

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Office of Oil and Gas Management**

**DOCUMENT NUMBER:** 820-4000-001

**TITLE:** Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations

**EFFECTIVE DATE:** January 17, 2015

**AUTHORITY:** The Oil and Gas Act of 2012 (58 Pa. C.S. § 3201 *et seq.*)  
Coal and Gas Resource Coordination Act (58 P.S. § 501.1 *et seq.*)  
Oil and Gas Conservation Law (58 P.S. § 401.1 *et seq.*)  
The Clean Streams Law (35 P.S. § 691.1 *et seq.*)  
Solid Waste Management Act (35 P.S. § 6018.101 *et seq.*)  
The Dam Safety and Encroachment Act (32 P.S. § 693.1 *et seq.*)  
The Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101 *et seq.*)  
The Air Pollution Control Act (35 P.S. 4001 *et seq.*)  
The Administrative Code of 1929 (71 P.S. § 510-1 *et seq.*)

**POLICY:** The Department of Environmental Protection (Department or DEP) is committed to ensuring compliance with the 2012 Oil and Gas Act and other applicable laws and regulations, by all persons conducting activities associated with well site preparation and related road construction, and with the construction, alteration or operation of a well. Appropriate action will be taken for each identified violation.

**PURPOSE:** This guidance provides direction to DEP’s Oil and Gas Program staff in following a consistent approach to identifying, tracking, and resolving violations of applicable laws. This includes direction on determining appropriate actions to resolve violations, including enforcement, and to bring about compliance. This Policy also provides the regulated industry and the public with information on the Department’s approach to ensuring compliance with the law.

**APPLICABILITY:** This policy applies to the DEP Oil and Gas Program, and any other Department staff involved in ensuring compliance with legal requirements administered by the Department’s Oil and Gas Program. This Policy replaces “Enforcement Actions by the Oil and Gas Program,” No. 550-4000-001 (2005), and “Compliance Monitoring of Oil and Gas Wells and Related Facilities and Activities,” No. 550-3000-001 (2005). In addition, it supersedes The Statements of Policy – Inspection Policy Regarding Oil and Gas Activities at 25 *Pa. Code* Subchapter X,

**DISCLAIMER:** The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in these policies or procedures shall affect more stringent regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 22 pages

# I. IDENTIFYING A VIOLATION<sup>1</sup>

## A. On-Site Inspections

### 1. Types of Inspections

The following types of inspections are conducted in the Oil and Gas Program:

- a) **Routine Complete:** Any inspection of a regulated facility or activity covering the majority of items that can possibly be inspected at that point in time in the project. Routine complete inspections reflect that the inspector performed a thorough inspection of a well site or project area for regulated activities. This inspection type should be the standard for routine inspections.
- b) **Routine Partial:** Any inspection of a regulated facility or activity that is limited in scope, not related to spills, complaints, or more specific inspection codes. Any routine inspection that targets only one or two aspects of a regulated facility or activity.
- c) **Pre-operation:** In accordance with 58 Pa. C.S. § 3258(a)(1), this inspection type is conducted during well site construction and preparation after the installation of erosion and sedimentation control measures. The operator may not commence drilling activities until after this inspection has been conducted.
- d) **Drilling/Alteration:** Any inspection performed during the drilling or alteration of a well. This inspection type would be used from application review until after the well is stimulated and operational.
- e) **Plugging:** This inspection type should be used for all plugging activity inspections.
- f) **Follow-up:** A follow-up inspection is conducted to determine if previously issued violations have been sufficiently resolved. The Oil and Gas Program utilizes this inspection type differently than the generic eFACTS definition of a follow-up inspection. The eFACTS definition states that a follow-up inspection should be done on the same day. In the Oil and Gas Program this inspection type will be used anytime an inspection is performed to document the status of a violation, *regardless* of whether it is performed on the same day.
- g) **Compliance Evaluation:** This inspection type is noted *only* when all previous violations are resolved in the field and the originally cited facility has returned to full compliance. If there are still outstanding violations, or new violations are found during the inspection, this inspection type should not be used.

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<sup>1</sup> For the purposes of this Policy, the term “operator” refers to operators, owners and other responsible parties, as applicable.

- h) **Bond Release:** This inspection type is used by a wide variety of oil and gas field personnel. The bond release inspection is done to ensure that all conditions of the well bond have been satisfied before the bond is refunded to the operator.
- i) **Site Restoration:** Site restoration inspections are conducted after all permitted earth disturbance activities are completed, temporary best management practices (BMPs) are removed, and the operator has permanently stabilized the site. Site restoration inspections are typically conducted in response to Department receipt of both Well Site Restoration Reports (5500-PM-OOGM0075) and Notice of Termination for an Erosion & Sediment Control General Permit.
- j) **Complaint:** Any inspection conducted in response to a complaint or referral from a citizen, organization, or governmental agency. Oil and gas staff shall utilize the Complaint Tracking System (CTS) and follow the Standard Operating Procedure for Complaint Response Management, when recording, investigating, and resolving complaints.
- k) **Incident-Response:** Incident-response to an accident or emergency type event. Field Inspectors conducting initial inspections in response to large spills, releases, well control events or other emergency situations should use this inspection type.
- l) **Road Spreading:** Any inspection conducted by field inspectors related to the spreading of brine for the purposes of dust control and road stabilization on unpaved roads.
- m) **Administrative:** Any review requiring a lengthy examination of files, permits, general permits, case/compliance history, databases, or other office duties related to a permitted facility.

## 2. **Frequency of Inspections**

Each District Office should ensure that all wells are inspected at least once for each of the following stages, where applicable:

- a) Prior to the commencement of drilling on a new well pad.
- b) During drilling, casing, and cementing operations.
- c) Following well stimulation and completion activities.
- d) Following the time period in which the owner or operator is required to restore a site after drilling a well.
- e) While a well is being altered or repaired or when casing is being replaced.

- f) Prior to a well being granted inactive status.
- g) During the plugging of a well.
- h) After the owner or operator restores a site following plugging or abandonment.
- i) Before a bond or other financial security is released.
- j) Following a complaint.
- k) Following a violation to determine whether the violation has been corrected.
- l) Annually for disposal wells.
- m) Twice annually for wells located in gas storage reservoirs or gas storage reservoir protective areas.

### 3. **Guidelines for Conducting On-Site Inspections**

#### a) Right of Entry

The Department has the statutory authority under the Oil and Gas Act, 58 Pa. C.S. § 3258, the Administrative Code, and the permit conditions, to enter a well site at all reasonable times to conduct investigations, conduct tests or sampling, or examine books, papers, and records pertinent to a matter under investigation to determine compliance with the Act.

#### b) Procedure and Notifications

Inspections are conducted to ensure compliance with the Department's permit conditions, rules, and regulations. This is performed via visual observation, measurements, and discussions with the operator or other representatives present on site. See Section II.A below for additional guidance.

Whenever possible, inspections should involve open dialogue and information sharing necessary to obtain a detailed accounting of site activities. The following is a list of suggested actions for setting up and undertaking field inspections:

1. The Department will either:
  - i) Conduct unannounced inspections; or
  - ii) Schedule an inspection with the operator, or other responsible person when specific technical information or testing is required for an inspection.

2. Review files including permits, plans, reports, correspondence, and other background information.
3. Upon arrival at the site, the inspector should identify himself/herself (provide identification and a business card, if appropriate) to the operator and state the purpose of the inspection.
4. Reasonable efforts should be made to determine the identity of operators during the inspection.
5. The Department should provide the operator with the results of an inspection or, when applicable, a copy of a written inspection report within 14 calendar days of the inspection.
6. The Department should conduct timely follow-up inspections to verify completion of voluntary compliance work. The attainment of site compliance should be recorded on the appropriate inspection report form.

c) **Recording On-Site Inspections**

Creating and maintaining clear, accurate records of the inspection and handling procedures is very important. District staff should complete the appropriate Inspection Report form documenting all observations including violations found during the inspection. If an operator expresses willingness to correct violations immediately, develop a mutually agreeable period of time to correct the violations and indicate on the inspection report form that this is a mutually agreed upon date. District staff will enter the inspection data into eFACTS within 10 business days of the inspection.

4. **Coordination with other Department or Agency Programs**

When appropriate, the Department should initiate intra-agency coordination for projects involving conditions originating from an activity that is also regulated by another Department program.

For matters that require inter-agency coordination, the Department will initiate communication with the appropriate state or federal agency as necessary.

For conditions and other matters that fall outside the Department's jurisdiction, the matter will be referred to the appropriate local, state, or federal agency when applicable.

## B. Data Reported to the Department

An operator must comply with all applicable permitting, approval, notification, and reporting requirements, including but not limited to the following:

1. Permits, Authorizations and Approvals
  - a) Well Permit [58 Pa. C.S. § 3211, 25 Pa. Code § 78.11]
  - b) Well Permit Transfer Applications [58 Pa. C.S. § 3211(a)]
  - c) Water Management Plans [58 Pa. C.S. § 3211(m)]
  - d) Inactive Status Requests [58 Pa. C.S. § 3214(a)(4), 25 Pa. Code § 78.102(4)]
  - e) ESCGP NOI [25 Pa. Code 102.5(c)]
  - f) ESCGP Transfer
  - g) ESCGP noncompliance reports
  - h) ESCGP NOI for major modifications
  - i) ESCGP Notice of Termination [25 Pa. Code § 102.7]
  - j) Centralized Impoundment Permit
  - k) OG-71[25 Pa. Code §§ 78.61-78.63]
  - l) Variance Approval [58 Pa. C.S. § 3215(a)]
  - m) Coal Pillar Approval [58 Pa. C.S. § 3224(a)]
  - n) Road Spreading Plan Approval [25 Pa. Code § 78.55(a)]
  - o) Proposed Alternate Method of Casing, Plugging, Venting or Equipping a Well [58 Pa. C.S. § 3221]
2. Incident Reporting
  - a) Stray Gas Incident Final Report [25 Pa. Code § 78.89(h)]
  - b) Spill Reports
  - c) Notice of Violation (NOV) Responses
3. Notifications
  - a) Spud Notice [58 Pa. C.S. § 3211(f)]
  - b) Cementing Casing String Notice [58 Pa. C.S. § 3211(f)(2)]
  - c) Conducting Pressure Tests Notice [58 Pa. C.S. § 3211(f)(2)]
  - d) Stimulation Notice [58 Pa. C.S. § 3211(f)(2)]
  - e) Abandon/Plug Notice [58 Pa. C.S. § 3211(f)(2)]
  - f) Completion of Stimulation Notice [25 Pa. Code § 78.55]
  - g) Preconstruction Conference Notice [25 Pa. Code § 102.5(e)]
  - h) Seven Day Earth Disturbance Notice
  - i) Three Day Notice Prior to Bulk Earth/Disturbance
  - j) Complaint notification [25 Pa. Code § 78.51(h)]
  - k) Spill notification [25 Pa. Code § 78.66(b)]
  - l) Defective casing or cementing notification [25 Pa. Code § 78.86]

4. Plans

- a) 911 Emergency Response Data [25 Pa. Code § 78.55]
- b) Emergency Response Plan [25 Pa. Code § 78.55(f)(5)(iii)]
- c) Wastewater Reduction Strategy [25 Pa. Code § 95.10(b)(2)]
- d) Containment Plans [58 Pa. C.S. § 3218(b)]
- e) PPC Plan [25 Pa. Code § 78.55]
- f) E&S Plan [25 Pa. Code § 102.4(b)(2)(ii)]
- g) PCSM Plan [25 Pa. Code § 102.8]
- h) Casing and cementing plan [25 Pa. Code § 78.86]

5. Reports/Records

- a) Water Management Plan Reporting
- b) Waste Reports [25 Pa. Code § 78.121(a)]
- c) Mechanical Integrity Assessment Report [25 Pa. Code § 78.88(e)]
- d) Centralized Impoundment Certification Report
- e) Well Record [58 Pa. C.S. § 3222(b), 25 Pa. Code § 78.121(a)]
- f) Completion Report [58 Pa. C.S. § 3222(b)(3)]
- g) Production Report [58 Pa. C.S. §§ 3222(a) and 3222(a.1), 25 Pa. Code § 78.121(a)]
- h) Inactive Status Monitoring Report [58 Pa. C.S. § 102]
- i) NOI to Plug and Plugging Certificates [58 Pa. C.S. § 3220(c)]
- j) 26R RW Chemical Characterization [25 Pa. Code § 287.54]
- k) Site Restoration Report [25 Pa. Code § 78.65]
- l) FracFocus Chemical Disclosure [58 Pa. C.S. § 3222.1]
- m) Industry Logs [58 Pa. C.S. § 3222(b)(3)]
- n) Other Industry Data [58 Pa. C.S. §§ 3222(b)(4) and 3222(c)]
- o) Centralized Impoundment Permit Quarterly Report
- p) Centralized Impoundment Monitoring Reports

6. Other Data

- a) Pre-Drill Survey [58 Pa. C.S. § 3218(e), 25 Pa. Code § 78.52]

**C. Reviewing Data Reported to the Department**

Office of Oil and Gas Management District staff should ensure that required self-reported data is received in a timely manner and should verify the completeness and accuracy of information upon receipt.

If warranted, a NOV should be issued to an operator that fails to submit complete and/or accurate data, followed by other enforcement actions as appropriate.

**D. Recording Data Reported to the Department**

Operators are required to report certain data through the Department's website, including well production data and well site waste generation. Office of Oil and Gas District staff

will enter all other reported data received into eFACTS, as required, within 10 business days of receipt.

## **II. ENFORCEMENT**

Consistent with the Department's goal of implementing the laws of the Commonwealth, the primary objective of the enforcement program is to attain and maintain a high degree of compliance with the laws governing oil and gas development.

While technical assistance and education is the preferred method of ensuring compliance, the Department is authorized by various laws to take various types of formal enforcement action to assure compliance with the law.

### **A. Basic Principles of Enforcement**

- An appropriate enforcement action should be taken for each identified violation.
- The minimum action for any violation is a written notification in the form of a NOV or a copy of an inspection report that notifies the operator or other responsible person (operator) of the violation. If the violation is corrected before the end of an inspection, an NOV may not be necessary if the violation is noted on the inspection report.
- In order to attain and maintain compliance, follow-up action should be based on progressive enforcement in accordance with enforcement priorities of the program, as appropriate under the circumstances.
- Civil penalties may be assessed in various circumstances. These include a threat to public health, safety or the environment; repeat violations; failure to apply for and obtain permits or registrations; and failure to submit reports. The factors used to determine the amount of the penalty include deterrence, damage to public health, safety or the environment; willfulness; operational cost savings; and costs incurred by the Department during an investigation.

### **B. Enforcement Process**

Enforcement begins at the point of notification of noncompliance and continues with progressive enforcement, as appropriate. The goal of all enforcement actions is to attain and maintain compliance.

There are basically two types of enforcement actions: corrective actions, and penalties. Corrective actions are formal actions initiated by the Department to inform the operator about violations, or compel the violator to take corrective measures. Corrective actions that provide information about violations include notations in inspection reports, NOVs, and administrative conferences. Corrective actions that compel corrective measures include consent orders and agreement (CO&A), consent decrees, administrative orders, suspension or revocation of permits or registrations, and equity actions in court. As described below, notations in inspection reports and NOVs must not compel or direct the operator to take any actions; they are informational only.

Penalties include civil penalties and bond forfeitures, and generally address past violations. Stipulated penalties from CO&A's address on-going violations. The payment of penalties may be separate from actions requiring the operator to correct the violation, and a penalty action by itself does not require the operator to correct the violation.

The Department should take a progressive enforcement approach, according to the circumstances. This normally involves the successive application of increasingly severe enforcement actions until compliance is achieved. Progressive enforcement also applies to the use of penalties. Progressive enforcement typically follows this sequence:

**Corrective Actions**

Notation in Inspection Report  
Notice of Violation  
Administrative Conference  
Consent Order and Agreement  
Consent Decree  
Administrative Order  
Permit/Registration Suspension or Revocation  
Equity Action

**Penalty Actions**

Consent Assessment of Civil Penalty  
Assessment of Civil Penalty  
Complaint for Civil Penalties  
Bond Forfeiture

This does not mean that each step is used in every enforcement case, nor does it mean that an action must be taken before a higher-level corrective action is taken or a penalty action proceeds. If an NOV is not expected to result in timely compliance, for example, then an administrative order may be issued or a consent order and agreement negotiated and signed. In addition, cases that present immediate environmental harm or public health and safety issues may warrant the filing of a court action.

There is no precise formula of enforcement action that is appropriate for every situation. The appropriate action must be chosen to achieve and maintain compliance considering various factors, such as seriousness, culpability, cooperation, and history.

**C. Enforcement Priorities**

Enforcement actions should be taken on each violation until compliance is achieved. However, in recognition of the limited resources available for enforcement efforts, the Department will generally follow these priorities:

1. Violations that result in the actual or potential release of any substance that endangers health, safety or the environment.
2. Violations that cause the need to restore or replace an adversely affected water supply.
3. Violations that result in the discharge of pollutants to surface or ground waters, such as spills or other releases.
4. Drilling or conducting other oil and gas related activities without a permit or other required authorization.

5. Intentional violations other than those listed above.
6. Failure to comply with an order, consent decree, etc., other than those listed above.
7. All other violations.

### **III. ENFORCEMENT ACTIONS**

Notification by the Oil and Gas Management Program of a final appealable action of the Department (not an NOV or inspection report) should include the appropriate statement of the party's right of appeal, as well as instructions for contacting the Environmental Hearing Board. This includes permits, and notifications of DEP determinations regarding request for water supply investigation.

All material obligations, corrective actions, or milestones for the resolution of a violation that are contained in a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document are to be entered and tracked by staff in eFACTS and be updated in eFACTS within 10 business days of compliance with each material obligation, corrective action, or milestone.

#### **A. Notice of Violation (NOV) and Inspection Reports**

1. Inspection Reports. All violations identified during an inspection should be documented in writing in the inspection report on the date of the inspection and should be presented to the facility before concluding the inspection, if possible. Inspection reports should always contain the following: (a) a clear and concise description of all violations, including the basis for the violations, (b) the requested actions (including a meeting, if applicable) to resolve each violation, and the requested due date(s) for those actions (c) the operator's written response, if any, (d) the status of the violation, and (e) any remedial steps taken by the operator or DEP to address the violation.

If the violation(s) cannot be determined on the date of the inspection because the receipt of sample results and/or further information is necessary, the "Inspection Results" field may be marked as "Pending." Confirmation of the violation and completion of the inspection report should be done within 14 calendar days after receiving this necessary further information. The program may establish an alternate time frame if necessary and approved by the Bureau Director or Program Manager.

Where a violation is corrected before the end of an inspection, the violation should still be recorded on the inspection report and the violator notified of the violation in writing by copy of the inspection report.

2. NOVs. A NOV is a formal communication in which the operator is notified of a violation. Typically, a written NOV requests the notified party to respond to the NOV and describe the actions they have taken or will take to correct the violation.

A NOV can be issued for a violation of any statute, regulation, or permit condition. Oil and Gas Program staff should use the Department's approved format, language, and notification procedures described below.

A NOV is not an order of the Department. The purpose of the NOV is to advise the recipient of the existence of a violation, not to compel an action. The language in the NOV must not direct, require, or command an action to be taken, but rather it should request or recommend that the person receiving the notice pursue corrective measures in a timely fashion.

Unless the Deputy Secretary or Bureau Director agrees otherwise, a NOV should be issued in writing to the violator or a legal representative of the violator no later than 14 calendar days after any of the following: completion of an inspection that documents a confirmed violation; expiration of a permit where no renewal application has been timely received by the Department; non-compliance with an obligation under a permit, registration, consent order and agreement, final order, and/or other enforceable document; and any other event where the Department has determined that a violation exists.

A NOV is typically used to notify an operator of violations detected during an inspection. In some situations, a higher level action is more appropriate; for example, where:

- The violation creates an existing or imminent danger to the environment or public health or safety.
- The violation is causing actual pollution or other environmental damage.
- The operator indicates a lack of ability or intention to comply with a previously cited violation.
- A NOV is not expected to result in compliance and an alternate action is appropriate.

The NOV should: (1) clearly and concisely identify each violation; (2) the basis for each violation; (3) the requested actions (including a meeting, if applicable) to resolve each violation; and (4) the requested due date(s) for those actions.

The program will update the eFACTS data system for recording all violations within 10 business days of the issuance of the NOV. When a violation is resolved, the operator will be notified and the violation will be closed out in eFACTS within 10 business days of final compliance with the enforceable document. For violations that are not physically correctable, such as a short-term discharge or a spill, the seriousness of the violation will be assessed and a penalty should be calculated if applicable. When the penalty is paid, the violation will be administratively closed in eFACTS.

The results of negotiations to resolve a violation will be documented in an enforcement document, such as a COA or Consent Decree, including the appropriate penalty assessment. That document must be finalized within 180 calendar days after the date that the Department notified the responsible person of the violations, unless the Deputy Secretary or Bureau Director agrees

that an extension of time is acceptable in the specific case. Otherwise, the Department should take the applicable enforcement action to resolve the violations. Negotiations can be re-established once the violator is under an enforcement document.

Violations that will take more than 180 calendar days to resolve should be addressed via a consent order and agreement, consent decree, final order, or other enforcement document unless the Deputy Secretary or Bureau Director agrees that an enforcement document is not warranted in the specific case. Violations that take less than 180 calendar days to resolve may be incorporated into an enforcement document, as appropriate.

## **B. Section 3251 Administrative Conference**

A party that has received a NOV for unresolved violations may request -- or may be invited to participate in -- an informal discussion with DEP staff regarding compliance issues and the party's responsibilities and plans to correct the violations. Such a conference is not an enforcement action but rather a step in the policy of progressive enforcement. A plan for corrective actions resulting from an administrative conference may be formalized in a negotiated agreement such as a consent order and agreement.

## **C. Administrative Order**

The Department has the authority to issue an administrative order to aid in achieving compliance with the Oil and Gas Act, the Clean Streams Law, and other applicable environmental statutes and regulations.

In an administrative order, the Department establishes the detailed factual basis for the violations(s), directs the violator to take specific corrective actions by specific dates to correct a violation. In addition, an order may be issued for partial or complete suspension or cessation of operations.

An administrative order can be used for, among other things, when a site condition creates an existing or imminent danger to public health or safety, or is causing or can be expected to cause pollution or other environmental damage, or when the operator indicates a lack of ability or intention to address a previous NOV or a violation notation in an inspection report. Additionally, administrative orders are used as necessary to assure restoration or replacement of the water supply.

An administrative order may be initiated by an Oil and Gas Inspector, Water Quality Specialist or related discipline, or by a supervisor after review of an inspection report after legal review by the Regional Counsel. Authority to sign orders has been delegated to the Bureau Director and District Program Managers after legal review. If a serious public health, safety or environmental hazard exists, and the matter meets the requirements in the applicable DEP field order previously approved by the Office of Chief Counsel, a field order may be issued upon concurrence by a supervisor and without legal review.

An administrative order should be sent to the responsible party by certified mail with return receipt requested, or hand-delivered with an affidavit executed by the person making the delivery. If the return receipt is not received, a certificate of first-class mailing will suffice.

Any order may be modified by a subsequent order that details additions, deletions, or corrections.

**D. Consent Assessment of Civil Penalty (CACP)**

A consent assessment of civil penalty (CACP) documents the Department's settlement of a civil penalty. Any violation identified in a CACP must be corrected prior to the date the settlement is finalized.

While a CACP is a negotiated settlement, the Department may deviate from policy guidance for calculating the penalty amount for a unilateral assessment of a civil penalty or a Complaint for a civil penalty. However, when determining an appropriate settlement amount, DEP will consider the factors contained in the applicable civil penalty guidance, as well as prior settlements for similar violations.

The civil penalty technical guidance for penalty calculation may be found in the DEP Technical Guidance Document, Civil Penalty Assessments in the Oil and Gas Management Program, Doc. ID No. 550-4180-001, as well as guidance issued by other programs.

**E. Suspension or Revocation of Permit or Registration**

Suspension or revocation of a permit or registration is accomplished by an order of the Department. The Oil and Gas Act establishes procedures for the Department to follow before issuing the suspension or revocation order (58 Pa. C.S. § 3253). This involves (1) notifying a well operator explaining the reasons for the action, using citations to specific statutory provisions, regulations or other reasons, and including the relevant facts, and (2) providing an opportunity for a conference.

A permit suspension is the temporary withdrawal of the privilege to conduct an activity under a specific permit or registration. The suspension may be for a fixed period of time or indefinitely until the Department is satisfied with progress towards compliance or resolution of the violation(s). A permit suspension would be issued to temporarily halt activity where a permit was based on erroneous, correctible information or where a well or other facility is causing a condition that can be remedied. Failure to comply after permit suspension could result in revocation of the permit. A suspension order terminates automatically once the violation is corrected to the Department's satisfaction, upon written confirmation by the Department following notice by the operator.

A permit revocation is the permanent termination of the privilege to conduct an activity under a specific permit or registration. A revoked permit or registration should not be reinstated using the original application materials. A new application would be required.

Revoking a permit or registration is an action of last resort where a well or other facility is malfunctioning or incapable of being repaired, or the permit or registration was based on false or deficient information that cannot be remedied, or the operator displays a lack of intention or ability to comply with the law.

## **F. Civil Penalties**

DEP administers many laws that authorize civil penalties for violations. The Office of Oil and Gas Management would seek penalties mainly under the Oil and Gas Act (58 Pa. C.S. § 3256 *et seq.*) and the Clean Streams Law (35 P.S. § 691.1 *et seq.*). The Program may also assess a penalty under other laws, such as the Solid Waste Management Act (35 P.S. § 6018.101 *et seq.*) and the Dam Safety and Encroachments Act (32 P.S. § 693.1 *et seq.*).

Although the maximum penalties allowed by these laws differ, the penalty provisions of each are similar in instructing the Department as to what factors to consider when evaluating penalties for violations. Civil penalty guidance for calculating civil penalties is in the following DEP Technical Guidance Documents: Civil Penalty Assessments in the Oil and Gas Management Program, Doc. ID No. 550-4180-001; and other applicable guidance.

## **G. Community Environmental Project (CEP) in Lieu of Paying Civil Penalty**

A community environmental project (CEP) settlement may be documented by a consent order and agreement (CO&A) wherein the violator agrees to fund or perform specific work of environmental improvement in or near the municipality where the violation occurred. In the Oil and Gas Management Program, such work would typically be to plug one or more abandoned or orphaned wells that do not belong to the violator. However, the agreement may allow a different kind of environmental project.

Participants in a CEP may use the DEP Technical Guidance Document, Civil Penalty Assessments in the Oil and Gas Management Program, Doc. ID No. 550-4180-001, for guidelines to calculate the equivalent penalty amount for a CEP agreement.

Department policy guidance for a Community Environmental Project is published in Policy for the Consideration of Community Environmental Projects in Conjunction with Assessment of Civil Penalty, Doc ID No. 012-4180-001.

## **H. Negotiated Agreements – Administrative Actions, Court Actions and Stipulations**

A consent decree, a consent order and agreement (CO&A) and a Stipulation are actions based on a negotiated settlement. A CO&A is an administrative action agreed to by the Department and the subject party. A CO&A is enforceable in Commonwealth Court or the Court of Common Pleas in the applicable county, upon petition by the Department.

A consent decree and is an agreement negotiated between the Department and the subject party, and must be approved by the court in which the underlying action was filed. Usually such agreements arise from litigation that is already before the court. A consent decree is entered by the Commonwealth Court or the applicable Common Pleas court. A

stipulation is somewhat similar in that the person who appeals a DEP action, such as an order or a permit suspension, withdraws the appeal after reaching an agreement with the Department as documented in the Stipulation filed with the Environmental Hearing Board (EHB).

## **I. Bond Forfeiture**

Depending on the circumstances, the Department will normally initiate bond forfeiture at the same time that it issues an administrative order or files a court action, or only after attempts at other enforcement actions have been pursued.

The District Program Manager will prepare and forward to the Bureau Director a recommendation to forfeit an operator's bond. The recommendation should include a summary of events in the history of enforcement actions leading to the decision. The District Office will prepare the Forfeiture Order and should require a replacement bond be submitted within 10 calendar days of the date the bond is declared forfeited to cover all wells under the forfeited bond.

If the operator does not appeal the bond forfeiture action to the EHB, or after an operator's appeal is dismissed, the Bureau Director will notify DEP's Division of Certification, Licensing, and Bonding to proceed with collecting the bond.

## **J. Equity Actions**

### **Injunction:**

The process is started when the Department files a request for an injunction with a court, seeking an order from the court. An injunction is a Court order directing a party to perform certain actions or barring a party from certain conduct.

An injunction is typically the appropriate enforcement action when significant harm may occur, such as in any of the following circumstances:

- The situation is critical and severe problems can result from delay.
- Past conduct by the violator indicates that other enforcement action by the Department will not achieve compliance.
- The violator has failed to comply with an Order of the Department.

### **Contempt of Court:**

If a person fails to comply with an order of the Department, CO&A or consent decree, DEP may file a petition to enforce in either Commonwealth Court or the applicable County Court of Common Pleas. The petition will request that the court compel compliance with the DEP order. DEP may seek a contempt order if that person continues to fail to perform as directed by a court. Courts have wide discretion in issuing a Contempt Order, including incarceration.

## **Lien**

In general, liens are filed by DEP attorneys assigned to the particular District, or in Central Office. Liens are filed for final penalty assessments or Court judgments which are unpaid. In some cases, liens are filed as part of a negotiated settlement, and are documented in a CO&A or Consent Decree. In all cases, liens are filed in a Pennsylvania County Court of Common Pleas, and in any other state as appropriate.

Section 3256 of the Oil and Gas Act establishes a procedure for imposing liens. DEP's Office of Chief Counsel should be consulted in this process.

### **K. Criminal Action**

The Department will consider referring violations that meet the requirements of the procedures established with the Office of Attorney General for criminal investigation and prosecution. Criminal referrals require the highest degree of confidentiality and are made through the Office of Chief Counsel.

## **IV. STANDARDS AND GUIDELINES FOR INITIATING, DOCUMENTING AND RESOLVING WATER SUPPLY INVESTIGATION REQUESTS**

### **A. Background**

Section 3218 of the Oil and Gas Act requires a well operator that adversely affects a water supply to restore or replace the impacted supply with an alternate water source adequate in quantity and quality for the purpose served by the supply. If a water supply user/owner, or an operator, contacts the Department with a concern that a water supply may have been adversely impacted by oil and gas activities, the Department will conduct a thorough investigation to ascertain whether the water supply has been affected and, if so, whether oil and gas activities are the cause of the impact.

If the water supply user/owner or operator indicates that human health is being affected as a result of oil and gas activities, the Department will provide the individuals with contact information for the Department of Health. If oil and gas activities are determined to have adversely impacted a water supply, the Department will take appropriate measures to require the responsible operator to restore or replace the supply. The Department will also inform the Department of Health of this determination. If a causal connection between oil and gas activities and the water supply impact cannot be established, the complainant will be notified that oil and gas activities did not impact the water supply, or that there was insufficient evidence to establish a causal connection.

Section 3218(c) of the Oil and Gas Act creates a presumption of liability on a well operator for pollution of private or public water supplies located within a "rebuttable presumption area." For a conventional oil and gas well, a water supply is within the rebuttable presumption area if the water supply is within 1,000 feet of an oil or gas well and the pollution occurred within six months after completion of drilling or alteration of the well. For an unconventional gas well, a water supply is within the rebuttable presumption area if the water supply is within 2,500 feet of the vertical well bore and the

pollution occurred within 12 months of the later of drilling, stimulation, well alteration or completion activities.

The intent of this statutory provision is to provide quick relief to the water supply user/owner. However, it is recognized that water supplies meeting the rebuttable presumption criteria may be adversely affected by some cause other than oil and gas activity. Thus, the statute specifies ways that an operator may rebut the presumption of liability.

There are five statutory defenses to the presumption of liability which are listed below. Any one of these defenses is sufficient to rebut the presumption.

1. The pollution existed prior to the drilling or alteration activity as determined by a pre-drilling or pre-alteration survey.
2. The landowner refused to allow the operator access to conduct a pre-drilling or pre-alteration survey. The operator shall submit evidence to the Department demonstrating that the landowner was notified by certified mail or personal service that the refusal of access to conduct a pre-drill or pre-alteration survey could be used to rebut a presumption of liability.
3. The water supply is not within 1,000 feet of a conventional well or 2,500 feet of an unconventional well.
4. The pollution occurred more than 12 months after the later of completion, drilling, stimulation or alteration activities for unconventional wells, and more than six months after completion of drilling or alteration activities for conventional wells.
5. The pollution occurred as a result of a cause other than drilling or alteration activity at a conventional well site, or completion, drilling, stimulation or alteration activity at an unconventional well site. If this defense is used, any report documenting the cause must be prepared and sealed by a geologist licensed in this Commonwealth.

The burden of proof remains with the Department when an affected water supply falls outside the rebuttable presumption area or the only issue with the affected water supply is diminution of the quantity of the water supply. The Department also has the burden of proof in cases where the operator successfully rebuts the statutory presumption. For these reasons, the applicable Regional Counsel should be consulted prior to relying upon the statutory presumption.

## **B. Procedures**

### **Templates**

District Office staff should use templates developed by Central Office, as applicable.

## **Water Supply Investigation Requests**

All water supply investigation requests related to oil and gas activities should be referred to the appropriate District Oil and Gas Office. The District Office will follow the procedures outlined in this section.

1. District Office staff where the request is received is responsible for collecting initial information regarding a water supply investigation request. The following information should be obtained from the requestor:
  - a) Name, address, and phone number of the requestor.
  - b) Name, address, and phone number of the water supply user or owner.
  - c) Name of the operator(s) conducting oil and gas activities in the vicinity of the water supply, if known.
  - d) Municipality and county where the water supply is located.
  - e) Brief description of the problem.
  - f) Date when problem was first noticed.
2. The information obtained shall be entered into the water supply investigation request tracking system upon receipt and the appropriate Water Quality Specialist (WQS) shall be notified of the water supply investigation request. The WQS Supervisor will also be notified of the request. If the information received from the requestor indicates there may be an imminent threat to public health and safety or the environment, the Oil and Gas Program Manager, the Department's Emergency Response Program and other agencies as deemed appropriate should be immediately notified.
3. The WQS should attempt to contact the requestor the same business day the request for investigation is received to obtain additional information. The WQS should explain to the requestor the Department's anticipated response. An onsite inspection/sampling of the water supply should be scheduled at that time if appropriate. Every effort should be made by the WQS or the WQS's supervisor to contact the requestor within two business days of the day the request for investigation is received.
4. Within two business days of contacting the requestor, the WQS should conduct a site inspection and obtain samples of the water supply if warranted. All information obtained during the site inspection should be documented on an Initial Water Supply Investigation Form. Although there may be circumstances preventing a site inspection within two business days of contacting the requestor (i.e. scheduling conflicts), a site inspection should be conducted within 10 calendar days of contacting the requestor unless the water supply user/owner fails or refuses to grant the Department access to the water supply.
5. Following an onsite inspection, if the WQS observes a potential impact to the water supply (e.g. effervescence, turbidity, or similar obvious contamination) and determines that the water supply is not located within the rebuttable presumption area, the WQS should gather all relevant information related to the investigation including sample results and if deemed necessary by the WQS Supervisor, refer

the request for water supply investigation to a Program Geologist. The WQS Supervisor, Environmental Group Manager, or District Program Manager should also request the operator provide temporary water to the water supply user.

6. The WQS and/or the Program Geologist will make a determination at the conclusion of the investigation as to whether or not the water supply was impacted by pollution or diminution that was caused by oil and gas activities.
7. The Department's goal is to conclude an investigation and make a determination within 45 calendar days of receipt of a water supply investigation request. In those situations where extenuating circumstances prevent the Department from making a determination within 45 calendar days, a letter shall be sent to the water supply user/owner containing a summary of the investigation to date and an explanation that additional investigation is necessary.
8. Final water sample test results and literature providing guidance on interpreting the results shall be mailed to the water supply user/owner within seven business days of receipt by the Department. The test results shall reference Pennsylvania Safe Drinking Water standards.
9. If the Department in the exercise of its discretion concludes that it is unable to establish that the operator adversely impacted the water supply, the Department shall notify the complainant of its findings in writing. The letter should include a paragraph instructing the requestor to contact the District Office should they have any questions or concerns.
10. If the Department determines that oil and gas activities have adversely impacted the water supply, the Department shall notify the water supply owner/user of the determination in writing. The operator will be requested to provide temporary water, if necessary, within 24 hours.
11. Within 30 calendar days following a final positive determination, the Department should issue to the responsible operator(s), as appropriate, (1) an NOV for affected water supplies where the rebuttable presumption does not apply, or (2) a Notice and Request for Corrective Action where the rebuttable presumption does apply. The NOV and the Notice and Request for Corrective Action should request, among other things, a written response by the operator within Department specified timeframes and should request that the operator provide the Department with a permanent water supply restoration or replacement plan.
12. Within 30 calendar days following an operator's written response to an NOV or Notice and Request for Corrective Action, the Department should take appropriate enforcement action to permanently restore or replace an adversely affected water supply unless: (1) the water supply has already been restored or replaced; (2) the request for water supply investigation has been withdrawn by the water supply owner/user; (3) the operator and water supply owner/user have entered an agreement pursuant to 25 *Pa. Code* § 78.51(g); or (4) the water supply is no longer polluted or diminished.

13. In addition to the enforcement actions listed above, a civil penalty should be issued if warranted. Factors to consider in issuing a civil penalty should include whether temporary water was provided, lab and other costs incurred by the Department for its investigation, and cooperation by the operator.
14. If multiple operators are potentially responsible for adversely impacting a water supply and the Department is unable to conclusively identify the responsible operator, a conference pursuant to Section 3251(a) of the Oil and Gas Act should be scheduled to attempt to ascertain the responsible operator. An NOV or Notice and Request for Corrective Action should be issued to the appropriate operator(s).
15. If the impacted water supply is replaced, the Department should direct the operator to evaluate the water supply for adequacy and quality pursuant to Section 3218(b) of the 2012 Oil and Gas Act. The evaluation of adequacy includes a determination of any increased operating costs to determine if the costs are *de minimis* or if the operator needs to make provisions for the increased costs. The Department should take any steps necessary to ensure the replacement water supply meets the adequacy requirements and the necessary agreements are in place if the costs are greater than *de minimis*.
16. The final disposition of all water supply investigation requests will be recorded in the water supply investigation request tracking system. If applicable, the Department will send a letter to the water supply user/owner and operator describing any remedial measures employed to restore or replace the water supply.
17. Any request from the water supply user/owner to withdraw a water supply investigation request should be confirmed by the Department in writing.

#### **Water Supply Investigation Requests Within the Rebuttable Presumption Area**

1. Following an onsite inspection, if the WQS observes a potential impact to the water supply (e.g. effervescence, turbidity, or similar obvious contamination) and determines that rebuttable presumption applies to the water supply, the WQS Supervisor, Environmental Group Manager or District Program Manager should contact the operator by phone and in writing, via certified mail, and request that the operator provide a temporary water supply adequate in quality and quantity for the needs of the user within 24 hours and to provide all information known to the operator that supports any of the statutory defenses to the rebuttable presumption of liability. The applicable Regional Counsel should review the order.
2. If the operator does not provide a temporary water supply within 24 hours of receipt of written notification and also fails to rebut the presumption of liability, the Program Manager may issue an administrative order as needed directing the operator to provide temporary water within 24 hours, and the Department shall initiate an investigation pursuant to the above-referenced guidelines.

3. In circumstances where an operator offers evidence attempting to rebut the presumption of liability, an investigation should still be conducted by the Department pursuant to the above-referenced guidelines. The Department, however, will consider the evidence offered by the operator along with the evidence it obtains in its investigation to make a determination as to whether pollution or diminution of the water supply has occurred and, if so, whether the pollution or diminution was caused by oil and gas activities.