

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF OIL & GAS MANAGEMENT**

**DOCUMENT NUMBER:** 550-3000-001

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

**EFFECTIVE DATE:** Upon Publication in the *Pennsylvania Bulletin*

**AUTHORITY:** The Oil and Gas Act of 2012 (58 P.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 Pennsylvania Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101 *et seq.*)  
The Administrative Code (71 P.S. § 510-1 *et seq.*)

**POLICY:** To ensure compliance with applicable laws and regulations by administrative or civil actions, DEP's Oil and Gas Management Program will follow the policies stated and referenced herein when pursuing enforcement against any person or business entity.

**PURPOSE:** This guidance provides direction to DEP's Oil & Gas Management staff in determining what courses of enforcement to pursue to resolve violations and bring about compliance, and to provide advisory information to the regulated industry.

**APPLICABILITY:** This policy applies to all conventional and unconventional oil and gas operators conducting business in Pennsylvania.

**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.

## **ENFORCEMENT ACTIONS BY DEP'S OIL AND GAS MANAGEMENT PROGRAM**

### **I. GENERAL**

Consistent with the Department's goal in 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 voluntary compliance through technical assistance and education is the preferred method of compliance, the Department is authorized by various laws to take formal enforcement action to assure compliance with the law. As with all DEP regulatory programs, the enforcement strategy for the Oil and Gas Management Program is guided by the Department's *Standards and Guidelines for Identifying, Tracking, and Resolving Violations* (April 4, 2004).

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

- An appropriate enforcement action is to be taken for each identified violation.
- The minimum response for any violation is a written notification in the form of a Notice of Violation (NOV) or a copy of an inspection report that notifies the 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 is to be based on progressive enforcement in accordance with enforcement priorities of the program.
- Penalties may be assessed where the violation results in an actual threat to public health and safety, pollution, or environmental damage; for repeat occurrences; or where the violator acts negligently, recklessly, or willfully.

#### **B. Enforcement Process**

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

Enforcement actions are basically two types: corrective actions and penalties. Corrective actions are formal actions initiated by the Department to persuade or compel the violator to take corrective measures. These include NOV, administrative order, suspension or revocation of permit or registration, administrative conference, consent decree, consent order and agreement (CO&A), and equity action.

Civil and criminal penalties and bond forfeitures are punitive. The purpose of penalties is to provide a deterrent and recover costs incurred by the Department during the investigation of the violation. 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.

Progressive enforcement involves the successive application of increasingly severe enforcement actions until compliance is achieved. Progressive enforcement also applies to the assessment of penalties. Progressive enforcement typically follows this sequence:

**Corrective Action**

Notice of violation  
Administrative conference  
Consent decree/CO&A  
Administrative order  
Equity action

**Penalty Action**

Consent assessment of civil penalty  
Civil penalty or criminal penalty  
Bond forfeiture

This does not mean that each step is used in every enforcement case, nor does it mean an action must be taken before a higher-level action is taken or a penalty assessed. If a NOV is not expected to result in compliance, then an administrative order may be issued or a consent order and agreement negotiated and signed.

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 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 release of gas or pollutants that endanger the environment or public health and safety.
2. 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 releases.
4. Drilling or conducting other oil and gas related activities without a permit or without the required authorization.
5. Intentional violations other than those listed above.
6. Failure to comply with an order, consent decree, consent adjudication, etc., other than those listed above.
7. All other violations.

**II. ENFORCEMENT ACTIONS**

To promote consistency among DEP regions in handling compliance and enforcement matters, DEP developed its *Standards and Guidelines for Identifying, Tracking, and Resolving Violations*.

The process for all actions initiated by the Oil and Gas Management Program will conform to the procedures described in the document referenced above, and any amendments thereto.

Notification by the Oil and Gas Management Program of a decision or action that would be appealable must include the appropriate statement of the party's right of appeal, as well as instructions for contacting the Environmental Hearing Board.

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)**

A Notice of Violation (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 will 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 with significant impact on the recipient. The NOV cannot direct, require, or command an action to be taken, but rather should request or recommend that the violator pursue corrective measures forthwith.

All violations identified during an inspection will 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. 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." Determination of the violation and completion of the inspection report are to 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. All violations, and the basis for the violations, should be clearly and concisely identified on the inspection report. Alternate time frames should be reported to the Secretary in the Weekly Report.

No later than 14 calendar days after the completion of an inspection; expiration of a permit where no renewal application has been timely received by the Department; non-compliance with an obligation under a permit, consent order and agreement, consent

decree, final order, and/or other enforceable document; and/or any other event where the Department has determined that a violation exists, a NOV will be issued in writing to the violator or a legal representative of the violator unless the Deputy Secretary or Bureau Director agrees that an extended time frame for issuing the NOV is acceptable.

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

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 failure 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 will be calculated if applicable. When the penalty is paid, the violation will be administratively closed in eFACTS.

Violation negotiations addressed via an enforcement document, including the appropriate penalty assessment, must be finalized within 180 calendar days after the date that the Department notified the violator/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 that imposes the obligations necessary to resolve the violations. Negotiations can be re-established once the violator is under an enforcement document.

Violations taking more than 180 calendar days to resolve should be addressed via a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document unless the Deputy Secretary or Bureau Director agrees that an enforceable document is warranted in the specific case. Violations that take less than 180 calendar days to resolve may be incorporated into an enforceable document, as appropriate.

The Department may also prioritize discharge violations identified by self-monitoring reports in accordance with the Clean Water Act definition for significant noncompliance of

Discharge Monitoring Reports.

## **B. 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 another 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 assessment of civil penalty or 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 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 cessation of operations.

An administrative order is to be used 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 failure to comply with a previously cited violation. Additionally, when the Department receives a request for water supply investigation and determines a well operator has affected a water supply by pollution or diminution, or if the Department presumes the operator to be responsible for pollution, it will issue an administrative order to the well operator 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. Authority to sign orders has been delegated to the Bureau Director and District Program Managers after review by a regional attorney. If a serious public health or environmental hazard exists, a field order may be issued upon concurrence by a supervisor.

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) is a convenient means for both parties to resolve penalties where it is mutually agreeable and in the interest of both parties to settle. Such an agreement is called for when the nature of the violation is significant enough to

warrant a penalty, but because of the cooperation of the parties, does not warrant an administrative order, criminal action, or civil penalty action. Any violation must be corrected prior to the date the settlement is finalized.

Practically, a CACP is a negotiated settlement that includes a confession of judgment or admission of guilt. As it is a negotiated settlement, the Department may deviate from policy guidance for calculating the penalty amount. 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.

For violations of obligations under a consent order and agreement, consent order, final order, and/or other enforcement document, settlement negotiations can continue for 60 calendar days before petitioning a court to resolve the violation because the negotiating process is not producing meaningful results, unless the Deputy Secretary or Bureau Director recommends, and the Secretary agrees, that an extended time frame for negotiations is acceptable while the violator is not complying with the terms of the enforcement document.

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

Suspension or revocation of a permit is accomplished by an order of the Department. The Oil and Gas Act establishes procedures for the Department to notify a well operator and provide the opportunity for a conference before issuing the suspension or revocation order for a well permit (58 P.S. § 3253).

A permit revocation is the permanent termination of the privilege to conduct an activity under a specific permit. A revoked permit cannot be reinstated. A new permit application would be required.

A permit suspension is the temporary withdrawal of the privilege to conduct an activity under a specific permit. The suspension may be for a fixed period of time or indefinitely until the Department is satisfied with progress towards compliance. 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.

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

#### **F. Civil Penalties**

Pennsylvania's DEP administers many laws that authorize civil penalties for violations. The Oil and Gas Management Program would seek penalties mainly under the Oil and Gas Act (58 P.S. § 3256 *et seq.*) and the Clean Streams Law (35 P.S. § 691.1 *et seq.*). The Program may also assess a penalty under another law similarly structured, such as the Solid Waste Management Act (35 P.S. § 6018.101 *et seq.*) or the Dam Safety and Encroachments Act (35 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. Policy guidance for evaluating circumstances that justify a civil penalty and for calculating civil penalty assessments is in the DEP Technical Guidance Document, Civil Penalty Assessments in the Oil and Gas Management Program, Doc. ID No. 550-4180-001.

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

A community environmental project (CEP) settlement may be documented by a consent assessment of civil penalty (CACP) or 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. When used for plugging abandoned wells, the Department may allow the entire penalty amount to be offset by a CEP of comparable expense.

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 Acceptance Of Community Environmental Projects In Lieu Of A Portion Of Civil Penalty Payments, Doc ID No. 012-4180-001.

#### **H. Negotiated Agreement – Administrative or Court Action**

A consent decree, a consent order and adjudication, and a consent order and agreement (CO&A) are administrative actions based on a negotiated settlement. The differences are whether court action is involved in negotiating and enforcing the agreement. A CO&A is an administrative action agreed to by the Department and the subject party, and does not involve court action. A consent decree and a consent order and adjudication are both agreements negotiated between the Department, subject party, and a court of the Commonwealth. Usually such agreements arise from litigation that is already before the court. A consent decree is entered by the Commonwealth Court, and a consent order and adjudication is entered by the Environmental Hearing Board.

#### **I. Bond Forfeiture**

The Department will initiate bond forfeiture only after attempts at other administrative remedies have been exhausted.

The Regional Program Manager will prepare and forward to the Bureau Director a recommendation to forfeit an operator's bond. The recommendation must include a

summary of events in the history of enforcement actions leading to the decision. The Regional Office will prepare the Forfeiture Order and will 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 Environmental Hearing Board 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:**

An injunction is a Court order directing a party to perform certain actions or barring a party from certain or a continuing course of conduct.

An injunction is the appropriate enforcement action in the following circumstances where:

- The situation is critical and severe problems can result from delay.
- Immediate and irreparable harm may occur.
- Past conduct by the violator indicates that administrative action by the Department will not achieve compliance.
- The violator fails to comply with an Order of the Department.

### **Contempt of Court:**

If a defendant fails to comply with an order, DEP may file a petition to enforce requesting the court to compel compliance with the order. DEP may seek a contempt order where a defendant continues to fail to perform as directed by a court.

### **Lien**

Liens are typically used when a court judgment is entered against a party that is unable to pay, but has real assets/property. Section 3256 of the Oil and Gas Act provides the following:

If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary

to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

When a judgment is entered and payment not made, the lien should be filed by the Regional Counsel.

## **K. Criminal Action**

DEP's Oil and Gas Management Program may initiate a criminal investigation or prosecution if a party intentionally committed a violation of law and refuses to initiate or continue corrective activity. The Regional Attorney should be consulted to determine whether to prosecute a criminal action as a summary offense before a district magistrate or to refer a case to the Pennsylvania Office of Attorney General for criminal investigation.

## **III. IDENTIFYING A VIOLATION**

### **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 P.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 pre-permit 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.
- 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 recovered, 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-OG-0075) 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, Document No. OPI 2012-01, 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, data bases, or other office duties related to a permitted facility.

## 2. Frequency of Well Inspections

Each District Office should ensure that all wells are inspected at least once in accordance with the following schedule:

- 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) Annually for disposal wells.
- k) Following a violation to determine whether the violation has been corrected.
- l) Following a complaint.

### 3. **Preparing for On-Site Inspections**

Preparing for an on-site inspection is critical to optimize efficiency in the field. The following are recommended resources that employees should review during the preparation and planning stages for field inspection work.

- a) **Equipment:** All field equipment should be clean and properly functioning, instruments calibrated, and battery levels/charges checked. Proper safety related personal protective equipment (PPE) shall also be used in accordance with Department related guidance.
- b) **Electronic Notices:** Several critical phases of the drilling process now trigger the requirement for electronic notification to the Department. These notices may be the first time a program inspector becomes aware that a well site has been constructed and that drilling is about to commence. This is especially true of conventional well site locations because an Erosion and Sedimentation Control General Permit (ESCGP) may not have been required for site preparation.
- c) **Permits/Authorizations:**  

Well Permits - The well permit can be useful for conducting inspections of both surface activities and “down hole” inspections. The well permit can often provide the following useful information:

  - Farm name and permit number.
  - Special permit conditions.
  - Type of well and target formation.
  - Special protection waters.
  - List of surface owners and/or water purveyors whose water supplies are within prescribed distances.

- Proximity of the well to nearby buildings or water supplies.
- Locational information.
- USGS 7.5' Quadrangle Map Name and map section.
- Elevation.

ESCGP – For most unconventional and some conventional locations, an ESCGP must be issued by the Department in accordance with 25 Pa. Code § 102.5(c). Reviewing the site map, E&S plan, and construction sequence contained in this authorization is important prior to conducting field inspections. Certain notifications are also a requirement of the ESCGP, including Preconstruction Conferences and Seven Day Earth Disturbance Notices. Attending these conferences can assist an inspector with planning efficient field inspection activities.

- d) Maps, GPS's and Mapping Software - These resources deserve special mention as locating some wells may prove extremely difficult. Many field inspectors refer to USGS 7.5' topographic maps with most of the known wells marked on the map. Mapping software programs like "Terrain Navigator" and eMAP are extremely useful and are easy to keep up to date.
- e) Review of Department Files - Files are an obvious place to go for current or historical information about an operator or a particular well. The official permit files are located in each of the three District Oil and Gas Offices. Smaller field offices may have a set of working files that inspectors have compiled over time. Additionally, each District Office houses the "General Operator Files" which can contain broader information about an operator's operations. An operator's general Preparedness, Prevention, and Contingency (PPC) Plans are normally filed in the "Operator's General File" and may also be useful to review.
- f) Past Enforcement/Compliance History - Older enforcement records can provide field inspectors with information about an operator's compliance history. Environmental Compliance Specialists located in each District may be able to assist with researching an operator's compliance history.
- g) Complaint Records - Complaint records are often kept separate from the other file types due to confidentiality issues. Looking at past complaints can obviously provide valuable information regarding problems an operator may have had historically. CTS is the official data base for documenting complaints, response, and resolution.
- h) eFACTS - The eFACTS database can be used to quickly gather extensive information regarding an operator, a particular lease, or an individual well. Simple queries or reports can be generated to assist inspection personnel.

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

##### a) Right of Entry

The Department has the statutory authority under the Oil and Gas Act, 58 P.S. §3258(a), to enter a well site at all reasonable times to make 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 representative present on site.

The chances for a successful site inspection or complaint investigation are enhanced by the positive appearance, conduct, and professionalism exhibited by the inspector. These attributes allow for an open dialogue and communication skills are essential 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 (provide identification and a business card if appropriate) to the operator and state the purpose of his inspection.
4. Reasonable efforts should be made to determine the identity of responsible persons during the inspection.
5. The Department will provide the owner, operator, or other responsible party with the results of an inspection or, when applicable, a copy of a written inspection report within 14 calendar days of the inspection.
6. 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

Keeping and maintaining clear, accurate records of the inspection and handling procedures is very important. Complete the appropriate Inspection Report form documenting all 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.

## 5. 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 conditions 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**

The following information is required to be filed by an operator with the Department pursuant to statute, regulation, or permit condition:

### 1. Permits, Authorizations and Approvals

- a) Well Permit [58 P.S. § 3211]
- b) Well Permit Transfer Applications [58 P.S. § 3211(a)]
- c) Water Management Plans [58 P.S. § 3211(m)]
- d) Inactive Status Requests [58 P.S. § 3214(a)(4), 25 Pa. Code § 78.102(4)]
- e) ESCGP Transfer
- f) ESCGP noncompliance reports
- g) ESCGP NOI for major modifications
- h) ESCGP Notice of Termination [25 Pa. Code § 102.7]
- i) Centralized Impoundment Permit
- j) OG-71[25 Pa. Code §§ 78.61-78.63]
- k) 26R Chemical Analysis for Residual Waste [25 Pa. Code § 287.54]
- l) Variance Approval [58 P.S. § 3215(a)]
- m) Coal Pillar Approval [58 P.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 P.S. § 3221]

### 2. Incident Reporting

- a) Stray Gas Incident Final Report [25 Pa. Code § 78.89(h)]
- b) Spill Reports
- c) NOV Responses

### 3. Notifications

- a) Spud Notice [58 P.S. § 3211(f)]
- b) Cementing Casing String Notice [58 P.S. § 3211(f)(2)]
- c) Conducting Pressure Tests Notice [58 P.S. § 3211(f)(2)]
- d) Stimulation Notice [58 P.S. § 3211(f)(2)]
- e) Abandon/Plug Notice [58 P.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

#### 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 P.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]

#### 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 P.S. § 3222(b), 25 Pa. Code § 78.121(a)]
- f) Country of Origin – Steel [58 P.S. § 3222(b.1)(2)(iii)]
- g) Completion Report [58 P.S. § 3222(b)(3)]
- h) Completion Report – CPI and Trade Secrets [58 P.S. § 3222(b.2)]
- i) Production Report [58 P.S. §§ 3222(a) and 3222(a.1), 25 Pa. Code § 78.121(a)]
- j) Inactive Status Monitoring Report [58 P.S. § 102]
- k) NOI to Plug and Plugging Certificates [58 P.S. § 3220(c)]
- l) 26R RW Chemical Characterization [25 Pa. Code § 287.54]
- m) Site Restoration Report [25 Pa. Code § 78.65]
- n) FracFocus Chemical Disclosure [58 Pa. C.S. § 3222.1]
- o) Industry Logs [58 P.S. § 3222(b)(3)]
- p) Other Industry Data [58 P.S. §§ 3222(b)(4) and 3222(c)]
- q) Centralized Impoundment Permit Quarterly Report
- r) Centralized Impoundment Monitoring Reports

#### 6. Other Data

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

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

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

If warranted, a NOV will be issued to an operator that fails to submit complete and/or accurate data.

#### **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.

### **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 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 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 their health is being affected as a result of oil and gas activities, the Department will provide the individual 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 operator to restore or replace the supply. The Department will also inform the Department of Health of this determination. If a hydrologic connection between oil and gas activities and the water supply 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 hydrologic connection.

Section 3218(c) of the Oil and Gas Act creates a presumption of liability on a gas 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 completion, drilling, stimulation, or well alteration 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 documented in the approved drilling permit application submitted to the Department prior to permit issuance.

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 or diminution occurred more than 12 months after the later of the completion of drilling, alteration or stimulation activities for unconventional wells, and more than six months after completion of drilling or alteration activities for conventional wells.
5. The pollution or diminution 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. The Department also has the burden of proof in cases where the operator successfully rebuts the statutory presumption.

## **B. PROCEDURES**

### **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 the Department of Health shall 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. Under no circumstances shall the WQS or the WQS's supervisor fail to attempt 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 shall be documented on an Initial Water Supply Investigation Form. Although there may be extenuating circumstances preventing a site inspection within two business days of contacting the requestor, a site inspection shall 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 the water supply is not located within the rebuttable presumption area, the WQS should refer the request for water supply investigation to a Program Geologist so that a hydrologic investigation can be initiated. The WQS shall also request the operator provide temporary water to the water supply user.
6. The Program Geologist will make a determination at the conclusion of the investigation 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.
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 determines a credible case cannot be established 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 for an informal review if the requestor is dissatisfied with the Department's findings.
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 shall issue an NOV to the responsible operator(s), if identified. The NOV will require a written response by the operator within 10 business days of issuance and shall 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, the Department shall issue an administrative order 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 issuing a NOV, a civil penalty shall be issued if warranted. Factors to consider in issuing a civil penalty shall include whether temporary water was provided and the cooperativeness of 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. If the responsible operator is identified, a NOV will be issued to that operator.
15. If the impacted water supply is replaced, the Department will 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 will 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 shall 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 the water supply is located within the rebuttable presumption area, the WQS Supervisor, Environmental Group Manager or District Program Manager shall advise the operator by phone and in writing, via certified mail, to 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.

2. If the operator fails or refuses to 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 shall issue an administrative order 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 to rebut the presumption of liability, an investigation should still be conducted by the Department pursuant to the above-referenced guidelines.