-60-108(9), C.R.S., a Recommended Order becomes a final order of the Commission unless, within 20 days (or such additional time as the Commission may allow), any party, or person whose petition to participate in the matter was denied, files an exception to the Recommended Order. An exception should include legal or factual arguments in support of the party's position that the Recommended Order is improper. Once an exception is filed, the Recommended Order is stayed until the Commission rules on the exception. Parties may file responses to exceptions within 14 days following service of the exceptions. The Commission will conduct a review of the matter on the same record that was before the Hearing Officer when the Recommended Order was entered, and a *de novo* review of the law. The Commission may—but is not required to—order oral argument on the exception. The Commission will then issue an Order on the exception.

## **V. Enforcement Hearing Procedures**

### *A. Notice and Application for Hearing*

The enforcement hearing process is initiated in one of two ways: (1) when a Notice and Application for Hearing is issued or (2) when a Notice and Application for Mandatory OFV hearing is issued. These notices serve as an application for purposes of Rule 503. Both types of notices are issued by the Secretary of the Commission. A standard Notice and Application is issued pursuant to Rule 504 and a Notice and Application for Mandatory OFV hearing is issued pursuant to Rule 523.d.(2).

Pursuant to Rule 504, the hearing will be set for 60 days after the notice is issued. The content of the notice is governed by the Administrative Procedure Act (“APA”), the Colorado Rules of Civil Procedure (“C.R.C.P.”), the Rules, and the Act. It will always contain the name of the operator, the date the NOAV was issued, and the date, time, and location of the hearing.

### *B. Service of the Notice*

Enforcement Staff serve the Notice upon the operator in compliance with the Act, C.R.C.P., and Rule 522. Enforcement Staff may request an operator waive service by certified mail and accept service by electronic mail. In the event that an operator does not accept service via electronic mail nor waive service via certified mail, Staff will mail the Notice to the operator’s address on file with the Commission. It is essential that operators keep their address up-to-date. Staff also publish the Notice in a Denver newspaper and in a newspaper in the county (or counties) in which the affected lands are located.

Enforcement Staff serves Cease and Desist Orders and orders pursuant to Rule 901.a. as quickly and effectively as possible, via confirmed electronic or facsimile copy, followed by a copy sent via other means such as certified mail, or fax.

### *C. Settlement Conferences and Prehearing Conferences*

Prior to a hearing, the operator and Enforcement Staff may engage in settlement conferences. An operator may be represented by an attorney at settlement and prehearing conferences though it is not required. Settlement conferences are generally conducted off the record for purposes of negotiation. Technical Staff is frequently involved to address topics dealing with performance of corrective actions, remediation requirements, and other technical issues. Any agreements reached during a settlement conference are incorporated into the AOC.

Any party to the case may request a prehearing conference pursuant to Rule 509. The Hearing Officer or Commission may also set a formal prehearing conference without any party making a formal request.

Prehearing conferences are governed by Rule 509, the APA, and the C.R.C.P. A Hearing Officer will typically preside over the prehearing conference and rule on preliminary matters. Prehearing conferences are used to establish deadlines, facilitate settlement, narrow issues, identify stipulated facts, and/or resolve other pertinent issues. By participating in one or more prehearing conferences, parties are frequently able to reduce

the scope and length of an adjudicatory hearing. Prehearing proceedings, such as a prehearing conference, may occur concurrently with settlement negotiations.

If the parties identify potentially dispositive legal issues in dispute, the Hearing Officer may establish a schedule for briefing and arguing those issues before the Commission. Cases may be bifurcated such that the Commission or the Hearing Officer will only hear arguments on legal issues at an initial hearing, and take up the factual aspects of the matter at a subsequent hearing after resolving the legal issues.

If an operator does not respond to an NOAV, notice, or does not appear at the hearing, Staff may request a default judgment. Occasionally, an operator will appear at the noticed hearing without having contacted Enforcement Staff in advance. In such an instance, the Commission has discretion to continue the matter, proceed with the hearing, or to fashion another appropriate remedy under the circumstances.

#### *D. Enforcement Hearing Procedures*

Enforcement hearings are governed by the APA, C.R.C.P., the Colorado Rules of Evidence, and Rule 510. The C.R.C.P. will not apply to Commission hearings when its rules are inconsistent with the Commission Rules or the Act. In such a case, the Commission Rules and/or Act will govern. The Commission has discretion to relax the Colorado Rules of Evidence during the course of a hearing. Otherwise, a Commission hearing resembles a typical trial court proceeding. Parties may present evidence, conduct direct and cross examination of witnesses, and make arguments. Witness testimony is given under oath and witnesses are subject to cross-examination.

At the conclusion of a hearing, the Commission may make a decision immediately, or it may enter a written order in due course. An operator against whom the Commission enters an order imposing a penalty must pay the penalty, by certified funds, within 30 days of the Commission's mailing of the order, unless otherwise provided in the order.

#### *E. Complainant's Rights and Responsibilities*

Any person may make a complaint using a Form 18, Complaint Report, to the Director alleging that a violation of the Act or any Commission Rule, order, or permit has occurred. The Director will investigate all complaints made pursuant to Rule 524 to the extent the Director believes sufficient grounds exist to warrant an investigation. Complainants then have certain rights during the enforcement process set forth more completely in Rule 524.

##### 1. Complainant Process

Following the investigation of a complaint, the Director will either (1) determine no violation occurred and take no further action; or (2) determine a violation may have occurred. If the Director determines that a violation may have occurred, the Director has discretion to address the violation using either informal or formal enforcement processes as described in Section III. The Director will notify both the operator and the complainant of their decision.

If the Director determines no violation occurred, a Complainant may file a Petition for Review objecting to that decision and requesting the Commission hear the complainant's objections. The Petition for Review must be filed within 28 days of service of the Director's decision.

If the Director issues an NOAV specifically in response to a complaint and the Director reaches a settlement with the operator, the Complainant has 14 days to comment on the terms of a draft proposed settlement before an AOC is signed and presented to a Hearing Officer. In the event the Complainant objects to the terms of a proposed settlement, they may file a Petition for Review. Complainants must file the Petition for Review within 28 days of receipt of the proposed AOC.

## 2. Petition for Review

A Petition for Review must include facts and legal arguments sufficient to demonstrate that the Director's decision was clearly erroneous.

A Petition for Review may also include a request for a continuance of any hearing on the Petition based on actual, compelling evidence which has been gathered by the Complainant after the Director's contested decision. The petition may also include a request that the Director conduct additional investigation. Either a Hearing Officer or the Commission can determine whether a continuance is warranted based on the information contained in the Petition for Review.

A hearing on a Petition for Review is limited to the evidence and information entered into the record prior to the Director's decision. At the hearing, the Complainant has the burden of proving the Director's decision was clearly erroneous. The hearing itself is a limited proceeding. Rule 510.g. bars the presentation of evidence or information not previously presented to the Director. Absent compelling circumstances, parties may not present testimony. See Statement of Basis and Purpose, Order No. 1R-125, Appendix B at 3. The hearing includes brief argument by the Complainant, the Director, the affected operator, and any intervenors. *Id.*

If the Complainant demonstrates that the Director's decision was clearly erroneous, the Hearing Officer or Commission may remand the matter to the Director for further proceedings, set the matter for an OFV hearing, or order other relief it deems just and reasonable. If the Complainant fails to meet this burden, the Hearing Officer or Commission will deny the Petition for Review.

If a Petition for Review hearing involves objections to a final proposed AOC and the Hearing Officer or Commission decides the Director's decision was not clearly erroneous, the Hearing Officer or Commission may approve the proposed AOC at the hearing.

## VI. The Orphaned Well Program and Claiming a Bond

### A. *The Orphaned Well Program*

The Commission created the Orphaned Well Program (“OWP”) in 1990 with the purpose of ensuring that abandoned wells pose no threat to the public health, safety, welfare, wildlife, or the environment. The OWP allows ECMC to plug wells, remove production equipment and debris, remediate soil and groundwater impacts, install safety equipment such as fences, signs, and locks or tags, and reclaim well pads, remote production sites, and access roads.

There are two ways for a well to enter the Orphaned Well Program: (1) when there is no known responsible party for the Well, or (2) through an Order of the Commission, ordinarily accompanied by the Commission claiming an operator’s financial assurance instrument(s).

ECMC may discover an orphaned well through an internal file review, ECMC field inspection, or a referral in a complaint. Once a potentially orphaned well is discovered, Staff will determine whether the well is already listed with the program, or if there is an active operator responsible for the well. Staff will also determine if there is any financial assurance held with the State for that well. If there is, then Staff will initiate the process of claiming the bond prior to entering the well into OWP. If there is no financial assurance and/or there is not an oil and gas operator responsible for the well, the site is placed into the OWP.

Once a well is placed into OWP, Staff works with the state procurement system to put the project out to bid and then awards a contract or purchase order for the project.

### *B. Bond Claims*

In instances in which the Director seeks to revoke an operator’s Form 1, Registration for Oil and Gas Operations, and place orphaned wells and other assets in the OWP, Enforcement Staff will initiate proceedings to claim the operator’s bond(s). This process is similar to a standard enforcement case, and Staff will notice the claim for hearing. Staff publishes the Notice in every county where the operator owned or operated a well or oil and gas facility. The Notice includes specific language to inform the operator and all potentially interested parties that the Director intends to claim the operator’s financial assurance and place its assets in the OWP. If the operator’s financial assurance is in the form of a surety rather than cash, Staff will provide notice to the relevant bondholder(s).

Once the case has been noticed, Enforcement Staff will attempt to contact the operator using the information on file with ECMC. If Staff are able to reach the operator, they will request that the operator sign a stipulated OFV. Generally, a stipulated OFV will include provisions in which the operator will use any remaining liquid assets to fulfill any outstanding obligations, pay any assessed penalties, do what is necessary to stabilize the location, and conduct reclamation at the site. A stipulated OFV also contains

provisions allowing ECMC to place the well(s) into the OWP, claim the assets and saleable property, and use any financial assurance towards plugging and abandonment of the operator's wells, including any required remediation and reclamation.

If Staff are unable to make contact with the operator, they will file a motion to have the case removed to the Commission. They will then present the case to the Commission, including any NOAVs against the operator and information on the operator's financial assurance held by the state, and request the Commission enter an OFV against the operator and place the wells into the OWP.

## **VII. Extraordinary Orders**

### *A. Cease and Desist Orders*

Rule 528 and § 34-60-121(5), C.R.S., describe the Commission's procedures with respect to Cease and Desist Orders. Cease and Desist Orders can be issued only during an emergency situation, defined in the 100-Series Rules as "a fact situation which presents an immediate danger to public health, safety, or welfare." Before issuing a Cease and Desist Order, the Commission or the Director typically communicate with the operator regarding the need for the Order. However, if the facts require prompt action, the Commission and the Director reserve the right to issue the Order and then attempt communication.

If the Director issues the Cease and Desist Order, the Director will likely notify the Commission to discuss the matter as soon as possible. However, Rule 528 requires that the Commission be notified no later than the next regularly scheduled Commission hearing. Director communication with the Commission may involve calling an emergency meeting of the Commission, a conference call, or some other means of timely communication. The Commission and the Director reserve the authority to stay or modify a Cease and Desist Order, or a discrete portion thereof, where it is appropriate.

### *B. Rule 901.a. Orders*

Pursuant to Rule 901.a., whenever the Director has reasonable cause to determine that an operator is impacting or threatening to impact public health, safety, welfare, the environment, or wildlife resources, the Director may require the operator to take action to avoid or mitigate those impacts. Orders issued pursuant to Rule 901.a. may require operators to take actions including but not limited to suspending operations at some or all of its locations, initiating immediate mitigation measures, or submitting a Form 27, Site Investigation and Remediation Workplan.

If the Director requires an operator to take action pursuant to Rule 901.a., the operator may appeal the Director's decision to the Commission. The Commission will hear that appeal at its next regularly scheduled meeting. Operators must continue to comply with the requirements imposed by the Director in the Order until the Commission makes a decision on the appeal.

Orders issued pursuant to Rule 901.a. are distinguished from Cease and Desist Orders in that Rule 901.a. does not require an “emergency situation” in order for the Director to take action. The threshold for issuance of orders pursuant to Rule 901.a. is lower than that for a Cease and Desist Order.

## **Part B ECMC Penalty Policy**

### **I. Introduction**

This section sets forth the Commission's policies, procedures, interpretations, and guidelines for determining appropriate penalties for violations of the Act, Commission Rules, orders, or permits. This Penalty Policy is intended to deter noncompliance and to encourage any out-of-compliance operators to come into compliance as soon as possible. It is also intended to encourage prompt, cooperative, and complete assessments of, and responses to, impacts to public health, safety, and welfare, the environment, and wildlife resources.

Further, this Penalty Policy is intended to ensure penalties: (1) are assessed equitably and consistently while allowing reasonable flexibility and discretion to the Commission; (2) are appropriate in view of the gravity or seriousness of the violation; (3) eliminate any economic benefit of noncompliance; and (4) are administered to encourage a rapid return to compliance.

#### *A. Preliminary Disclosure*

The policies and procedures set forth in this Penalty Policy are for guidance only. The purpose of this guidance document is to inform all interested stakeholders of the Commission's interpretation of, and expectations concerning, the Rules discussed herein. This document does not contain rules or binding procedures. Interpretative rules or general statements of policy are not binding as rules under the APA. § 24-4-103(1), C.R.S. Similarly, nothing in this Penalty Policy creates any substantive or procedural right in any person or entity. Finally, the Director and Commission may periodically update this Penalty Policy.

It will be unusual for the Commission or the Director to substantially vary from this Penalty Policy. Nevertheless, the Commission retains the discretion to vary penalty assessments from the guidance contained in this Penalty Policy when appropriate.

The Commission acknowledges that an assessment of no penalty, or an assessment of a penalty less than that called for under this Penalty Policy, may be the just and appropriate enforcement response in the circumstances of a particular violation. Similarly, the Commission acknowledges that other circumstances may dictate a penalty greater than the penalty calculated under this Penalty Policy.

#### *B. Documentation of Penalty Assessment*

Enforcement Staff will explain how a proposed penalty is determined and calculated in the enforcement order. Documentation will include information sufficient to demonstrate that a penalty is consistent with the Act, Commission Rules, and this Penalty Policy. If a proposed penalty varies substantially from this Penalty Policy, the variance will be explained in the enforcement order.

Once an enforcement matter concludes, the administrative record for the determination of a penalty is generally a public record available for public review pursuant to the Colorado Open Records Act.

## **II. Brief Overview of the Penalty Calculation**

This section describes the calculation of a penalty amount for an NOAV. Each of the steps set forth in this section are described in more detail below.

1. Enforcement Staff compiles a list of each violation described in the NOAV and the Class of each rule violation.
2. Staff determines a daily penalty amount for each violation using the Penalty Schedule. The daily penalties in the Penalty Schedule are based upon the Rule class violated and the degree of threatened or actual harm to public health, safety, welfare, the environment, or wildlife resources caused by the violation.
3. Staff determines the duration of each violation. Each daily penalty amount is multiplied by the number of days the violation persists.
4. For violations of longer duration, Staff may apply additional procedures that reduce penalty amounts based upon that duration.
5. Staff lists a total penalty amount for each violation and adds these totals to reach a cumulative amount for all violations in the NOAV.
6. Staff considers aggravating and mitigating factors and, if applicable, applies corresponding adjustments to either the cumulative amount or the penalty for an individual violation.
7. Staff may apply other adjustments to a penalty on a case-by-case basis, as discussed in Part B, Section IV. Enforcement Staff will seek this adjusted cumulative amount in the enforcement order.

## **III. Calculation of the Daily Penalty**

To ensure that a penalty is appropriate to the nature of a violation and that penalties are applied uniformly over time, the Commission has established a Penalty Schedule, which is codified in Rule 525.c.(1). and reprinted below. The penalty amounts shown in the schedule are guidelines for considering the appropriate range of an administrative penalty and are meant to inform the Director, the Commission, the regulated community, the public, and other stakeholders. The final amount of a penalty proposed by the Director or approved by the Commission is determined on an individual, case-by-case basis for each violation and may vary from the amounts shown in the schedule.

The Commission's Penalty Schedule is based upon: (1) the Commission's Rule Classification (Appendix A), which establishes rule classes for Commission Rules based on the nature of the violation; and (2) the degree of threatened or actual adverse impact to public health, safety, welfare, the environment, or wildlife resources caused by the violation. These factors form the vertical and horizontal axes of the Penalty Schedule.

**Penalty Schedule – Rule 525.c.(1).**

		Rule Classification		
		Class 1: Paperwork or other ministerial rules, a violation of which presents no direct risk or threat of harm to public health, safety, and welfare, including the environment and wildlife resources.	Class 2: Rules related at least indirectly to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a possibility of distinct, identifiable actual or threatened adverse impacts to those interests.	Class 3: Rules directly related to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a significant probability of actual or threatened adverse impacts to those interests.
Degree of threatened or actual impact	<u>Major:</u> Actual significant adverse impacts	\$5,000	\$10,000	\$15,000
	<u>Moderate:</u> Threat of significant adverse impacts, or moderate actual adverse impacts	\$1,500	\$5,000	\$10,000
	<u>Minor:</u> No actual adverse impact and little or no threat of adverse impacts	\$200	\$2,500	\$5,000

The penalty amounts in the cells of the Penalty Schedule are based on a statutory maximum penalty of \$15,000 per violation, per day. § 34-60-121(1)(a), C.R.S. The Commission has discretion to levy a penalty for each day a violation continues from \$0 to \$15,000 per violation, per day, under the Act. The first step in calculating a daily penalty is to determine which cell in the Penalty Schedule best fits the alleged violation.

**A. Rule Classification**

The first part of the Penalty Schedule is based upon the Commission’s Rule Classification. Appendix A classifies each substantive Commission Rule as a Class 1, 2,

or 3 violation, with a Class 1 having the least severe penalty and Class 3 having the most severe penalty. The Rule classification consideration is shown along the top of the Penalty Schedule. The Rule classifications are set in advance based on the language and goals of the Rule, and are not adjusted based on the individual circumstances of a particular violation.

Class 1 Rules are generally ministerial in nature and a violation of the Rule is unlikely to result in a risk or threat of harm to public health, safety, and welfare, including the environment and wildlife resources. The minimum penalty for violating a Class 1 Rule is \$200 per day.

Class 2 Rules are related in some way to the protection of public health, safety, and welfare including the environment and wildlife resources. Class 2 is the most common rule classification. The minimum penalty for violating a Class 2 Rule is \$2,500 per day.

Class 3 Rules are directly related to protection of public health, safety, and welfare, including the environment and wildlife resources. The minimum penalty for violating a Class 3 Rule is \$5,000 per day.

Typically, the classifications prescribed in the Commission's Rule Classification (Appendix A) will be followed; however, Rule classifications are, by necessity, broad characterizations. Therefore, the Director retains the discretion to reclassify a Rule on a case by case basis where appropriate.

#### *B. The Degree of the Actual or Threatened Impact*

The second factor in determining a penalty is the degree to which a violation results in an actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources. This factor is shown along the left side of the Penalty Schedule.

Enforcement Staff will consider the totality of the circumstances when determining the degree of threatened or actual adverse impact. Generally, "threatened adverse impacts" are particular and foreseeable adverse consequences that could result immediately from a violation.

A violation can have a minor, moderate, or major impact. A minor impact occurs when there is little or no threat of adverse impact, and no actual adverse impact to public health, safety, and welfare, including the environment and wildlife resources. Rule 525.c. does not directly contemplate violations resulting in minor actual adverse impacts. As a result, Enforcement Staff may assign—and has historically assigned—a violation a minor impact where the violation results in minor actual adverse impacts that do not rise to the level of a moderate impact. A moderate violation occurs when there is a threat of a significant adverse impact or a moderate actual adverse impact to public health, safety, and welfare, including the environment and wildlife resources. A major impact occurs when there is an actual, significant, adverse impact to public health, safety, and welfare, including the environment and wildlife resources.

The impact applied to a particular circumstance lies wholly within the discretion of the Commission and the Director. Rule 525.c.(2). provides a *non-exhaustive* list of factors the Director and Commission may consider when assessing the extent of adverse impacts, including:

- Whether and to what degree the environment and wildlife resources were adversely affected or threatened by the violation;
- Whether and to what degree Waters of the State were adversely affected or threatened by the violation;
- Whether and to what degree drinking water was adversely affected or threatened by the violation;
- The quantity and character of any exploration and production (“E&P”) Waste or non-E&P Waste that was, or threatened to be, spilled or released;
- Whether any persons were harmed or whether there was a threat to the health, safety, and welfare of any persons; and
- Any other facts relevant to an objective assessment of the degree of adverse impact.

Enforcement Staff is not required to specifically address each of these factors in calculating a penalty.

### *C. Calculating the Penalty*

The total penalty per violation is calculated by multiplying the daily penalty in the Penalty Schedule by the days of violation. Under § 34-60-121(1), C.R.S. and Rule 525, each day of violation is subject to a daily penalty.

Rule 525.b. describes how Enforcement Staff will calculate the duration of a violation in most cases. Generally, Enforcement Staff will count the days of violation commencing when the violation was discovered or should have been discovered, or when an action should have been taken, and ending when the required action is completed or commenced to the Director’s satisfaction.

#### 1. Duration - Start Date

The first step in determining the duration of a violation is to find the start date. The start date for a reporting or minor violation will usually be the day the report should have been made or other required action should have been taken. For all other violations, the start date is typically the date the violation was discovered or should have been discovered through the exercise of reasonable care.

For example, pursuant to Rule 413, operators are required to submit Form 7, Operator’s Monthly Report of Operations, 45 days after the end of each month. This is a Class 1 reporting violation, and the start date would be on the 46<sup>th</sup> day because it is the first day after the date the Report was due.

In another example, pursuant to Rule 606.c., an operator must keep the Oil and Gas Location free of all Undesirable Plant Species. Failure to comply with this rule is a Class

2 violation. If Commission Staff inspects a location on October 1st and discover Undesirable Plant Species sufficient to warrant an NOAV, then the start date would be October 1st, the date Staff discovered the violation.

Sometimes, the start date is not so obvious. For example, assume a flowline leak exists with noticeable surface impacts and the operator has failed to pressure-test the leaking flowline for two years. Rule 1104 requires operators to implement an integrity management program for flowlines. In this case, the start date for a violation of Rule 1104 could be: (1) when the surface impacts were first identified; (2) when the surface impacts should have been discovered through the exercise of reasonable care; or (3) on the date that the testing required by the integrity management program should have been completed. Enforcement Staff will consider all available facts and evidence in determining the most appropriate start date of the violation in cases like this.

## 2. Duration - End Dates and Commencement of Corrective Actions

The next step in determining the duration of a violation is to determine the end date. The end date for a reporting or minor violation is the date the missing report is filed or the required action is commenced to the Director's satisfaction. See § 34-60-121(1)(c), C.R.S. For all other violations, the end date is when the appropriate corrective action is commenced to the Director's satisfaction. *Id.*

Commencement of corrective actions can look different depending on the violation and the impacts of that violation. If the violation resulted in actual or threatened adverse impacts, the operator must, at a minimum, (1) perform any immediate actions necessary to assess and evaluate the actual or threatened adverse impacts to public health, safety, welfare, the environment, and wildlife resources; and (2) perform all other near-term actions necessary to stop, contain, or control actual or threatened impacts for the corrective action to be considered commenced.

In most cases, commencing corrective actions will eliminate the threat of harm without the need for additional, long-term remediation. For example, Rule 905.a.(1). requires operators to ensure that E&P waste is properly stored, handled, transported, treated, recycled, or disposed of to prevent threatened or actual significant adverse impacts to the environment and public health or, to the extent necessary, to ensure compliance with the concentration levels in Table 915-1.

Under this Rule, if an operator improperly stored E&P waste near a municipal water source, the operator may be subject to an NOAV and subsequent penalties for creating a threat of significant adverse environmental impacts. In this example, improper storage created a *threat* of a spill, not an actual spill or actual adverse impacts. Therefore, long term remediation is not necessary and the operator can commence corrective actions by taking one step: properly storing the E&P waste. The start date in this example is when the threat was created—when the E&P waste was improperly stored near a municipal water source—and the end date is when the operator properly stored the E&P waste such that it would no longer represent a threat of significant adverse environmental impacts to the municipal water source.

Conversely, imagine a poorly constructed tank battery at which subsidence of the tank causes a valve to break and significant quantities of hydrocarbons to spill. First, the operator must remedy the actual cause of the impact: the broken valve. Then, the operator must eliminate any actual impacts and the threat of additional impacts. Theoretical end dates for such a violation could be when the operator shut in the wells or emptied the affected tank and removed standing fluids. Daily penalties will stop accruing once the operator takes steps to the Director's satisfaction to eliminate the threat of additional impacts. At this point, the operator may begin the long-term work of remediating the spill.

Where, as here, a set of facts clearly represents a threat to the environment or public health, an operator will be liable for daily penalties until the threat is removed. Enforcement Staff generally does not impose a penalty for days on which an operator is awaiting approval of a workplan. However, such approval is rarely required to perform the kind of near-term actions necessary to stop an ongoing violation. While awaiting approval, operators are required to undertake all other responsive activities that can be performed.

Generally, Enforcement Staff does not count the time required for long-term actions necessary to fully and completely remediate adverse environmental or wildlife impacts resulting from a violation as part of the violation duration, absent aggravating circumstances. Such long-term remedial actions may include, but are not limited to, construction and ongoing operation and maintenance of a groundwater treatment system; long-term monitoring of environmental impacts; in-situ soil treatment; provision of a permanent alternative water supply; or removal of oily waste. Completing these kinds of remedial actions often can take many months or years.

### 3. Application of the Violation Duration Matrix

The Act requires the Commission to assess a penalty for each day a violation continues. § 34-60-121(1)(a), C.R.S. The Commission recognizes that for violations of long duration, a straight per-day-of-violation calculation can result in an extremely large penalty amount. Often, such a large penalty is disproportionate to the violation and unjust. In such cases, the Commission and the Director have the discretion to adjust the daily base penalty. Rule 525.c.(4). To determine the appropriate daily penalty amount for a long-term violation, the Commission or Director may apply the Violation Duration Matrix. The Violation Duration Matrix reduces the daily penalty by a specified percentage depending on the duration of the penalty. The calculations for each time interval are summed to determine the total penalty. The decision to apply the Violation Duration Matrix lies wholly within the discretion of the Commission and the Director.

		<b>Violation Duration Matrix</b>					
		<b>Days of Continuing Violation</b> (Columns represent parts of the complete duration of the violation)					
<b>Type of Violation</b> (refer to the axes of Penalty Matrix)		1-10	11-30	31-60	61-120	121-365	366+
	Class 3/Major	100.00%	50.00%	25.00%	10.00%	5.00%	2.00%
	Class 3/Moderate	100.00%	45.00%	22.50%	9.00%	4.50%	1.80%
	Class 3/Minor	100.00%	40.00%	20.00%	8.00%	4.00%	1.60%
	Class 2/Major	100.00%	35.00%	17.50%	7.00%	3.50%	1.40%
	Class 2/Moderate	100.00%	30.00%	15.00%	6.00%	3.00%	1.20%
	Class 2/Minor	100.00%	20.00%	10.00%	4.00%	2.00%	0.80%
	Class 1/Major	100.00%	18.30%	9.20%	3.70 %	1.80%	0.70%
	Class 1/Moderate	100.00%	16.70%	8.30%	3.30%	1.70%	0.70%
	Class 1/Minor	100.00%	15.00%	7.50%	3.00%	1.50%	0.60%

Example Calculation

For illustration, consider a violation of a Class 3 Rule that resulted in a moderate degree of threatened or actual impact. The daily penalty for the violation, based on the Penalty Schedule, is \$10,000 per day of violation.

Assume the violation persists for 82 days. A straight per-day-of-violation calculation would result in a penalty of \$820,000.

Applying the Violation Duration Matrix, the penalty would be calculated using the “Class 3/Moderate” row of the matrix. The calculation would be:

Days 1-10	(\$10,000) X (10 days) X (100%)	\$100,000
Days 11-30	(\$10,000) X (20 days) X (45%)	\$90,000
Days 31-60	(\$10,000) X (30 days) X (22.50%)	\$67,500
Days 61-82	(\$10,000) X (22 days) X (9.00%)	<u>\$19,800</u>
Total Penalty		\$277,300

Using the Violation Duration Matrix reduces the total daily penalty for this violation by \$542,700, or approximately 66%.

The Violation Duration Matrix is a guide only. The Commission retains the discretion to propose penalties greater or smaller than those calculated using the Violation Duration Matrix.

#### **IV. Penalty Adjustments for Aggravating and Mitigating Factors**

Enforcement Staff has the discretion to adjust the total penalty based upon consideration of the aggravating and mitigating factors in Rule 525.c.(3). When determining whether an aggravating or mitigating factor should be applied, Enforcement Staff will consider the totality of the circumstances surrounding a violation. However, Enforcement Staff is under no obligation to adjust a penalty based upon these factors. Enforcement Staff may only increase the daily penalty to the statutory daily maximum of \$15,000.

Enforcement Staff can apply adjustments based upon aggravating or mitigating factors to the cumulative penalty amount or to individual violations.

##### *A. Aggravating Factors*

An aggravating factor is either something the operator did, or something that happened as a result of the violation, that warrants a more severe penalty than that calculated using the penalty matrix.

There are eight aggravating factors contemplated by the Rules:

1. The violator acted with gross negligence or knowing and willful misconduct;
2. The violation resulted in significant waste of oil and gas resources;
3. The violation had a significant negative impact on correlative rights of other parties;
4. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation;
5. The violator falsified reports or records;
6. The violator benefited economically from the violation, in which case the amount of such benefit will be taken into consideration;
7. The violator engaged in a pattern of violations; and
8. The violation led to death or serious injury.

If the Director or Commission find that an operator has acted with gross negligence, knowing and willful misconduct, or has engaged in a pattern of violations, the operator may face additional consequences beyond a larger penalty. Pursuant to the Act, the Director or Commission may suspend a violator's Certificates of Clearance, withhold new drilling or oil and gas location permits for the violator, or take other appropriate action. § 34-60-121(7), C.R.S. If a violation resulting from gross negligence or knowing and willful misconduct is an egregious violation, the violation cannot be resolved administratively by Enforcement Staff, but must be set for an OFV hearing before the Commission.

Certificates of Clearance may be restored and an operator may be allowed to obtain new drilling or oil and gas location permits once they demonstrate, to the Director and Commission's satisfaction, that it has returned to compliance with the Act and the Rules and paid any assessed penalty. Guidance from Enforcement Staff on application of certain aggravating factors is listed below.

## 1. Gross Negligence or Knowing and Willful Misconduct

Gross negligence is reckless or conscious disregard for a legal duty or for the lives and safety of others. Gross negligence is conduct beyond simple negligence, showing an extreme departure from the ordinary standard of care. Knowing and willful conduct is conscious and intentional.

While assessing whether a violation is the result of gross negligence or knowing and willful misconduct, the Commission will ordinarily consider the following non-exhaustive list of factors:

- Whether the violator had control over the events constituting the violation, and to what degree;
- Whether the events constituting the violation were foreseeable;
- Whether the violator took or could have taken reasonable precautions against the events constituting the violation;
- Whether the violator knew or should have known of the hazards associated with the events constituting the violation; and
- Whether the violator proceeded with actions constituting the violation with specific knowledge, or whether the violator knew or should have known of the legal requirement that was violated.

Lack of knowledge of a legal requirement is not a basis upon which to reduce a penalty.

## 2. Economic Benefit

Enforcement Staff will seek penalties that eliminate economic incentives for noncompliance. For instance, violations of the following regulatory requirements are likely to present significant economic benefits: failure to perform mechanical integrity tests (Rule 417), failure to remediate spills or releases of E&P Waste (Rule 912), and failure to legally dispose of E&P Waste (Rule 905). This is a non-exhaustive list.

## 3. Pattern of Violations.

A “pattern of violations” is a history of non-compliance with the Act, Commission Rules, orders, or permits. It demonstrates the operator’s persistent and potentially intentional disregard for these legal requirements or the Commission’s authority.

Enforcement Staff will consider an operator’s history of violations of the Act or Commission Rules, orders, or permits, and any other factors relevant to objectively determining whether to seek a determination by the Commission that an operator has engaged in a pattern of violations. For an operator’s history of violations, Enforcement Staff may only consider violations confirmed by Commission order through an AOC or OFV.<sup>2</sup>

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<sup>2</sup> The Commission discussed the “history of violations” aspect of Rule 525.d.(3). more thoroughly in Order No. 1V-772.

Even if an AOC contains language limiting an operator's admission of liability, the Commission and the Director may still consider the violations therein for purposes of identifying a pattern of violations.

If the Director seeks a finding that an operator has engaged in a pattern of violations, Rule 510.f.(1). requires that there be an OFV hearing.

### *B. Mitigating Factors*

A mitigating factor is an action or event that occurred that warrants a reduction in the calculated penalty amount. Enforcement Staff has the discretion to apply mitigating factors in any enforcement action. An operator's cooperation with the Director, Commission, and other regulatory agencies actively involved in responding to an alleged violation is a prerequisite to a reduction in penalties based on the following mitigating factors. Rule 525.c.(3).B. contemplates six mitigating factors.

1. The violator self-reported the violation;
2. The violator demonstrated a prompt, effective, and prudent response to the violation, including assistance to any impacted parties;
3. The cause of the violation was outside of the violator's reasonable control and responsibility, or is customarily considered to be force majeure;
4. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation;
5. The cost of correcting the violation reduced or eliminated any economic benefit to the violator, excluding circumstances in which increased costs stemmed from non-compliance; and
6. The violator has demonstrated a history of compliance with the Act and the Commission's Rules, orders, and permits.

Further explanations for each mitigating factor is provided below.

#### 1. Self-Disclosure

A self-disclosure occurs when an operator discloses the existence of a violation to the Director as soon as practicable after discovery. This mitigating factor applies only in a narrow set of circumstances and even if the requirements are met, Enforcement Staff retains the discretion not to apply this factor when calculating a penalty.

In order for Enforcement Staff to consider the application of this mitigating factor, the operator must: (1) promptly disclose the violation; (2) discover the violation independent of, and unrelated to a Commission inspection, Warning Letter, or NOAV; (3) cooperate with the Director regarding investigation of the violation; and (4) achieve, or commit to achieve, compliance within a reasonable time and pursue compliance with due diligence. If the operator fails to meet any of these requirements, Enforcement Staff will not consider application of the self-disclosure mitigating factor.

Similarly, Enforcement Staff will not consider a penalty reduction if the operator makes a self-disclosure (1) for fraudulent purposes; (2) as part of a pattern of violations; or (3) the

violation disclosed was egregious and the result of the operator's gross negligence or knowing and willful misconduct.

Importantly, *it is not considered a self-disclosure if the operator reports a violation pursuant to a Commission Rule*. For example, if an operator spills E&P waste and then reports the spill on a Form 19 – Initial, that is not a self-disclosure because Rule 912 requires operators to report a spill of E&P Waste.

If an operator wishes to self-disclose a violation pursuant to Rule 525.e., the operator should file a request with Enforcement Staff. If the operator discovers multiple violations that are tied to the same factual circumstances (*e.g.*, same date of discovery, same location, etc.), they should be included in the same request. If the operator discovers multiple violations that are the result of *different* factual circumstances, separate requests should be submitted for each violation. By submitting a request, an operator acknowledges that:

- Enforcement Staff reserves the right to deny a penalty reduction based on the facts and information presented in the request, and additional information gathered during its own investigation and application of the factors in Rule 525.e.
- Enforcement Staff reserves the right to verify the accuracy of the information submitted by an operator or the adequacy of sampling, monitoring, and other methods to obtain information through the regulatory compliance program.
- Enforcement Staff reserves the right to enter any site, copy records, inspect, monitor, or otherwise investigate compliance, including the Commission's authority to investigate complaints.

If the operator does not correct the violation within a reasonable time, Enforcement Staff reserves the right to pursue the full penalty amount and require timely completion of corrective actions.

## 2. Prompt, Effective, and Prudent Violation Response

This mitigating factor may apply when an operator has cooperated with the Commission and other agencies with respect to the violation *and* demonstrated a prompt, effective, and prudent response to the violation, including assistance to any impacted parties.

This mitigating factor does not apply to a situation where, in response to an NOAV, an operator simply returns to compliance in the ordinary course. Instead, an operator must promptly return to compliance in a manner that is atypical and simultaneously be forthcoming in their communications with Staff and assisting impacted parties (*e.g.*, an impacted surface owner).

## 3. Violations Outside the Operator's Control or Force Majeure

Force majeure is an extraordinary event that directly prevents an operator from complying with the Rules and/or is the underlying cause of the violation. Common examples of force majeure events are fires, floods, and storms. However, a mere impracticality or unanticipated difficulty due to such an event is not sufficient for force majeure to apply.

Enforcement Staff will consider whether force majeure caused, in whole or substantial part, an alleged violation prior to the issuing an NOAV. Enforcement Staff typically will not issue an NOAV if force majeure appears to be the sole cause of an alleged violation. Force majeure may be applied as a mitigating factor where Enforcement Staff determines it was a substantial contributing factor to the violation or the adverse impacts arising from the violation.

#### 4. Good Faith Effort to Comply

Good faith is a term used to encompass the idea of honest dealing. Typically, good faith requires an honest belief or purpose, or a sincere intention to be open and honest during an interaction. This encompasses the requirement that an operator act with due diligence, promptly and respectfully communicate with Commission Staff when problems arise, and perform its operations with care, in accordance with best engineering practices and industry standards. In order for Enforcement Staff to consider applying this mitigating factor, the operator must have made a good faith effort to comply with the Rule or the Act *prior to* the Commission learning of the violation.

#### 5. Cost of Correcting the Violation

The Commission does not consider the costs incurred to return to compliance a mitigating factor, even if those costs have increased as a result of being out of compliance. For example, where an operator has improperly disposed of E&P Waste the cost of disposal will usually be higher than if the waste had been properly disposed of from the start. This increased cost will not be considered a mitigating factor.

#### 6. Demonstrated History of Compliance

An operator's *exceptional* compliance history over an *extended* period of time may warrant consideration as a mitigating factor. However, it is not determinative. Enforcement Staff retains the discretion not to apply this mitigating factor, even where an operator has an otherwise perfect history of compliance.

### **V. Other Penalty Adjustment Considerations**

#### *A. Batch NOAVs*

Recently, ECMC Staff have been issuing and resolving an increasing amount of “batch” NOAVs. Batches are groups of NOAVs issued to numerous operators who have all violated the same Rule or provision of the Act. The penalty structure of these batch NOAVs will likely differ from a standard penalty calculation because Enforcement Staff may exercise discretion to modify the penalty calculation and assess a penalty that is more appropriate to the nature of the violations. This modification will be applied consistently to all of the operators within the batch. Batch treatment seeks to resolve multiple NOAVs as efficiently as possible and Enforcement Staff has found that a reduced penalty amount, consistently applied to multiple operators, results in a very streamlined

process that returns operators to compliance quickly. Enforcement Staff reserves the right to differ from this modified approach where the circumstances warrant doing so.

### *B. Consolidation of Violations*

When an NOAV contains multiple violations, Enforcement Staff has the discretion to consolidate violations that are not substantially distinguishable.

Generally, violations are substantially distinguishable when: (1) the Rules violated have at least one distinct legal or factual element; or (2) the purpose of each Rule violated is separate and distinct. Conversely, where separate acts constitute distinct violations of the same Rule, each act of violation may be separately prosecuted.

However, even where violations are substantially distinguishable, circumstances may exist in which asserting a full penalty for all possible violations arising from a single activity or event would result in a disproportionately large penalty. Particularly where certain violations could have been resolved through the issuance of a Warning Letter or a Corrective Action Required Inspection Report. In such circumstances, flexibility and discretion may be used to provide a just and effective penalty.

### *C. Adjustments in Settlement Negotiations*

In light of the avoided costs and administrative burdens reached through settlement, the Director may reduce a penalty as an inducement to settle.

When the Director determines that an NOAV may be resolved through negotiated settlement, the Director may propose a resolution that includes a percentage reduction of the calculated penalty. The size of the discount is left to the discretion of Enforcement Staff based on the facts known at the time of settlement. If the operator declines to accept the original settlement offer the matter will be scheduled for hearing before the Commission. Penalty reductions offered during settlement negotiations are neither available nor applicable should an operator decline to accept the Director's offer to settle a matter.

### *D. Violator's Ability to Pay*

Enforcement Staff may consider the violator's "ability to pay" when setting a penalty. In some cases, this consideration affects the total penalty assessed. More often, this consideration affects only the penalty amount due immediately after Commission approval of a Recommended Order/AOC. "Ability to pay" refers to the effect a penalty might have on the violator's ability to continue operating in Colorado. Of particular concern is whether a high penalty would cause the operator to "orphan" its assets, leaving the state with unfunded liability for remediation.

If a large penalty would jeopardize a violator's ability to conduct necessary environmental remediation, or delay the operator's ability to perform necessary corrective actions or remediation, Enforcement Staff has discretion to consider a suspended penalty during

settlement negotiations. A suspension occurs when an operator is only required to immediately pay a portion of the total penalty, with the imposition of the remaining penalty contingent upon timely completion of corrective actions. If the operator timely performs the required corrective actions, the suspended portion of the penalty is typically vacated. The suspended portion of the penalty provides the operator incentive to complete the required work on time, as failure to do so will result in certain and rapid imposition of the remainder of the suspended portion of the penalty.

Alternatively, if an operator is unable to pay a penalty, they may request a payment plan or a reduced penalty. Payment plans and penalty reductions are uncommon and occur at the sole discretion of Enforcement Staff.

Another alternative if an operator is unable to pay a penalty is to place their wells into the OWP. In doing so, the operator will surrender their remaining wells to the state, however, they must commit any remaining liquid assets to plugging and abandoning the well(s) and reclamation.

An operator that wishes to have its ability to pay considered in penalty assessment will need to document its financial condition to the satisfaction of Enforcement Staff by completing and submitting an ECMC Application for Consideration of Inability to Pay Standard Enforcement Penalty. This application requires an operator to provide a written summary regarding company revenues, liabilities, and assets, attaching financial statements, bank statements, and tax returns (among other information), in a certified submission. This application is available by request from Enforcement Staff. Absent sufficient evidence, a penalty typically will not be adjusted based on claimed hardship.

#### *E. Suspended Penalties*

As discussed in Section V.D., above, Enforcement Staff may suspend a portion of a penalty contingent upon an operator's agreement to certain terms. Typically, a suspension will not be granted where an operator simply corrects the underlying violation. Instead, an operator must agree to something above and beyond what they are otherwise obligated to do. The full penalty will become due if the contingencies in the AOC are not fully satisfied. Enforcement Staff may consider this approach independent of an operator's demonstrated ability to pay.

#### *F. Increased Financial Assurance*

In order to address perceived inadequacies in an individual operator's financial assurance, the Director has the discretion to petition the Commission for increased financial assurance. Rule 707.a. Rather than undertake the administrative burden of filing such a petition, the Director has the discretion to offset a portion of a proposed penalty with additional financial assurance posted by the operator. This has the dual benefit of better protecting the State of Colorado while simultaneously resulting in the imposition of a penalty that is more appropriate to the nature of the violation.

#### *G. Public Projects*

Pursuant to Rule 525.f., the Commission may consider a Public Project in lieu of, or in partial satisfaction of, a penalty. Public Projects must benefit public health, safety, and welfare, including the environment and wildlife resources. Preferably, the project will have a geographic nexus to communities or areas affected by the violation.

Public Projects must be carefully designed and documentation of the project's scope, extent of public participation, and other relevant information is required prior to Commission approval of a project.

A post-completion report is required in most cases to document successful completion of the project, to report on actual costs, and other relevant parameters.

Past examples of approved public projects include first-responder training, donations of specialized emergency response equipment related to oil and gas operations, and providing an outside consultant to analyze an oil and gas related issue with potential adverse impacts to public health, safety and welfare.

A violator must not otherwise be legally required to perform the activities proposed in a Public Project (outside of the agreement and order memorializing a Public Project). Notably, pursuant to Rule 525.f., a Public Project may offset the penalty amount dollar for dollar, or by a ratio determined by the Commission. As such, engaging in a Public Project may substantially decrease the amount of penalty paid by the operator, resulting in a penalty more closely aligned with the nature of the violation. However, the violator is ultimately responsible for ensuring the satisfactory performance of a Public Project; if in the discretion of the Director, a Public Project is not adequately performed pursuant to an AOC, the Director reserves the right to impose the entire offset penalty amount or a portion thereof.

## Appendix A

<b>Definitions (100 Series)</b> General Definitions that are not separately enforced				
<b>General Rules (200 Series)</b>				
<b>Rule (Old Rule)</b>	<b>(Subpart)</b>	<b>Name</b>	<b>Classification</b>	<b>Mandatory (M) or Discretionary (D)</b>
201 (Old Rules 201, 205A, 320)		Effective Scope of Rules and Regulations	x	x
202		Office and Duties of Director	x	x
203		Office and Duties of Secretary	x	x
204		Inspection Powers	x	x
		<b>Operator Registration</b>		
205 (302)	a	Form 1, Registration for Oil and Gas Operations	1	M
	b	Form 1A, Designation of Agent	1	D
	c	Form 1B, Annual Registration	1	D
206 (205, 201, 308C)		Record Keeping and Access to Records	1	D
207		Reports	1	D
208 (205, 205A)		Chemical Disclosure	1	D
		<b>Tests and Surveys</b>		
209 (207)	a	Tests and Surveys	1	D
	b	no name	x	x
	c	Bradenhead Test Areas	2	D
210 (208)		Corrective Action	x	x
211 (208)		Plugging and Abandonment of Wells and Closure of Oil and Gas Facilities and Locations	2	D
212 (209)		Isolation of Coal Seams and Groundwater	2	D
213 (301)		Notice to the Director and Commission	1	D
214 (211)		Naming of Fields	x	x
215 (214)		Form 29, Local Government Information	x	x
216 (215)		Global Positioning Systems	1	D
217 (310)		Form 8, Oil and Gas Conservation Levy	2	D
218 (312)		Form 9, Transfer of Operatorship	2	M
219 (312)		Form 10, Certificate of Clearance	2	M
220 (313B, 401)		Form 12, Gas Facility Registration/Change of Operator	2	M
221 (334)		Public Highways and Roads	x	x
222 (336)		Form 18, Complaint Report	x	x
223 (308C)		Confidential Information	x	x
<b>Permitting Process (300 Series)</b>				
		<b>General Requirements for Approval, Changes to Operations, and Filing Fees for Oil and Gas Operations</b>		
301 (303)	a	Approval	X	x
	b	Denial	X	x
	c	Changes to Approved Oil and Gas Development Plans	1	D
	d	Filing Fees	X	x
	e	no name	X	x

	f	Coordination with Local Governments and Federal Agencies	1	D
302 (302, 303, 305, 305A, 306)	Local Governments			
	a	no name	x	x
	b	Local Government Siting Information	1	D
	c	Director's Review of Local Government Citing Information	x	x
	d	no name	x	x
	e	Notice to Relevant and Proximate Local Governments	1	D
	f	Local Government Waiving Authority	x	x
	g	Local Government Consultation	2	D
303(303)	Procedural Requirements for Oil and Gas Development Plans			
	a	Components of an Oil and Gas Development Plan Application	2	D
	b	Completeness Determination	X	x
	c	Revisions to an Oil and Gas Development Plan Application	X	x
	d	Public Review and Consultation	X	x
	e	Notice	2	D
	f	Publication of Comments	X	x
	g	Extension of Comment Period	X	x
	h	Drilling and Spacing Unit Applications	X	x
304 (303, 605, 1201)	Form 2A, Oil and Gas Location Assessment Application			
	a	Submitting Form 2A	2	M
	b	Information Requirements	1	D
	c	Plans	1	D
	d	Lesser Impact Areas	x	x
	e	Substantially Equivalent Information	x	x
305 (new rule)	Application for a Drilling and Spacing Unit			
	a	Procedural Requirements	1	D
	b	Standards for Approval	x	x
306 (304, 305)		Director's Recommendation on the Oil and Gas Development Plan	x	x
307 (305)		Commission Consideration of the Oil and Gas Development Plan	x	x
308 (303)	Form 2, Application to Drill, Deepen, Re-Enter, or Recomplete and Operate			
	a	Submitting Form 2	3	M
	b	Information Requirements	2	D
	c	Administrative Approval or Denial of the Form 2	x	x
	d	Changes to Form 2	x	x
309 (305, 305A, 305, 1202)	Consultation			
	a	no name	2	D
	b	Surface Owners	2	D
	c	Building Unit Owners and Tenants	2	D
	d	Schools, Child Care Centers, and School Governing Bodies	2	D
	e	Colorado Parks and Wildlife	2	D

	f	Consultation with CDPHE	2	D
	g	Public Water Systems	2	D
310 (303)		Suspending Approved Oil and Gas Development Plans	x	x
311 (303)		Expiration	x	x
312 (new rule)		Subsequent Operations on Existing Wells	2	D
313 (333)	Form 20, Permit to Conduct Seismic Operations			
	a	Submitting Form 20	2	D
	b	Information Requirements	2	D
	c	Local Government Permits	2	D
	d	Traffic Control and Load Limits	2	D
	e	Director's Decision	x	x
	f	Changes to Form 20	2	D
	g	Form 20 Expiration	x	x
	h	Refile Form 20	2	D
	i	No name	2	D
314 (216)		Comprehensive Area Plans	x	x
<b>Operations and Reporting (400 Series)</b>				
401 (318)		Location of Well Completions	2	D
402 (318A)		Greater Wattenberg Area Special Well Location and Unit Designation Rule	1	D
403 (318B)		Yuma/Phillips County Special Well Location Rule	1	D
404 (307)		Form 4, Sundry Notices	x	x
405 (316C, 333)		Form 42, Field Operations Notice	2	D
406(305)	General Oil and Gas Location Construction Rules			
	a	no name	2	D
	b	Requirement to Provide Construction Notice	1	D
	c	Requirement to Post Location Assessment at the Location	1	D
	d	Location Signage	1	D
	e	Conductors	2	D
407 (new rule)		Form 45, Location Construction Report	2	D
	General Drilling Rules			
	a	Closed Loop Drilling	2	D
	b	Bottom Hole Location	2	D
	c	Requirement to Post Permit at the Rig	2	D
	d	Requirement to Provide Spud Notice	2	D
	e	Drilling Fluid, Casing, and Cement Program	3	M
	f	Cementing	2	D
	g	Casing Centralization	2	D
	h	Wellbore Circulation	2	D
	i	Surface and Intermediate Casing Cementing	2	D
	j	Production Casing Cementing	2	D
	k	Surface Casing Pressure Testing	2	D
	l	Intermediate Casing Pressure Testing	2	D
m	Production Casing and Stimulation String Pressure Testing	2	D	

408 (317, 604)	n	Casing Pressure Test Monitoring and Success Criteria for all Casing Strings	2	D
	o	Isolation when Drilling Operations are Suspended before Running Production Casing	3	M
	p	Protection of Productive Strata During Deepening Operating	2	D
	q	Requirement to Evaluate Disposal Zones for Hydrocarbon Potential	2	D
	r	Requirement to Log Well	2	D
	s	Remedial Cementing	2	D
	t	Statewide Wellbore Collision Prevention	3	M
	u	Statewide Setback for Hydraulic Fracturing Treatment	3	M
	v	Notice Prior to Hydraulic Fracturing Treatment	2	D
	w	Offset Wellheads and Surface Equipment	3	M
	x	Consent to Offset Well Mitigation	2	D
	y	Communication Prevention	3	M
	z	Surface Equipment Used in Hydraulic Fracturing Treatment	3	M
aa	Hydraulic Fracturing Treatment Monitoring	2	D	
409 (315)		Report of Reservoir Pressure Test	1	D
410 (321)		Directional Drilling	2	D
411 (317B)		Public Water System Protection	3	M
412 (305, 604)	Surface Owner Notice			
	a	Statutory Notice to Surface Owners	2	D
	b	Move-in, Rig-up Notice	2	D
413 (309)		Form 7, Operator's Monthly Report of Operations	1	D
414 (308A)		Form 5, Drilling Completion Report	2	D
415 (322)		Commingling	2	D
416 (308B)		Form 5A, Completed Interval Report	2	D
417 (326)		Mechanical Integrity Testing	2	D
418 (316B)		Form 21, Mechanical Integrity Test	2	D
419 (341)	Bradenhead Monitoring, Testing, and Reporting			
	a	Equipment Requirements	2	D
	b	Bradenhead Monitoring	2	D
	c	Annual Bradenhead Testing and Reporting	2	D
	d	Bradenhead Test Observations	1	D
420 (314)		Form 17, Bradenhead Test Report	2	D
421 (603.h.)		Statewide Floodplain Requirements	2	D
422 (801)		Local Government Welfare Protection Standards	2	D
423 (802)		Noise	2	D
424 (803)		Lighting	2	D
425 (804)		Visual Impact Mitigation	2	D
426 (805)		Odors	2	D
427 (805, 907)		Dust	2	D

428 (327)		Well Control	3	M
429 (328)		Measurement of Oil	1	D
430 (329)		Measurement of Gas	1	D
431 (330)		Measurement and Reporting of Produced, Reused, Recycled, and Injected Water	1	D
432 (331)		Vacuum Pumps on Wells	2	D
433 (332)		Use of gas for Artificial Gas Lifting	2	D
434 (319)		Abandonment	3	M
435 (311)		Form 6, Well Abandonment Reports	2	D
436 (333)		Seismic Operations, Notice, Consultation and Reporting		
	a	Surface Owner and Tenant Notice	1	D
	b	Utility Owner Notice and Consultation	1	D
	c	no name	1	D
	d	Vibration Limits	2	D
	e	Seismic Operations Requiring the Drilling of Shot holes	2	D
	f	Form 20A, Completion Report for Seismic Operations	1	D
	g	Financial Assurance Requirements	1	D
	h	Reclamation Requirements	2	D
437 (New Rule)		Hydraulic Fracturing Chemical Additives	3	M
<b>Rules of Practice and Procedure (500 Series)</b> Procedural Rules that are not separately enforced, except for Rule 523.f. as described below				
523	f	Failure to comply with Commission Order	3	M
<b>Safety and Facility Operations Regulations (600 Series)</b>				
601 (202, 601)		Introduction	x	x
602 (602, 603)		General Safety Requirements		
	a	no name	2	D
	b	Employee Training	2	D
	c	Employee Safety	3	D
	d	Operations Safety Management Program	2	D
	e	Reporting Unsafe Conditions	2	D
	f	Safety Shut-ins	x	x
	g	Reportable Safety Events	2	D
	h	Form 22, Accident Reports	2	D
	i	no name	3	D
	j	Emergency Response Plans	2	D
	k	Vehicle Parking	1	D
	l	no name	x	x
	m	Provision of Sanitary Facilities	1	D
		Operational and Safety Requirements		
	a	Blowout Prevention Equipment ("BOPE")	3	M
	b	Rig Floor Safety Valve Requirements	2	D
	c	Well Servicing Options	3	M
	d	Well Consolidation	2	D
	e	Development from Existing Oil and Gas Locations	2	D

603 (317, 603, 604, 605)	f	Pit Level Indicators	2	D
	g	Drill Stem Tests	2	D
	h	Fencing Requirements	2	D
	i	Loadlines	2	D
	j	Guy Line Anchors	2	D
	k	Tank Specifications	2	D
	l	Access Roads	2	D
	m	Well Site Cleared	2	D
	n	Identification of Plugged and Abandoned Wells	2	D
o	Secondary Containment	3	D	
604 (603, 604)		Setbacks and Siting Requirements	2	M
605 (210, 305, 603, 605)		Signage Requirements for Oil and Gas Operations	2	D
606 (603.f.)		Equipment, Weeds, Waste, and Trash Requirements	2	D
607 (603.g.)		Equipment Anchoring Requirements	2	D
Oil and Gas Facilities				
608 (603, 604, 605, 805)	a	Production Liquid Storage Tanks	2	D
	b	Fired Vessel, Heater, Treater, and Separation Equipment	2	D
	c	Special Equipment	2	D
	d	Static Charge, Lightning, and Stray Current Requirements	2	D
	e	Mechanical Conditions	2	D
	f	Buried or Partially Buried Tanks, Vessels, or Structures	3	D
	g	Fluid Handling Equipment	2	D
609 (new rule)		Inspections	2	D
Fire Prevention and Protection				
610 (604, 606A)	a	Gas Engines	2	M
	b-r	n/a	2	D
611 (606B)		Air and Gas Drilling	2	D
612 (607)		Hydrogen Sulfide Gas	3	M
613 (610)		Grade 1 Gas Leak Reporting	2	D
Coalbed Methane Wells				
614 (608)	a	Assessment and Monitoring of Plugged and Abandoned Wells Within 1/4 mile of Proposed Coalbed Methane Well	1	D
	b	Coal Outcrop and Coal Mine Monitoring	2	D
	c	Prior to Producing - Static Bottom Hole Pressure Survey	2	D
	d	CBM Monitoring	2	D
	e	Bradenhead Testing	2	D
Groundwater Baseline Sampling and Monitoring				
615 (318A, 608, 609, 318A.f.)	a	Applicability and Effective Date	x	x
	b	Sampling Locations	2	D
	c	Inability to Locate an Available Water Source	x	x

009, 318A.T.)	d	Timing of Sampling	2	D
	e	Sampling Procedures and Analysis	2	D
	f	Sampling Results	2	D
	g	no name	x	x
<b>Financial Assurance and Oil and Gas Conservation and Environmental Response Fund (700 series)</b>				
701		Types of Financial Assurance	x	x
702		Financial Assurance for Plugging, Abandonment, and Reclamation		
	a	Applicability	x	x
	b.(1)	Form 3, Financial Assurance Plan - Initial Financial Assurance Plan Submissions	1	D
	b.(2)	Form 3, Financial Assurance Plan x Revised Financial Assurance Plans	1	D
	c	Financial Assurance Plan Options	2	D
	d	Contents of Financial Assurance Plans	2	D
	e	Procedure for Review of Financial Assurance Plans	x	x
	f	Transition Period	x	x
703		Financial Assurance for Other Oil and Gas Facilities & Operations	2	D
704		Surface Owner Protection Bonds		
	a	When Surface Owner Protection Bonds are Required	2	D
	b	Procedures for Claiming Surface Owner Protection Bonds	x	x
	c	Release of Financial Assurance	x	x
705		General Liability Insurance	2	D
706		Release or Claim of Financial Assurance	x	x
707		Review of Financial Assurance	x	x
<b>Underground Injection for Disposal and Enhanced Recovery Projects (800 Series)</b>				
801 (324A, 325)		Class II Underground Injection Control Wells		
	a-d	Injection Well Authorizations	x	x
	e	Prohibition on Injection into Drinking Water	3	M
802 (324B)		UIC Aquifer Exemptions	2	D
803 (325, 403, 404, 405)		Application Requirements for Class II Underground Injection Control Wells		
	a	no name	2	D
	b	Related Permitting Requirements	2	D
	c	Multiple Disposal Well Applications	2	D
	d	no name	3	M
	e	Denial of Underground Disposal of Class II Exploration and Production Waste	2	D
	f	Maximum Allowable Injection Rate, Total Volume, and Surface Injection Pressure	3	M
	g	Form 31, Underground Injection Formation Permit Application-Intent	2	D
	h	Form 31, Underground Injection Formation Permit Application - Subsequent	2	D
	i	Form 33, Injection Well Permit - Intent	2	D
	j	Form 33, Injection Well Permit - Subsequent	2	D
	k	Injection Application Deadlines	2	D
	l	Notice of Commencement	2	D

	m	Notice of Discontinuance	2	D
	n	no name	2	D
804 (325, 403, 404)		Notice and Comment For Class II UIC Well Applications	1	D
805 (324C)		Analytical Requirements for Injection Fluid Analyses	2	D
806 (325)		Timing of Injection Fluid Sampling and Analysis	2	D
807 (325)		Form 26, Source of Produced Water for Disposal	2	D
808 (316A)	a	NonxProduced Class II Exploration and Production Waste Injection Form 14A, Authorization of Source of Class II Waste for Disposal	3	M
	b	Form 14, Monthly Report of NonxProduced Water Injected	2	D
809 (325)		Simultaneous Injection Well Application Requirements	1	D
810 (425)		Commercial Disposal Wells and Facilities	x	x
811 (401, 402, 403, 404, 405)		Enhanced Recovery Injection Projects	3	M
<b>Environmental Impact Prevention (900 Series)</b>				
901 (901)		General Standards	2	D
902 (324A)		Pollution	3	D
903 (317, 604, 805, 912)		Venting or Flaring Natural Gas	3	D
	a	Notice to Local Governments and Emergency Responders	2	D
	b	Emissions During Drilling Operations	3	D
	c	Emissions During Completion Operations	3	D
	d	Emissions During Production	3	D
	e	Gas Capture Plans	2	D
904 (new rule)		Evaluating Cumulative Impacts	x	x
905 (907)		Management of E & P Waste	2	D
906 (907A)		Management of Non E&P Waste		
	a	Solid and Hazardous Waste	2	D
	b	Hazardous Waste Determination	2	D
	c	NonxHazardous/NonxE&P Waste	2	D
	d	Burning or Burying E&P Waste	3	M
907 (905)		Centralized E&P Waste Management Facilities		
	a	Applicability	x	x
	b	Permit Requirements	2	D
	c	Permit Review	x	x
	d	Financial Assurance	2	D
	e	Facility Modifications	2	D
	f	Permit Expiration	x	x
	g	Annual Permit Review	2	D
	h	Closure	2	D
908 (335, 903)		Pit Permitting/Reporting Requirements	2	D
		Pits Construction and Operation		
	a	Permitting, Mapping, Facility Records	2	D

909 (323, 902)	b	General Protection Against Impacts	2	D
	c	Freeboard; Release Reporting	2	D
	d	Storage of Oil or Produced Liquid Hydrocarbon in Earthen Pits	3	D
	e	Hydrocarbons on Pits	3	D
	f	Fencing Requirements	2	D
	g	Multi-Well Pits	2	D
	h	Treatment of Produced Water	2	D
	i	Biocide Treatment for Bacteria Growth and Odors	2	D
	j	Produced Water Quality Analyses	2	D
	910 (904)	Pit Lining Requirements and Specifications		
a		Lined Pits	2	D
b		Skim Pits	3	M
c		Pit Construction	2	D
d		Pit Construction	2	D
e		Pit Construction	2	D
f		Additional Protection	x	x
911 (905, 909)	Closure of Oil and Gas Facilities		2	D
912 (337, 906)	Spills and Releases		2	D
913 (340, 905, 909)	Site Investigation, Remediation, and Closure		2	D
914 (324D)	Criteria to Establish Points of Compliance		x	x
915 (910)	Concentrations and Sampling for Soil and Groundwater		2	D
<b>Reclamation Regulations (1000 Series)</b>				
1001 (1001)	Introduction		x	x
1002 (1002)	Site Preparation and Stabilization		2	D
1003 (1003)	Interim Reclamation		2	D
1004 (1004)	Final Reclamation of Well Sites and Associated Production Facilities		2	D
<b>Flow line Regulations (1100 Series)</b>				
1101 (1101)	Registration Requirements		2	D
1102 (1102)	Flow line and Crude Oil Transfer Line Requirements		2	D
1103 (1103)	Flow line and Crude Oil Transfer Line Valves		2	D
1104 (1104)	Integrity Management		2	D
1105 (1105)	Abandonment		2	D
<b>Protection of Wildlife Resources (1200 Series)</b>				
1201 (new Rule)	Wildlife Plans		2	D
1202 (1203, 1204, 1205)	Operating Requirements			
	a	no name (various operational protections)	2	D
	b	no name (Bore instead of trench through streams)	3	M
	c	no name (No Surface Occupancy)	3	M
	d	no name (Density Driven Habitat Protection)	3	M
1203 (new rule)	Compensatory Mitigation for Wildlife Resources		2	D
Violation of an Enforcement Order			3	M
Violation of a 901.a Order			3	M

Violation of a General or Field Order	2	D
Violation of a Permit or COA (C.R.S. § 34-60-121)	2	D