

**FINAL**

**RULE A-5 - ENFORCEMENT PROCEDURES**

- a) Definitions:
- 1) “Commission” shall mean the Arkansas Oil and Gas Commission, on which the Director serves as secretary, but is a non-voting member.
  - 2) “Director” shall mean the Commission Director of Production and Conservation.
  - 3) “Regulated Entity” shall mean all operators, owners, producers or persons subject to Commission regulatory authority.
  - 4) “UIC” shall mean the Underground Injection Control program of the Federal Safe Drinking Water Act.
- b) Any regulated entity engaged in the drilling, operation or plugging of any production, injection, or other well or drill hole regulated by the Commission; or the operation of any crude oil or gas production or injection facility; or the operation of any natural gas line or crude oil flowline regulated by the Commission; or transporter by tank truck of any oilfield production or completion fluid; or seismic activity; or any other activity regulated by the Commission, is subject to this rule for violation of any oil, gas and/or brine statutes, or any rule, regulation, or permit condition of the Commission.
- c) In accordance with Ark. Code Ann. § 15-72-103(c) or § 15-76-303(c), any person knowingly and willfully aiding or abetting any other person in the violation of any statute relating to the conservation of oil, gas and/or brine, or the violation of any provision of the state oil, gas and/or brine statutes, or any rule, regulation, order, or permit condition, shall be subject to the same penalties as are prescribed herein for the regulated entity.
- d) Notice of Non-Compliance
- 1) A Notice of Non-Compliance may be issued when any regulated entity is in non-compliance with any requirement of the Arkansas oil, gas and/or brine statutes, or rules, regulations, orders, or any permit condition, and:
    - A) That the non-compliance was not caused by the regulated entity’s deliberate action;
    - B) That any action necessary to abate the non-compliance was commenced immediately and was or will be completed within a specified date certain, as established by the Director, or his or her designee, not to exceed thirty (30) days from the date of the determination that the regulated entity was determined to be in non-compliance; and
    - C) That the non-compliance has not caused and cannot reasonably be expected to cause significant environmental harm or damage to property.

- 2) The notice of non-compliance shall be documented in writing and, delivered via first class mail to the regulated entity or to the regulated entity's representative as reported on the AOGC Form 1 Organization Report. The written notification shall indicate the nature and circumstances of the non-compliance, and the time within which and the means by which the non-compliance is to be abated.
  - 3) If abatement was not completed as specified in the written notification, the Director, or his or her designee, may issue a formal Notice of Violation in accordance with subparagraph (e) below.
  - 4) The provisions of this subparagraph (d), shall not apply to the following types of incidents, which may require a Notice of Violation to be issued in accordance with subparagraph (e) below:
    - A) Conducting any regulated activity specified in paragraph (b) above prior to issuance or re-issuance of the appropriate Commission permit or authority;
    - B) Operating an annular or casing injection/disposal well or a well with pressure on the annulus;
    - C) Failure to maintain required performance bond or pay annual well fees;
    - D) Failure to establish mechanical integrity on any UIC well prior to operation, or failure to repair any UIC well following failure of mechanical integrity;
    - E) Commencing any work or activity on a well or its related production facility or well site that has been placed in the Abandoned and Orphan Well Plugging Program;
    - F) Failure to provide emergency response for a crude oil or saltwater spill;
    - G) Improper discharge or disposal of produced fluids; or
    - H) Operating a well in violation of spacing requirements or permit conditions.
- e) Notice of Violation(s)
- 1) A Notice of Violation may be issued, by the Director or his or her designee, when any regulated entity is in violation of any requirements of the Arkansas oil, gas, and/or brine statutes, or rules, regulations, orders, or any permit conditions of the Commission. Unless otherwise determined by the Commission after notice and a hearing, a regulated entity shall not be held responsible by the Commission for violations of oil, gas and/or brine statutes, or rules, regulations, or permit conditions of the Commission in the absence of the issuance of an underlying Notice of Violation.
  - 2) The Notice of Violation shall be in writing and contain:

- A) A statement regarding the nature of the violation, including a citation to the specific section of the oil, gas and/or brine statutes, or any rule, regulation, order or permit condition of the Commission alleged to have been violated;
  - B) The suggested action needed to abate the violation including any appropriate remedial measures to prevent future violations;
  - C) The time within which the violation should be abated; and
  - D) A notice of any civil penalties, as specified in subparagraph g) below, the Director will request to be issued by the Commission.
  - E) A notice of any civil penalties for violations of natural gas line regulations under United States Department of Transportation, Office of Pipeline Safety jurisdiction in accordance with appropriate federal regulation specified in 49 CFR 190.223, the Director will request to be issued by the Commission.
- 3) The Notice of Violation may include a well, lease, or unit cessation requirement for the following types of violations:
- A) Violation of production allowable;
  - B) Failure to maintain required well specific performance bond;
  - C) Drilling or operating, without a Commission permit or permit transfer, a well required to be permitted or transferred;
  - D) Operating a well that has been determined to be abandoned by the Commission;
  - E) Failure to plug a leaking well or a well ordered to be plugged by the Commission;
  - F) Operating an annular or casing injection/disposal well;
  - G) Operating a UIC Class II or V well with a failed mechanical integrity test;
  - H) Operating a UIC Class II or V well with pressure on the annulus indicating tubing and/or casing failure;
  - I) Failure to provide emergency response or remediate a crude oil or produced water spill;
  - J) Improper disposal or discharge of produced fluids; or
  - K) Any other violation for which a cessation requirement is authorized by an oil, gas and/or brine statute, or rule, regulation, order or permit condition.

- 4) The Notice of Violation may also include a state-wide cessation requirement for the following types of violations:
  - A) Failure to maintain required blanket financial assurance as specified in General Rule B-2;
  - B) Failure to pay annual well fees as specified in General Rule B-2;
  - C) Failure to pay any monies due the Abandoned and Orphaned Well Plugging Fund as specified in General Rule G-1; or
  - D) Failure to comply with the provisions of General Rule B-42, or General Rule E-3.
  - E) Any other violation for which a state-wide cessation requirement is authorized by an oil, gas and/or brine statute, or rule, regulation, order or permit condition.
- 5) The Director, or his or her designee, shall send via certified mail the Notice of Violation to the regulated entity, or the regulated entity's representative as reported on the AOGC Form 1 Organization Report, charged with the violation(s), or provide personal delivery of a copy of the notice to the regulated entity, or the regulated entity's representative.
- 6) The regulated entity charged with the violation(s) may request a Director's Review of the Notice of Violation and provide the Director, in writing, any information in mitigation of the violation(s) on or before thirty (30) calendar days of the mailing or personal delivery of the original Notice of Violation, unless a shorter time period is specified in the Notice of Violation for instances where there is a condition that creates an imminent danger to the health or safety of the public or threatens significant environmental harm or damage to the property. Such written information may include a proposed alternative to the required action needed to abate the violation(s). Upon receipt of such information from the regulated entity, the Director, shall conduct a review.
- 7) During the review, the Director may consider any of the following criteria in reaching a Final Director's Decision regarding the violation(s):
  - A) The regulated entity's history of previous violations, including violations at other locations and under other permits;
  - B) The seriousness of the violation, including any irreparable harm to the environment or damage to property;
  - C) The degree of culpability of the regulated entity; and
  - D) The existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by the regulated entity.

- 8) Upon completion of the review, the Director shall issue a Final Director's Decision to:
    - A) affirm the violation; or
    - B) vacate the violation; or
    - C) amend or modify the type of violation and abatement requirements specified in the violation; or
    - D) establish probationary or permanent modification or conditions to any underlying permit related to the violation, which may include special monitoring or reporting requirements; or
    - E) enter into a settlement agreement to extend the amount of time provided to complete remedial actions necessary to abate the violations or reduce the amount of the requested assessed civil penalty.
  - 9) The Final Director's Decision shall be delivered to the regulated entity, or the regulated entity's representative, as reported on the AOGC Form 1 Organization Report, via first class mail. The Final Director's Decision may be appealed to the Commission by filing an application in accordance with General Rule A-2, A-3, and other applicable hearing procedures. The application to appeal the Final Director's Decision is required to be received by the Director within thirty (30) days of the mailing of the Final Director's Decision. The application shall state the reason for the appeal and shall be scheduled to be heard by the Commission in accordance with General Rule A-2, A-3, and other applicable hearing procedures.
  - 10) A Notice of Violation for which a Director's Review has not been requested, shall become a final administrative decision of the Commission thirty (30) days following the mailing of the Notice of Violation.
  - 11) A Final Director's Decision not appealed to the Commission within thirty (30) days of mailing of the Final Director's Decision shall become a final administrative decision of the Commission.
  - 12) All violations specified in a Notice of Violation(s) which have become a final administrative decision in accordance with subparagraph e) 10), a Final Director's Decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 11), or by Order of the Commission, shall be fully abated within the time frame specified in the original Notice of Violation, Final Director's Decision, or Order of the Commission. No further permits or authorities shall be issued to the regulated entity until all outstanding violations specified in a Notice of Violation which has become a final administrative decision in accordance with subparagraph e) 10), a Final Director's Decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 11), or by Order of the Commission have been fully abated.
- f) In addition to the issuance of a Notice of Violation(s), the Director may initiate further enforcement proceedings, as provided for in statute, as follows:

- 1) Assessment of a civil penalty as provided in Ark. Code Ann. § 15-71-114, § 15-72-103, § 15-72-202, or § 15-76-303;
- 2) The revocation of a certificate of clearance on a state-wide basis, as provided for in Ark. Code Ann. § 15-71-110 (11);
- 3) The filing of a civil complaint in a court of competent jurisdiction in the County where the violation occurred, as provided for in Ark. Code Ann. § 15-72-108 or § 15-76-304;
- 4) The filing of a criminal complaint in any court of competent jurisdiction, as provided for in Ark. Code Ann. § 15-71-114, § 15-72-104 or § 15-76-303.

g) Civil Penalties

- 1) The Director shall determine whether to request the assessment of civil penalties based on failure to comply with the applicable abatement requirements for violations issued under subparagraphs (g) (2) and (3) below. The Director shall determine whether to request the assessment of civil penalties for violations issued under subparagraphs (g) (4) and (5) below. If a civil penalty is requested by the Director, the Regulated Entity may voluntarily agree to the assessment and pay the civil penalty as requested or modified by the Director, or the Director or his designee may file an application, in accordance with General Rule A-2, A-3, and other applicable hearing procedures, to request the issuance of the requested civil penalty by the Commission. The maximum amount of the Director's requested civil penalty shall be computed as provided in subparagraphs (g) (2) through (5) below. However, the Commission is not bound by the Director's request, or the amounts provided below, and may impose civil penalties of up to the maximum amounts permitted by law.
- 2) Administrative violations, defined as failure to file required reports and forms and to provide required notices (excluding spill notice), including, but not limited to regulated activities such as, the failure to file production and well reports or other reports required by Commission rules, regulations, orders or permit conditions; failure to notify the Commission before the setting of surface casing, or the plugging of a well; failure to maintain required performance bond in force for the wells under permit; or pay annual well fees within the specified time. The Director may request the assessment of up to \$1000 per administrative violation and up to \$1000 per day for each day the violation remains unabated after the specified compliance date. The per administrative violation civil penalty request shall be calculated as follows:
  - A) No previous violation of the same rule: \$250. One previous violations of the same rule: \$500. Two or more previous violations of the same rule: \$1000. The fourth and each subsequent violation of the same rule shall be considered a significant violation in accordance with subparagraph g) 4) below.

- B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding three full calendar years before the issuance of the violation.
- 3) Operating violations, defined as failure to maintain compliance with Commission rules on well drilling and operation, and production facility, pipeline and seismic operations and/or commencing operations requiring a permit prior to issuance or re-issuance of the required permit or authority. These operations include, but are not limited to regulated activities such as, operating a well or natural gas pipeline system without the proper permit or transfer of ownership, failure to maintain a well or crude oil flow line in a leak-free condition, failure to comply with non-jurisdictional natural gas pipeline requirements, failure to notify of a spill occurrence, failure to maintain containment dikes, or operating an Exploration and Production Fluid Transportation System without a proper permit. Multiple incidents of the same violation against a regulated entity on the same occasion shall not be considered separate violations. The Director may request the assessment of up to \$2500 per operating violation and up to \$2500 per day for each day the violation remains unabated after the specified compliance date, with the exception that operating violations as specified in Ark. Code Ann. § 15-76-303 are limited to a maximum of \$1,000 per operating violation. The per operating violation civil penalty shall be calculated as follows:
- A) No previous violation of the same rule \$500. One previous violation of the same rule, \$750; two or more previous violations of the same rule, \$1000. The fourth and each subsequent violation of the same rule shall be considered a significant violation in accordance with subparagraph g) 4) below.
  - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding three full calendar years before the issuance of the violation; plus
  - C) If the violation had a low degree of probability to cause environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$250; or, if the violation had a high degree of probability to cause environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$500; or, if the violation caused environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$1000, or
  - D) If the violation created a hazard to the safety of any person, such as the contamination of a potable water well or emission of hydrogen sulfide gas, add \$2000.
- 4) Except as limited in Ark. Code Ann. § 15-76-303, significant violations may result in a request by the Director or his or her designee, of a civil penalty of up to \$2500 per violation and up to \$2500 per day for each day of the violation for the following types of violations: failure to comply with the provisions of General Rule A-7, failure to comply

with well spacing provisions, operating a UIC well without a proper permit, operating an annular or casing injection/disposal well, operating a UIC well prior to establishing mechanical integrity, operating a UIC well with a failed mechanical integrity test, operating a UIC well with pressure on the annulus, failure to provide emergency response or remediate a crude oil or produced water spill, or the improper disposal or discharge of produced fluids. The per violation civil penalty shall be computed as follows:

- A) An initial amount of \$1000; plus
  - B) One or more previous violations of the same type: add \$500 per violation; plus
  - C) If the violation caused environmental impact to surface water, ground water or wildlife: add \$1000, or if the violation created a hazard to the safety of any person, such as the contamination of a potable water well or emission of hydrogen sulfide gas: add \$1500.
  - D) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding three full calendar years before the issuance of the violation.
- 5) The Director may request any amount in civil penalties authorized by applicable federal law for violations of the United States Department of Transportation, Office of Pipeline Safety jurisdictional natural gas line requirements.
- h) All civil penalties assessed and paid to the Commission shall be deposited in the Commission operating fund. Additionally, all civil penalties assessed and paid, for violations specified in Ark. Code Ann. § 15-72-202 shall be turned into the general fund of the county where the violation occurred to be used on roads, bridges, and highways at the discretion of the county court.