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May 1, 2007

In Reply Refer To:
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EMS TRANSMISSION 05/15/2007
Instruction Memorandum No. 2007-118
Expires: 09/30/2008

To: All Field Officials

From: Assistant Director, Minerals, Realty and Resource Protection

Subject: Oil and Gas Program Enforcement Policy and Procedures

Program Area: Fluid Minerals

Purpose: To update and clarify enforcement procedures to be used in the Bureau of Land Management's (BLM) efforts to ensure compliance of Federal and Indian oil and gas operations.

Policy/Action: This policy applies to the BLM's oil and gas operations. For policy and guidance regarding operations under tribal jurisdiction, refer to the appropriate Section 202 Cooperative Agreement (guidelines for these types of agreements are outlined in 43 CFR 3192) or Self-Determination/Self-Governance Contract (guidelines for these types of contracts are outlined in 25 CFR 900 or 1000). Enforcement actions that involve shutdown of operations, lease suspension or cancellation, suspension of operations, or attachment of a bond must be coordinated with the appropriate tribal jurisdiction.

Attachment 1 provides policy and procedures to be used when noncompliance is observed during the inspection of oil and gas operations to ensure consistent and uniform implementation. These procedures include proactive measures to reduce the number of violations and create standard documentation procedures of noncompliance actions. Attachment 2 provides instructions for using the letter format for Incidents of Noncompliance (INC) and Written Orders.

Timeframe: Effective upon issuance to Field Offices (FO).

Background: The BLM is responsible for the oversight of oil and gas operations on Federal and Indian (except Osage) lands. The Inspection and Enforcement (I&E) Program is critical to the protection of the environment, public health and safety, proper accounting of production, and to ensure oil and gas resources are developed in a manner that maximizes recovery while minimizing waste. Mishandling of production can result in significant underpayment of royalties. Additionally, environmental degradation from improperly managed oil and gas operations can be long lasting.

Inspections are conducted on oil and gas operations to ensure compliance with applicable statutes regulations, Onshore Orders, Notices to Lessees (NTL), lease terms, approved permits, Conditions of Approval (COA), and Orders of the authorized officer (AO).

The BLM-certified inspectors have broad responsibilities and authority to conduct inspections and ensure compliance. Enforcement actions may include, but are not limited to, issuing INCs, Orders of the AO, imposing assessments or civil penalties, ordering shutdown of operations, and initiating the process for lease cancellation.

Budget Impact: Any additional costs are expected to be manageable under current budget allocations.

Manual/Handbook Section Affected: The Inspection and Enforcement Handbook will be updated to incorporate the guidelines outlined in this IM.

Coordination: This IM was coordinated with the Fluid Minerals Division (WO-310), and State Office (SO) and FO I&E Personnel.

Contact: Questions concerning this policy should be directed to William Gewecke at 202-452-0337. Questions concerning data entry procedures into the Automated Fluid Minerals Support System (AFMSS) should be directed to Carol Larson at 406-233-3655.

Signed by:
Elaine Y. Zielinski
Acting, Assistant Director
Minerals, Realty and Resource Protection

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

2 Attachments
1- Oil and Gas Program Enforcement Procedures (47 pp)
2 –Instructions for Use of Letter Format for INCs and Orders (9 pp)

Oil and Gas Program Enforcement Procedures

April 2007

Oil and Gas Program Enforcement Procedures

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Oil and Gas Program Enforcement Procedures

To ensure uniform implementation of the Oil and Gas Program enforcement procedures, the following provides the policy to be implemented by field offices (FO) having oil and gas program responsibilities.

In the past, several terms have been used to define a verbal warning issued to an operator. A verbal warning has often been referred to as a verbal Incident of Noncompliance (INC), an oral warning, or an oral INC. The use of these terms all refer to the same type of enforcement action. It is nonwritten communication to an operator for a minor and inadvertent violation that will be corrected immediately. To ensure consistency, verbal warning is the term to be used for enforcement actions of this type. A verbal warning is not to be confused with an oral order per 43 CFR 3161.2.

I. Identification of Violations and Problems

A. Identifying a Violation

Recognizing a violation is the critical first step in ensuring compliance, although it is not always as straightforward as it may seem. Operators must be in violation of a specific requirement outlined in the regulations, Onshore Oil and Gas Orders (Onshore Orders), Notices to Lessees (NTL), lease terms, approved permits, Conditions of Approval (COA) and/or Orders of the Authorized Officer (AO) before a *Notice of Incident of Noncompliance* (INC), Form 3160-9, or an INC in letter format can be issued.

B. Identifying a Problem

Recognition of a problem as opposed to a violation can be difficult. A problem is defined as a concern or issue identified during an inspection that is not covered by a specific regulatory requirement. In these instances, the issuance of an INC is not appropriate. Examples of these types of instances include such items as environmental protection, public health and safety issues (other than those specific requirements addressed in Onshore Order No. 6) or workmanlike conduct. Although these areas are discussed in the regulations, specific standards are not provided for operations. The AO must notify the operator in writing using either the *Notice of Written Order* (Form 3160-18), or letter format.

Written Orders of the AO are used to specify or clarify requirements that may or may not be covered or addressed in detail by regulations, Onshore Orders, NTLs, lease terms, approved permits, COAs, or to supplement an existing approval and must be in writing. The Written Order must 1) specify any requirement(s) or corrective action(s) necessary to address the problem(s); 2) provide a reasonable timeframe to comply; and 3) include appeal rights. If at the end of the timeframe the requirement is not met, enforcement actions pursuant to §3163.1 must be taken.

A table and flow charts, summarizing enforcement steps, are included in Section X for easy reference. Section III provides specific instructions for notifying the operator when violations or problems are identified.

C. Documentation of the Violation or Problem

Sufficient documentation is the mainstay of successful enforcement. Clear evidence of a violation/problem supports the issuance of an INC/Written Order and will be vital evidence if the action is submitted to the State Director for review and appealed to the Interior Board of Land Appeals (IBLA) or to U. S. Federal Court.

There are three principal ways to document a violation or problem:

1. Written documentation: This provides a record of the facts of what, when, where, why, and the conditions pertaining to the violation/problem. This documentation must be maintained in an official hardcopy file and forms the legal historical record for the inspection program. This hardcopy file contains detailed information regarding the violation/problem and authority requirement(s). Meetings and telephone calls (date, time, name of the individual and discussion points) related to the violation/problem must also be documented. Documentation of verbal communications is critical to an official hardcopy file and supports enforcement actions if appealed.

   All actions, including INCs, Written Orders, and Verbal Warnings must also be recorded in AFMSS. (Refer to Section XIII for detailed data entry instructions.) Recording and maintaining this data in AFMSS is critical in providing FOs with the capability to determine program direction and the ability to focus on the most critical noncompliance areas. It provides statistical information as to the overall effectiveness of the program on a state and national level. AFMSS also provides a Violation Status Report containing enforcement action information and abatement dates, which assists in the prompt followup on actions to ensure compliance.

   Refer to Section XIII for detailed documentation requirements.

2. Physical evidence: This can range from collecting water samples to gathering reports. If samples are to be analyzed by a laboratory, consult with the laboratory on how to collect and preserve the sample. Proper collection of the sample is as important as the analysis. Reports include but are not limited to logs, driller's tour sheet data, mud reports, run tickets, pit samples, calibration reports, and cement job reports.

3. Photographs: Photographs must be taken of the violation/problem and included with the documentation. When violations cannot be depicted in photographs, written report(s) will be essential to document actions taken. Photographs are effective tools when describing violations such as missing seals, well signs, facility diagram deficiencies, oil spills, and safety hazards. They are also effective in documenting problems where an Order of the AO will be issued.

   Inspection personnel must be careful to ensure photographs clearly show the specific violation or problem. In some cases it may be necessary to take a series of photographs to properly indicate scale or relationship of the noncompliance to the site or equipment associated with the concern. For example, when

photographing a defective seal, the photograph must be close enough to clearly show the exact nature of the defective seal. Additional photographs may be needed in order to identify which valve, and uniquely numbered tank, had the defective seal.

All photographs must be identified, at a minimum, with the date, time, lease (case) number, operator, location, and a brief description of the violation or problem. Photographs must be attached to the official hardcopy file of the Written Order or INC, and filed appropriately.

D. Gravity of a Violation

All violations must be classified either major or minor. A major violation is defined in §3160.0-5 as a noncompliance that causes or threatens immediate, substantial and adverse impacts to public health and safety, the environment, production accountability, or royalty income. If the violation does not meet these criteria, it must be classified as a minor violation. Section III provides the procedures for notifying the operator of major and minor violations.

The Onshore Orders provide information to operators about the typical classification for noncompliance with a specific requirement. However, each violation must be weighed against the criteria for a major violation before that classification can be assigned. For example, Onshore Order No. 3, Site Security, states that an unsealed or inappropriately sealed sales valve is a major violation. If the fluid level in the tank is at the same level as the valve near the bottom of the tank, the violation does not meet the criteria of a major violation and must be issued as a minor violation. The Onshore Order classification designation is a guideline, and inspection personnel must use judgment in determining if the violation meets the definition of a major violation.

A minor violation may change to a major violation when conditions meet the definition of a major violation. In these situations, a new INC must be issued as a major violation and a new abatement period. The INC for the minor violation is closed by showing a correction date that corresponds to the date the major violation is open.

For example, a minor violation is identified when an emergency pit is being used inappropriately but the conditions do not warrant a major violation. If, during the abatement period or if noncompliance continues, and the emergency pit is in danger of breaching into a live waterway, it would then be classified as a major violation.

Refer to Section XIII. AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS, Resolution Tab

E. Immediate Assessments for Noncompliance - §3163.1(b)

Certain instances of noncompliance are so serious that they warrant the issuance of immediate assessments. The following violations will result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

1. Failure to install a blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500/day for each day the violation existed, including days prior to discovery, not to exceed $5,000.

2. Drilling without approval, or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500/day for each day the violation existed, including days prior to discovery, not to exceed $5,000. Violations on Fee (Private) or State surface (split estate) do not incur this assessment.

3. Failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500 (one-time payment, 43 CFR 3163.1(b)(3)).

4. Removal of a Federal seal without approval of the AO, $250 (one-time payment per Federal seal removed, Onshore Order No. 3, Section IV).

II. Proactive Measures to Achieve Compliance

On occasion, we find that operators are not aware of the regulatory requirements on Federal and Indian lands. By taking a proactive approach to compliance we can help the operator more clearly understand what is required. These efforts will also foster better working relationships with industry.

There are several proactive steps that can be taken to help prevent and alleviate some noncompliance issues. As a first step, FOs must review operator noncompliance ratings each year to identify issues or trends of noncompliance. This provides an opportunity to communicate with the operator and possibly avoid repeated violations. It is critical to have open lines of communication with operators to discuss the problems that are occurring and explain the regulatory requirements. Other proactive measures to consider include:

- attending company safety meetings to explain regulatory requirements;
- having one-on-one meetings in the field to discuss specific violations that are occurring;
- reminding the operator prior to violation abatement dates that compliance must be obtained by the due date or assessments may occur;
- holding operator meetings and discussing common violations occurring in the area; and
- If during the early stages of conducting an inspection, systemic violations or problems are identified, contact the operator for a meeting to address the situation. This should be done before the enforcement actions issued become overwhelming to both the operator and the BLM.

Although these proactive measures may not help obtain compliance in all cases, they should facilitate better working relationships with companies that are trying to operate in accordance with the regulations.

III. Notice of Violation - §3163.1, 3163.2, and 3165.3(a)

CAUTION: Do not reference these instructions when citing a violation, assessment, or penalty. Always reference the appropriate approval document, that is, Onshore Order, NTL, COA or regulation.

When a violation is discovered, §3165.3(a) and 3163.1(a) require the AO to notify the appropriate party in writing and provide a reasonable abatement period to correct the violation. The *Notice of Incidents of Noncompliance,* Form 3160-9, or letter format must be used and signed by the appropriate AO. The notice must be delivered by hand or by certified mail, return receipt requested and include the appeal language. Refer to *Instructions for Use of Letter Format for INCs and Orders* for detailed information regarding the letter format.

Note: Through the certification process (BLM Handbook H-3160-6, *National Certification Handbook for Inspection and Enforcement Personnel*), certified inspectors are authorized to sign the INC form. If the State or an FO delegation of authority allows, a certified inspector may sign the INC letter. Anyone other than a certified inspector must successfully complete the official (BLM National Training Center) compliance training specifically designed and presented for this purpose, and must be deemed authorized to sign an INC or Written Order.

A. When certified mail is used, delivery is deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier.

B. When the notice is delivered by hand, the BLM copy of the notice must be signed by the recipient. If the recipient refuses to sign the notice, record the time, date, and the name of the person who accepted the notice. The abatement period begins when the notice is delivered.

C. For major violations, §3165.3(a) requires "that a good faith effort must be made to contact such designated representative by telephone and must be followed by a written notice. Receipt of the notice is deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party must be confirmed in the official hardcopy file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part." The time of notice and the name of the receiving party must be documented in the remarks section of the notice.

To ensure that a "good faith effort" is made to contact an operator representative, verbal communication must take place. Leaving a telephone message may be acceptable if several attempts have been made. Attempts to contact the operator must be documented in the official hardcopy file, which includes the date, time, and telephone number that was used.

Abatement periods typically will be very short, days or even hours in some cases, due to the serious nature of a major violation. Even with shorter abatement periods for

major violations, the time to correct the violation must be considered reasonable so that the operator can correct the violation.

D. Minor violations, per §3165.3(a), also require written notice. This written notice can be served by personal service by an authorized officer or certified mail. If the notice is served by personal service, the time of notice and the name of the receiving party must be documented in the remarks section of the notice.

E. Verbal Warnings, can be used when the operator's efforts demonstrate good faith, the violation is minor, obviously inadvertent, and non-reoccurring. If the FO determines that a pattern of noncompliance or repeated violations are occurring, Verbal Warnings cannot be used. Furthermore, if the operator fails or refuses to comply with a Verbal Warning, the written notification procedures must be used prior to further enforcement action such as assessments or penalties. All Verbal Warnings must be documented in AFMSS.

IV. Notice of Written Order of the Authorized Officer, §3161.2

CAUTION: Do not reference these instructions when citing an order. Always reference the appropriate approval document, that is, Onshore Order, NTL, COA or regulation.

When a problem is discovered, §3165.3(a) requires the AO to notify the appropriate party in writing and provide a reasonable abatement period to correct the problem. The *Notice of Written Order* Form 3160-18 or letter format must be used and signed by the appropriate AO. The notice must be delivered by hand or by certified mail, return receipt requested and include the appeal language.

A. When certified mail is used, delivery is deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier.

B. When the notice is delivered by hand, the BLM copy of the notice must be signed by the recipient. If the recipient refuses to sign the notice, record the time, date, and the name of the person who accepted the notice. The abatement period for a hand-delivered notice begins when it is delivered.

C. All Written Orders must be documented in AFMSS. When the letter format is used, the notice must be recorded in AFMSS for tracking purposes. The order may include multiple wells and/or facilities, but the requirements for each Case/Operator must be documented separately in AFMSS. The notice must include the case number (lease or agreement), well and/or facility identification, the nature of the problem, abatement period, and the "Failure to Comply" and "Appeal" language. Refer to *Instructions for Use of Letter Format for INCs and Orders* for information regarding the letter format.

D. The regulations at §3161.2 discuss the use of Oral Orders. Keep in mind that Oral Orders of the AO must be confirmed in writing within 10 business days. It should be noted that Oral Orders are not the same as Verbal Warnings.

Orders of the AO are not INCs and therefore do not affect an operator's compliance rating. An operator's compliance rating is determined by the number of Federal Oil and Gas Royalty Management Act (FOGRMA)-related violations issued during a fiscal year. The rating is used during the development of the I&E Strategy Matrix for inspection prioritization purposes.

V. Follow-up Inspection

A follow-up inspection is required to ensure compliance within the abatement period. However, a follow-up field trip may not be necessary for minor violations per item B below:

A. Major violations must have a follow-up inspection immediately after the abatement period. If the operation is critical, for example if the public health and safety is at risk, inspections to check the status and condition may be necessary prior to the end of the abatement period.

B. In the case of a minor violation when the operator/representative has signed and returned the INC form, verifying the violation has been corrected (Self-Certification), a follow-up field trip may not be required except on a random basis. The follow-up date is the date the Self-Certification has been reviewed and the determination has been made that a field trip to ensure compliance is not necessary.

If the operator or responsible party fails to self-certify its correction, a follow-up inspection is required. Minor violations that have the potential to escalate to a major classification, if not abated promptly, require a follow-up inspection even though correction has been self-certified.

C. Follow-up inspections of Orders of the AO must be conducted in a timely manner to ensure the operator has corrected the problem(s). If the operator has failed to correct the problem(s) within the abatement period, an INC must be issued for failure to comply with an order of the AO [§3163.1(a)]. Follow-up inspections for compliance are critical for the success of future enforcement actions. AFMSS provides a Violation Status Report containing enforcement action information and abatement dates which assists in the prompt follow-up on actions to ensure compliance.

VI. Corrected Violations and Problems

A. After the violation/problem is corrected, and the correction is verified, the INC/Written Order is placed in the official hardcopy file for compliance history.

B. Update the INC/Written Order record in AFMSS by entering the follow-up and corrected dates, and a brief summary of the follow-up in the remarks. If extension dates were granted, those must also be entered into AFMSS with an explanation for the extension(s).

VII. Rescinding INCs or Written Orders

In some rare instances, it may be necessary to rescind an INC. If technical or procedural

errors such as typographical mistakes, incorrect legal description, incorrect regulatory citation, and so on, are identified on the original INC, the INC may be rescinded by the issuing Authorized Officer/Certified Inspector. The corrected INC should inform the operator that the original INC is being rescinded and provide the original INC number for reference. State what is being corrected and include a revised abatement date. Written justification for rescinding the INC must be sent to the local State Office I&E Program Lead/Coordinator, along with the corrected INC. For a major INC, the operator must also be immediately notified by telephone. The rescinded INC record must be deleted from AFMSS so it will not be counted toward the operator compliance history.

INCs issued by the Authorized Officer/Certified Inspector in accordance with applicable regulations or policy, and which do not contain any discrepancies, cannot be rescinded without review by the Deputy State Director.

VIII. Enforcement Tools for Continued Noncompliance

If the operator fails or refuses to comply with notices (INCs/Written Orders) described above, other means to gain compliance will be necessary. The list below provides the tools available to address noncompliance issues. Field Offices should be aware that they may have more than one choice of enforcement tools that can be used, or in some cases multiple tools could be used. Each FO should take the time to identify the best tool(s) to gain compliance most effectively, and should not assume only one approach/tool can be used for enforcement.

A. Monetary assessment, §3163.1(a)(1) and (2).
B. Immediate assessments, §3163.1(b)(1), (2), and (3).
C. Civil penalties, §3163.2.
D. Shut down of operations, §3163.1(a)(3).
E. Enter lease and perform, or have performed work at the sole risk and expense of operator, §3163.1(a)(4).
F. Forfeiture under the bond, §3163.1(a)(5).
G. Lease cancellation, §3163.1(a)(5) and 43 CFR 3163.2(j).

A. Monetary Assessments - §3163.1(a)

1. Major Violations

If a major violation is not corrected within the allowed time, the AO will impose an assessment of not more than $500/day for each day non-abatement continues [§3163.1(a)(1)]. If more than one violation exists the assessment shall not exceed $1,000/day/operator/lease [§3163.1(c)].

Issue a second INC informing the operator that it is being assessed $500/day for each day the violation continues, and provide another abatement period to correct the violation. The abatement period for the second INC should be based on criteria for what is a reasonable period to correct a major violation, typically a short timeframe. Before civil penalties can be proposed, the violation must remain uncorrected for at least 20 days from the date of first notice. Due to the nature of major violations, the 20-day civil penalty standard should not normally

be used as an abatement period for the second notice.

As identified in section III.A.3. above, the second INC of a major violation also requires that a good faith effort must be made to verbally inform the operator of the violations and then are followed up in writing.

The second INC must inform the operator that civil penalties may be issued if the violation is not corrected in a timely manner. A copy of this notice must be sent to the lessee and/or operating rights owners if different from the operator.

In those cases when an operator has failed to comply with the second INC on a major violation, inspection personnel are strongly encouraged to consider shutting down the operation, using the *Notice to Shut Down Operation* (Form 3160-12). Caution must be used when considering the shutdown of operations to ensure 1) shutdown is appropriate given the operational conditions, and 2) shutdown would not cause undue harm to the operations or the environmental resources.

Note: Shutdown of operations on tribal or allotted leases must be coordinated with the appropriate tribe or agency.

To ensure necessary compliance, the AO may also enter upon a lease and perform or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing - [§3163.1(a)(4)]. Charges shall include actual cost of work plus 25 percent to cover administrative costs.

2. Minor Violations

If a minor violation is not corrected within the time allowed, the AO may subject the operator to an assessment of $250 [§3163.1(a)(2)]. If more than one violation exists the assessment shall not exceed $500/operator/lease/inspection. [§3163.1(c)]. In cases when the self-certification is not received from the operator, a field inspection will be necessary to verify the status of the violation.

Issue a second INC informing the operator it is being assessed $250 for failure to correct the violation. Provide another abatement period of not less than 20 days per 43 CFR 3163.2(g)(2)(ii),. Even though the abatement period for the second notice cannot be less than 20 days, some violations may require longer periods to comply in order to meet the criteria for reasonableness.

When operators are unresponsive, or if violations could escalate to a major classification, shutdown of operations should be considered, using the *Notice to Shut Down Operation* (Form 3160-12). Caution must be used when considering the shutdown of operations to ensure 1) shutdown is appropriate given the operational conditions; and 2) shutdown would not cause undue harm to operations or the environmental resources.

To ensure necessary compliance, the AO may also enter upon a lease and perform or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing - [§3163.1(a)(4)]. Charges must include actual cost of work plus 25 percent to cover administrative costs.

The second INC must also inform the operator that civil penalties may be issued if the violation is not corrected in a timely manner. A copy of the notice must be sent to the lessee(s) and/or operating rights owner(s) if different from the operator.

On a case-by-case basis, the State Director (SD) may compromise or reduce the assessment amount [§3163.1(e)]. However, the SD must state on the record the reasons for such determination.

B. Civil Penalties, §3163.2

Note: Prior to initiating civil penalties, coordinate with the State Office program lead and other subject matter experts for assistance.

Whenever an operator fails or refuses to remedy a violation:

1. If the violation is not corrected within 20 days of the first INC, or such longer time as the AO may agree to in writing, the operator shall be liable for a civil penalty of up to $500/violation for each day such violation continues from the date of the first INC. Refer to Item C, below, to determine actual penalty calculation amounts.

2. A good faith effort to contact the operator must be made by telephone to notify it of potential civil penalties. The date, time, and the name of the receiving party must be confirmed in the official hardcopy file.

3. Notification of proposed civil penalties will be issued in a letter format requiring the signature of the AO. Do not use an INC when issuing a civil penalty. The notification must include the appeal language and be delivered by hand or by certified mail, return receipt requested. Copies of the written notice must also be sent to all lessees and the operating rights owners.

   For the purpose of State Director Review (SDR), appeal, and hearing on the record, this letter will be the operator's only opportunity to file for review/appeal of the proposed civil penalties, §3165.3(c), 3165.4(b).

4. If the violation is not corrected within 40 days of the first INC, the operator shall be liable for a civil penalty of up to $5,000/violation for each day the violation continues, not to exceed 60 days from the date of the first INC.

5. During the civil penalty phase, continued follow-up inspections, as well as attempts to contact the operator and notify it of the ongoing status of compliance and accumulating civil penalties should be conducted and documented in detail.

   At a minimum, 5 days prior to the end of the 40-day penalty phase, a courtesy letter will be sent to the operator informing it of the pending increased penalty amount and urging immediate compliance. Five days prior to the end of the 60-day penalty phase, a second courtesy letter will be sent to the operator notifying it of pending lease cancellation proceedings and again urging immediate compliance. Notification must be delivered by hand or by certified mail, return receipt requested. Copies of the written notice must also be sent to all lessees and the operating rights owners. A good faith effort must be made to contact the operator by telephone at both penalty phases and must be documented in the official hardcopy file.

   Note: Courtesy letters are not formal notices of decision. They are informational and must be filed in the hardcopy file, but not be entered into AFMSS.

   See Item C. below for determination of penalty amounts for immediate, major, and minor violations. Any amount imposed or paid as assessment under §3163.1(a)(1) will be deducted from these penalties.

6. In accordance with 3163.2(c), "In the event the Authorized Officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculations."

   For example, the notice of violation was deemed received on January 1, with an abatement date of January 20. Prior to January 20, the operator requested an extension to January 30, and it was granted by the AO. The calculation for proposed civil penalty would then begin on January 10.

C. Calculations of Civil Penalties

The amounts for civil penalties under §3163.2 shall be determined as follows:

Note: Calculation of civil penalties is based on calendar days.

1. For major violations, all initial proposed penalties shall be at the maximum rate provided.

a. If the violation is not corrected within 20 days of the first notice, or such longer period as agreed to by the AO, the penalty shall be a $500/violation/day, if more than one violation exists the penalty shall not to exceed the rate of $1,000/day/operator/lease, through the 40th day.

b. If the violation is not corrected within 40 days of the first notice, or such longer period as agreed to by the AO, the penalty shall be $5,000/violation/day; if more than one violation exists the penalty shall not exceed a maximum of $10,000/day/operator/lease, not to exceed a maximum of 60 days from such notice or report.

c. If the violation continues beyond the 60-day maximum, lease cancellation proceedings shall be initiated under Title 43.

2. For minor violations, no penalty under §3163.2(a) shall be assessed unless:

a. The operator was notified of the violation in writing and did not correct it within the allotted time.

b. The operator was assessed $250 under §3163.1 and a second INC was issued giving an abatement period of not less than 20 days (§3163.2(g)(2)(ii)).

c. If the violation is not corrected within 20 days, or such longer period as agreed to by the AO, the initial proposed penalty shall be at the rate of $50/day; if more than one violation exists the penalty shall not exceed $100/day/operator/lease.

d. If the violation is not corrected within 40 days, or such longer period as agreed to by the AO, the initial proposed penalty shall be at the rate of $500/day; if more than one violation exists the penalty shall not exceed $1000/day/operator/lease.

e. If the violation continues beyond the 60-day maximum, lease cancellation proceedings shall be initiated under Title 43.

f. If a minor violation is changed to a major violation after the operator is notified of civil penalties, the FO must immediately notify the operator verbally, and follow up in writing, that the violation classification has changed and a new abatement date has been established. This notification must inform the operator the penalty amounts will increase to the major violation rate if it fails to comply within the new abatement period. The major penalty rate will commence on the date the operator fails to comply with the new abatement period.

If this occurs, contact the State Office program lead for guidance.

g. The major violation penalty rate will begin on the date the operator receives notification of the major classification. Civil penalties incurred during the minor violation cease as soon as the major classification and penalty amounts begin.

3. Billing, or demand for payment, for Civil Penalties – See Section VIII for detailed information.

D. Other Civil Penalties

1. Whenever a transporter fails to permit inspection for proper documentation, the transporter shall be liable for a civil penalty of up to $500/day, not to exceed a maximum of 20 days. If the violation continues beyond the 20-day maximum timeframe, the AO shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from, or allocated to, any Federal or Indian lease site under authority of the AO.

2. Any person shall be liable for a civil penalty of up to $10,000/violation for each day, not to exceed 20 days, if he/she:

   a. Fails or refuses to permit lawful entry or inspection authorized by §3162.1(b).

   b. Knowingly or willfully fails to notify the AO by letter or Sundry Notice, not later than the fifth business day, of any well that begins production or resumes production after being off production for greater than 90 days. See §3160.0-5 for definition of new or resumed production.

3. Any person shall be liable for a civil penalty of up to $25,000 per violation for each day, not to exceed 20 days, if he/she:

   a. Knowingly or willfully prepares, maintains, or submits false reports or other data.

   b. Knowingly or willfully takes or removes, transports, uses, or diverts any oil or gas, from any Federal or Indian lease without legal authority.

   c. Purchases, accepts, sells, transports, or conveys to another, any oil or gas, knowing or having reason to believe that the oil or gas was stolen from the Federal or Indian lease.

NOTE: The Secretary delegated authority for administering operations on oil and gas leases to the Director, Bureau of Land Management, in 235 DM 1.1K. The authority with respect to the determination and levying of civil penalties under §3163.2 was re-delegated to State Directors. See Manual Part 1203, Release 1-1586, Appendix 1, page 67. Additionally, the Solicitor's Office has stated that the legislative history refers specifically to reductions and adjustments by the State Directors in the course of administrative review. Therefore, on a case-by-case basis, the State Director may compromise or reduce civil penalties and shall state on the record the reasons for such

determination.

Civil penalties shall be supplemental to and does not detract from or decrease other penalties or assessments for noncompliance in any other provision of law, except as provided in §3163.2(a) and (b).

E. Shut down of operations, §3163.1(a)(3).

Note: Caution must be used when considering the shut down of operations to ensure 1) shut down is appropriate given the operational conditions; and 2) shut down would not cause undue harm to the operations or the environmental resources. Shut down of operations on tribal or allotted leases must be coordinated with the appropriate tribe or agency.

1. Immediate shut down action may be taken when operations are initiated and conducted without prior approval, or when continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

2. Shut down actions for other situations, such as continued noncompliance, may be taken only after due notice has been given in writing. Caution must be taken when considering this option. In some cases, shutting down an operation could cause irreversible damage to a reservoir if the well(s) was shut in. Internal communication with the Petroleum Engineer, Geologist and management (for Indian leases, only upon concurrence of the appropriate Bureau of Indian Affairs (BIA) office) is the key to determine if a shut down action should be taken.

   If the inspector has not been delegated authority to issue a shut down of operations, the inspector must notify the AO and explain the problem and the lack of authority to enforce. The AO must then determine if a written, or oral (confirmed in writing) shut down of operations will be issued in accordance with §3163.1(a)(3).

   Shut down of operations can be used in conjunction with other enforcement actions to have the greatest effect in gaining compliance. For instance, if an operator has failed to comply with a major violation, issue a second notice with a $500 per day assessment and inform the operator that if the violation is not corrected, shut down proceedings will be initiated. This puts the operator on notice as required by §3163.1(a)(3), that if it fails or refuses to correct the violation, operations will be shut down. If the shut down action is taken due to continued noncompliance, the $500 per day assessment continues until the violation is corrected.

F. Enter lease and perform, or have performed work at the sole risk and expense of operator, §3163.1(a)(4).

To ensure necessary compliance, the AO may enter a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing by the AO. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or provide written justification to the BLM why the lease should not be entered.

The AO must approve the decision for the BLM to perform the work, or contract for the work to be completed. This would only be required in emergency situations.

G. Forfeiture under the Bond, §3163.1(a)(5) and Lease cancellation, §3163.1(a)(5) and 43 CFR 3163.2(j).

Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator will be provided with a reasonable period of time either to take corrective action or to provide written justification why the lease should not be recommended for cancellation.

If the violation continues beyond the 60-day maximum civil penalty process, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

Both of the actions require close coordination with management and the leasing staff. Leases capable of production require a court action to terminate the lease (§3108.3).

IX. State Director Review and Appeals

A. State Director Review §3165.3(b): Any adversely affected party who contests a notice of violation or assessment or an instruction, order, or decision of the AO may request an administrative review by the State Director. Such request, including all supporting documentation, must be filed with the appropriate State Director within 20 business days of the date such notice of violation, assessment, instruction, or order was considered received. Upon request and showing good cause, an extension for submitting supporting data may be granted by the State Director.

Any request for review by the State Director will not result in a suspension of the requirement for compliance with the INC or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director so determines.

B. Effect of a Hearing on the Record-§3165.3(e)(2), or Appeal to IBLA-§3165.4(d) on Compliance Requirements:

1. **43 CFR 3165.3(e)(2):** Any request for a hearing on the record before an Administrative Law Judge shall not result in a suspension of the requirement for compliance.

2. **43 CFR 3165.4(d):** Any appeal filed pursuant to this section shall not result in a suspension of the requirement for compliance, unless a stay has been granted under the requirement of paragraph (c) of this section.

C. Review of Proposed Penalties-§3165.3(c).

1. No civil penalty shall be assessed until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of FOGRMA. Therefore, any party adversely affected by the State Director's decision on the proposed penalty may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal directly to the IBLA as provided in §3165.4(b)(2). A request for a hearing on the record is to be filed with the State Director within 30 days of receipt of the State Director's decision on the notice of proposed penalty.

2. If the party adversely affected by the State Director's decision waives the right for a hearing before an Administrative Law Judge and goes directly to IBLA, any further appeal to the U.S. District Court under section 109(j) of FOGRMA is precluded.

3. A request for a hearing on the record before an Administrative Law Judge, or an appeal to IBLA, will suspend the accumulation of additional daily penalties until final decision is rendered, according to §3165.3(e)(2) and 3165.4(e). The State Director may, after review of a request for hearing, and within 10 days of receipt of such request, recommend the Director reinstate the accumulation of daily civil penalties until the violation is abated. The Director has 45 days from filing of the request to reinstate the accumulation of civil penalties. If not reinstated within 45 days, the suspension of penalties will continue.

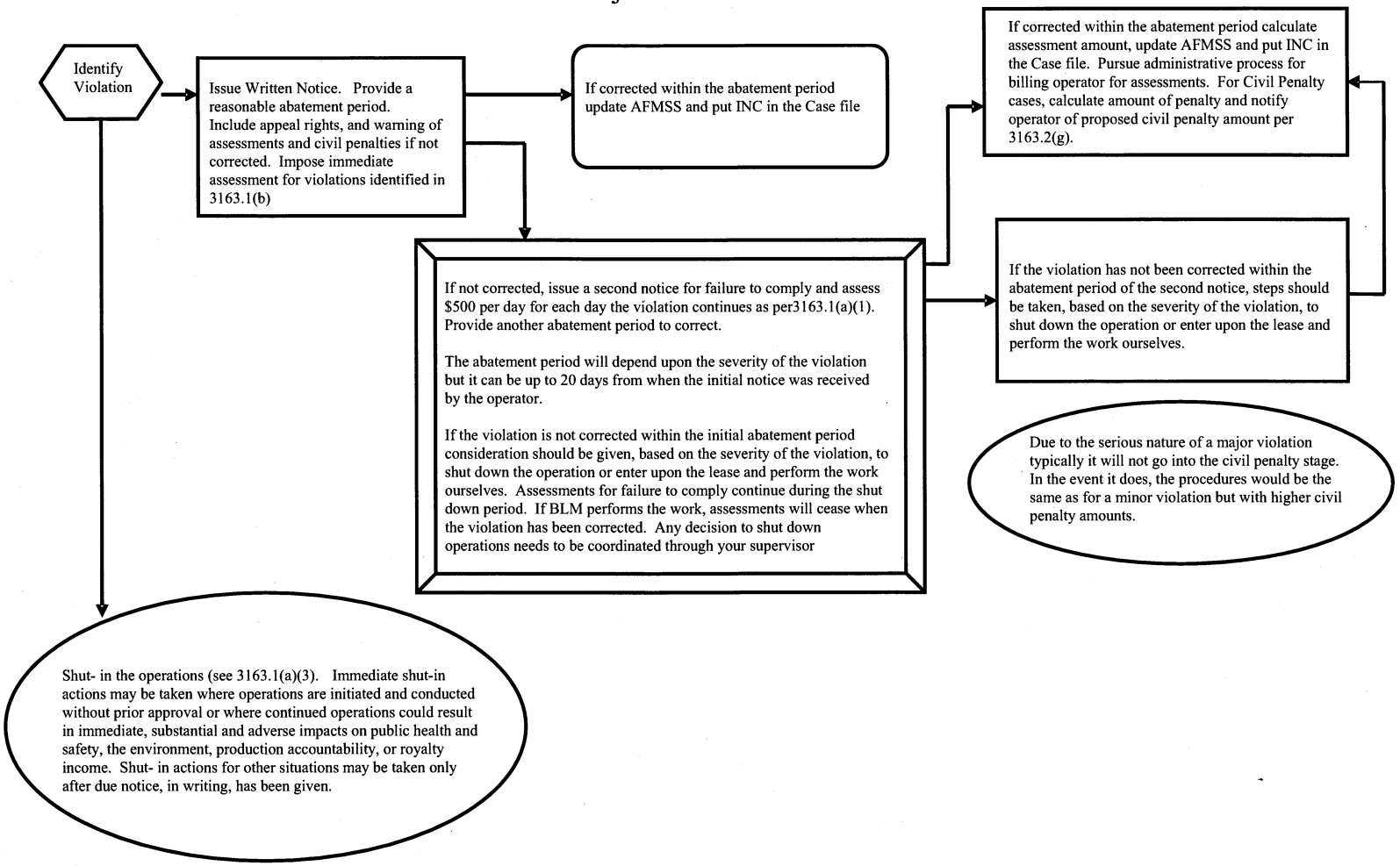
D. Appeals - §3165.4: Any party who is adversely affected by the decision of a State Director or an Administrative Law Judge may appeal that decision to the IBLA as provided in §3165.4.

X. Summary of Enforcement Actions

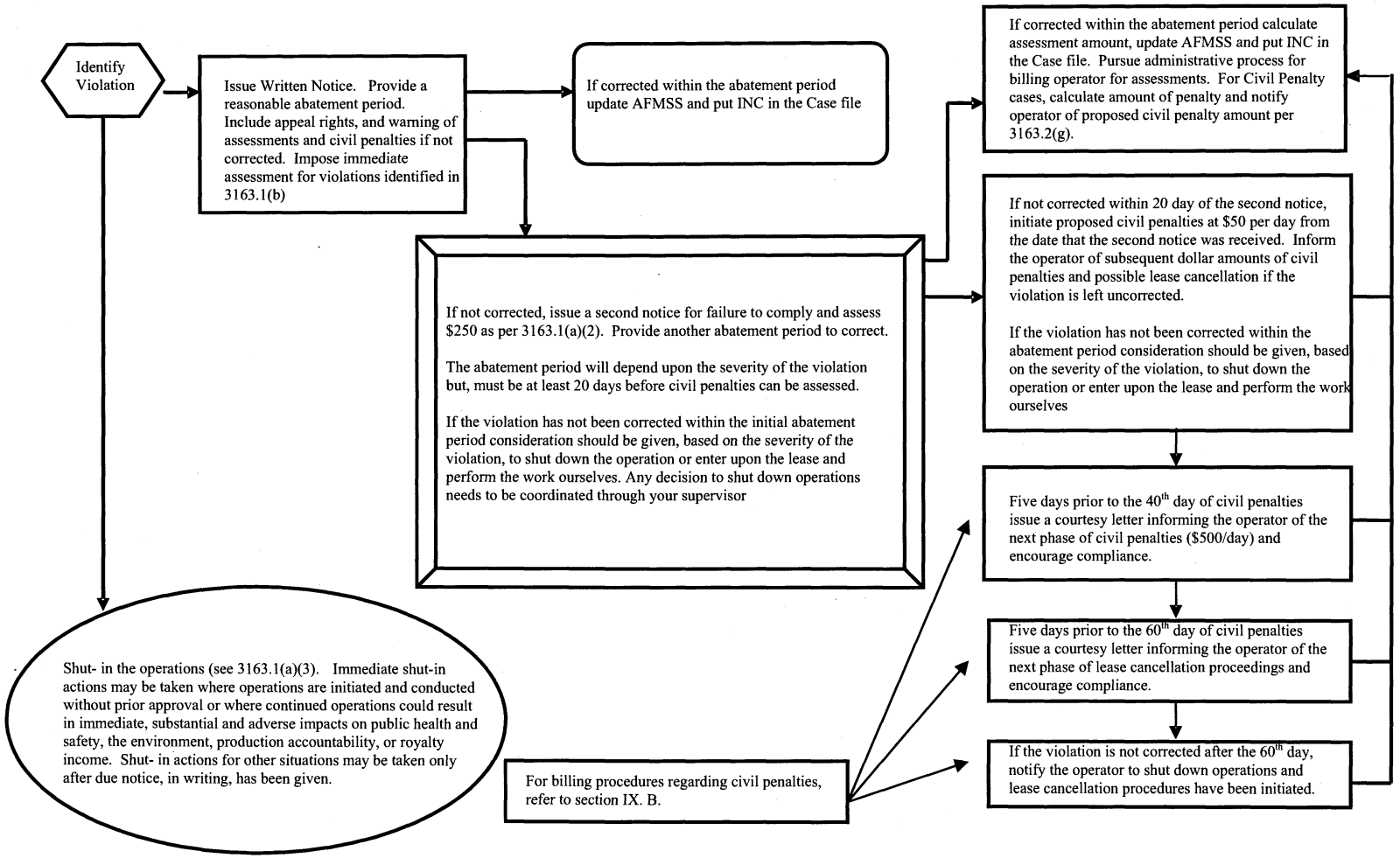
Enforcement Process Short Version		
Order of the Authorized Officer	**Minor Violation**	**Major Violation**
Used for problems that are not violations. Can initially notify the operator orally followed up in writing within 10 days.	In violation of a specific regulatory requirement that does not raise to the level of a major violation.	In violation of a specific regulatory requirement that causes immediate, substantial and adverse impact on environment, public health and safety, production accountability or royalty income.
1. Issue the Order - provide an abatement date. Followup.	1. Issue the INC with a reasonable abatement date. Followup.	1. Issue the INC with a reasonable abatement date. Followup.
2. If not corrected - issue an INC.	2. If not corrected with in initial abatement date, issue a second notice with $250 assessment. Provide an abatement date of not less then 20 days. Followup. Consider whether operations should be shut down or if we need to perform the work.	2. If not corrected within initial abatement date, issue a second notice with $500 per day assessment and provide a new abatement date. Followup. Consider whether operations should be shut down or if we need to perform the work.
3. Follow the INC process	3. If not corrected within 20 days of the second notice, initiate proposed civil penalties at $50 per day from the date that the second notice was received. Inform the operator of subsequent dollar amounts of civil penalties and possible lease cancellation if the violation is left uncorrected. Consider whether operations should be shut down or if we need to perform the work.	3. If the second INC is not corrected and due to the serious nature of the violation, steps should be taken to shut down operations (if appropriate) or perform the work ourselves.
	4. Five days prior to the 40th day of civil penalties issue a letter informing the operator of the next phase of civil penalties ($500/day) and encourage compliance.	

	Consider whether operations should be shut down or if we need to perform the work.	
	5. Five days prior to the 60th day of civil penalties, issue a letter to inform the operator of the next phase. Initiate lease cancellation procedures and encourage compliance.	

Major Violation Flowchart



Minor Violation Flowchart



XI. INSTRUCTIONS FOR COMPLETING *NOTICE OF INCIDENTS OF NONCOMPLIANCE*, FORM 3160-9 (JANUARY 1989).

A. A separate form must be prepared for each violation.

B. Distribution of copies: Hard copy form: The hard copy form may be used in those instances where it is necessary to issue an immediate INC in the field; however, all INC information must also be entered into AFMSS. The original and a copy of the INC (Form 3160-9) are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy to the FO. A copy must be maintained in the FO. The information from the INC must be entered into AFMSS (and any other office tracking systems as appropriate). When the operator returns the original copy of the INC, ensure it has been signed and filed in the official hardcopy files. The lessee(s) and operating rights owner(s) must be notified if civil penalties are initiated.

AFMSS-generated form: Complete the data entry screens as appropriate in AFMSS. Generate three copies of the INC form. Two copies are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy of the INC form and keep one for its records. Maintain a copy in the FO. When the operator returns the original copy of the INC, ensure it has been signed and filed in the official hardcopy files. Refer to Section XIII below for instructions on entering noncompliance information into AFMSS.

C. The following numbers correspond to the fields on the Form 3160-9. The asterisk (*) indicates corresponding AFMSS data elements for data entry. Detailed AFMSS data entry instructions begin with Section XIII below.

1. *Method of Delivery:

a. If certified mail is used, so indicate. Enter the Certified Mail Receipt number for tracking.

b. If hand delivered, so indicate. Enter the name of the person the form was hand delivered to. Ensure that a "received by" signature is obtained or record time and date delivered if the operator refused to sign.

2. *Number: A unique number must be assigned to each notice. A suggested format would be inspector initials, fiscal year, and sequential numbers, such as JD-07-001.

3. Page ___ of ___: Number each page of the form (Pg 1 of 3, Pg 2 of 3, Pg 3 of 3, and so on).

4. *Identification: Enter the appropriate identification for the case, such as lease number, CA number, or unit name with PA designation.

5. *Bureau of Land Management Office: Enter the name, address, and telephone number of the FO that has jurisdiction over the case.

6. *Operator: Enter the operator's name.

   Address: Enter the operator's mailing address. Ensure that the appropriate mailing address is used. Some notices are sent to the office of record, while others may go to a local office for the operator.

   Attention: Enter the name of the company, agent, or representative responsible for correcting the violation, if known.

7. *Site Name: If appropriate, enter the lease name. This may also be used to enter the Facility Identification (Facility Name). This should describe a location in terms that the operator is familiar with.

8. *Well or Facility Identification: Enter the name or number identifying the well or facility where the violation has been detected.

9. *¼ ¼ Sec.: Enter quarter-quarter and section location of well or facility.

10. *Township: Enter the township for the location.

11. *Range: Enter the range for the location.

12. *Meridian: Enter the meridian for the location.

13. *Inspector: Enter the name of the inspector who discovered the violation.

14. *Date: Enter the date the violation is discovered.

15. *Time: Use the 24-hour clock system to enter time of day the violation is discovered.

16. *Violation: Cite the specific regulation, NTL, Oil and Gas Onshore Order, lease term, approved permits, COA, or agreement that is in violation. The authority reference shall be as specific to the nature of the violation as possible. In most cases, only one authority reference shall be used per INC.

17. *Gravity of Violation: Enter major or minor. Refer to 43 CFR §3160.0-5 for definition of major and minor violations.

18. *Corrective Action To Be Completed By: Enter date corrective action is to be

completed or abatement timeframe, starting upon receipt of notice or 7 business days after notice is mailed.

19. *Date Corrected: Enter the date the violation was corrected. The operator should enter the date the violation was corrected before returning the form to the inspection office. If the date is not entered by the operator, the date the operator signed the return copy should be entered.

20. *Assessment for Noncompliance: Enter amount of monetary assessment as provided for in 43 CFR §3163.1, "Remedies for Acts of Noncompliance."

NOTE: If an assessment is not applicable to the notice being issued, do not enter an amount in this field.

21. *Assessment Reference: If applicable, insert appropriate 43 CFR reference.

NOTE: Check the 43 CFR 3160 regulations for correct reference.

- Immediate assessments are issued under 43 CFR 3163.1(b).
- For failure to abate Major violation: 43 CFR 3163.1(a)(1).
- For failure to abate Minor violation: 43 CFR 3163.1(a)(2).

22. *Remarks: Clearly, and in detail, describe the nature of the violation, for example, "The seal is ineffective on the sales valve on Tank No. 154." The remarks must be consistent with the authority reference. Include only those remarks that are pertinent to the operator. Do not include remarks related to internal tracking.

23. Company Representative Title, Signature and Date: To be completed by the operator's representative authorized to certify completion of corrective action.

24. Company Comments: Optional, for use by the operator in commenting on violation and/or corrective action.

25. Signature of BLM Authorized Officer, Date, and Time: Inspectors delegated authority to issue notices of noncompliance, or the AO, must sign and enter the date and time of the signature to validate the notice of violation.

26. For Office Use Only:

*Number: See XIII AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS for instructions to complete this field.

*Assessment: See XIII AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS for instructions to complete this field.

*Penalty: See XIII AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS for instructions to complete this field.

*Termination: This field is not used.

*Type of Inspection: Enter the appropriate Inspection Type code for the type of inspection being conducted when the violation was discovered.

Form 3160-9
(December 1989)

Number (2)

(3) Page ____ of ____

☐ Certified Mail - Return Receipt Requested (1)

☐ Hand Delivered Received by

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOTICE OF INCIDENTS OF NONCOMPLIANCE

(4)

Identification
IID
Lease
CA
Unit
PA

Bureau of Land Management Office (5)	Operator (6)
Address	Address
Telephone	Attention
Inspector (13)	Attn Addr

Site Name (7)	Well or Facility (8)	1/4 1/4 S (9)	Township (10)	Range (11)	Meridian (12)	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State

THE FOLLOWING VIOLATION WAS FOUND BY BUREAU OF LAND MANAGEMENT INSPECTORS ON THE DATE AND AT THE SITE LISTED ABOVE

Date	Time (24 - hour clock)	Violation	Gravity of Violation
(14)	(15)	(16)	(17)
Corrective Action To Be Completed By	**Date Corrected**	**Assessment for Noncompliance**	**Assessment Reference**
(18)	(19)	(20)	43 CFR 3163.1() (21)

Remarks

(22)

When violation is corrected, sign this notice and return to above address.

Company Representative Title (23) Signature Date

Company Comments (24)

WARNING

Incidents of Noncompliance correction and reporting timeframes begin upon receipt of this Notice or 7 business days after the date it is mailed, whichever is earlier. Each violation must be corrected within the prescribed time from receipt of this Notice and reported to the Bureau of Land Management office at the address shown above. Please note that you already may have been assessed for noncompliance (see amount under "Assessment for Noncompliance"). If you do not comply as noted above under "Corrective Action To Be Completed By" you may incur an additional assessment under (43 CFR 3163.1) and may also incur Civil Penalties (43 CFR 3163.2). All self-certified corrections must be postmarked no later than the next business day after the prescribed time for correction.

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits, false, inaccurate, or misleading reports, notices, affidavits, record, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

A person contesting a violation shall request a State Director review of the Incidents of Noncompliance. This request must be filed within 20 working days of receipt of the Incidents of Noncompliance with the appropriate State Director (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, Suite 300, Arlington VA 22203 (see 43 CFR 3165.4). Contact the above listed Bureau of Land Management office for further information.

Signature of Bureau of Land Management Authorized Officer (25)	Date	Time

FOR OFFICE USE ONLY

Number (26)	Date	Assessment	Penalty	Termination
Type of Inspection				

XII. INSTRUCTIONS FOR COMPLETING, *NOTICE TO SHUT DOWN OPERATION* FORM 3160-12 (JANUARY 1989).

A. When an immediate shut down of operation is required under 43 CFR §3163.1(a)(3), the *Notice to Shut Down Operation*, Form 3160-12, must be used.

B. In those instances when there is a violation, a *Notice of Incidents of Noncompliance*, Form 3160-9, must also be issued to accompany the *Notice to Shut Down Operation*. While rare, there may be cases when a "Problem" is identified, an INC cannot be issued. In these situations a Written Order of the AO must accompany the *Notice to Shut Down*

C. The following numbers correspond to the fields on the Form 3160-12.

1. *Method of Delivery:

a. If certified mail is used, so indicate. Enter the Certified Mail Receipt number for tracking.

b. If hand delivered, so indicate. Enter the name of the person the form was hand delivered to. Ensure that a "received by" signature is obtained or record time and date delivered if the operator refused to sign.

2. *Number: A unique number must be assigned to each notice. A suggested format would be inspector initials, fiscal year, and sequential numbers, such as JD-07-001.

3. Page ___ of___: Number each page of the form used (Pg 1 of 3, Pg 2 of 3, Pg 3 of 3, and so on.).

4. *Identification: Enter the appropriate identification for the case, such as lease number, CA number, or unit name with PA designation.

5. *Bureau of Land Management Office: Enter the name, address, and telephone number of the FO that has jurisdiction over the case.

6. *Operator: Enter the operator's name.

Address: Enter the operator's mailing address. Ensure that the appropriate mailing address is used. Some notices are sent to the office of record, while others may go to a local office for the operator.

Attention: Enter the name of the company, agent, or representative responsible for correcting the violation requiring the shut down notice.

7. *Site Name: If appropriate, enter the lease name. This may also be used to enter the Facility Identification (Facility Name). This should describe a location in terms that the operator is familiar with.

8. *Well or Facility Identification: Enter the name or number identifying the well or facility where the shut down has been ordered.

9. *¼ ¼ Sec.: Enter quarter-quarter and section for the location.

10. *Township: Enter the township for the location.

11. *Range: Enter the range for the location.

12. *Meridian: Enter the meridian for the location.

13. *Inspector: Enter name of inspector who identified the violation requiring the shut down notice.

14. *Date: Enter date the shut down order is effective.

15. *Time: Enter the time of day the shut down is ordered, using the 24-hour clock system.

16. *Corrective Action To Be Completed By: Enter date or hour corrective action is to be completed or abatement timeframe, starting upon receipt of notice.

17. *Report Corrective Action By: Enter the number of days, or date by which the operator must report corrective action taken to the inspection office.

18. *Date Corrected: Enter the date corrective action was completed.

19. *Remarks: The Remarks section must be used to explain why the notice to shut down is being issued. The explanation must describe in detail what operation is to be shut down. Reference *Notice of Incidents of Noncompliance* Form, 3160-9, and what needs to be corrected before operation can resume. Include only those remarks pertinent to the operation. Do not include remarks used for internal tracking.

20. Company Representative Title, Signature and Date: To be completed by the operator to certify completion of the corrective action.

21. Company Comments: This space is provided for a company representative to comment on the violation or the corrective action.

22. Signature of BLM Authorized Office, Date, and Time: The AO must sign and enter the date and time of signature.

Form 3160-12
(December 1989)

Number (2)
(3) Page ____ of ____

☒ Certified Mail - Return Receipt Requested (1)
☐ Hand Delivered Received by

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NOTICE TO SHUT DOWN OPERATION

(4)

Identification
IID
Lease
CA
Unit
PA

Bureau of Land Management Office (5)	Operator (6)
Address	Address
Telephone	Attention
Inspector (13)	Attn Addr

Site Name (7)	Well or Facility (8)	1/4 1/4 (9)	Towns (10)	Range (11)	Meridi (12)	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State

YOU ARE ORDERED TO IMMEDIATELY SHUT IN THE ABOVE OPERATION ACCORDING TO 43 CFR 3163.1(a)(3)

Date	Time (24 - hour clock)	Corrective Action To Be Completed By	Report Corrective Action By	Date Corrected
(14)	(15)	(16)	(17)	(18)

Remarks

(19)

When violation is corrected, sign this notice and return to above address.

Company Representative Title (20) Signature Date

Company Comments (21)

WARNING

Operations are not to be resumed until permitted by the authorized officer. Failure to comply with this notice within the time allowed may incur an assessment under (43 CFR 3163.1) and may also incur Civil Penalties under 43 CFR 3163.2

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits, false, inaccurate, or misleading reports, notices, affidavits, record, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

A person contesting a violation shall request a State Director review of the Incidents of Noncompliance. This request must be filed within 20 working days of receipt of the Incidents of Noncompliance with the appropriate State Director (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, Suite 300, Arlington VA 22203 (see 43 CFR 3165.4). Contact the above listed Bureau of Land Management office for further information.

Signature of Bureau of Land Management Authorized Officer (22)	Date	Time

XIII. AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS

All violation information must be entered into AFMSS. AFMSS can generate the *Notice of Incidents of Noncompliance*, Form 3160-9, *Notice to Shut Down Operation* Form 3160-12, and the *Notice of Written Order*, Form 3160-18. The following information describes the data entry fields required to generate a Written Order, INC or Shut Down Notice form; or to document a Verbal Warning for tracking purposes. The term "INC" used throughout these instructions refers to all enforcement action types unless otherwise specified.

All Verbal Warnings must be documented in AFMSS. Indicate in the remarks that a written follow-up to a Verbal Warning was issued. Include the date, time, and name of person who received the Verbal Warning. Complete all of the applicable fields.

AFMSS Data Entry Screen: INC/Shut-Down Order Input (IEP.43):

This screen includes a series of TABs. Upon initial entry to this screen, the "Issued By" tab is activated. We will discuss each TAB separately.

ISSUED BY TAB

Contact Person:	AFMSS allows for various "types" of addresses, such as LOC-local, GEN-general, INC-Incident of Non-Compliance, etc. Select the appropriate operator address and contact person.
BLM Office:	This selection will default to the BLM Office issuing the notice. This should only be changed if the return notice should be addressed to a satellite office, rather than the main FO address.
SME Contact Person:	Optional. Select the appropriate Surface Management Entity contact person for the notice.

WELLS AND FACILITIES TAB

The wells and/or facilities associated with the Case/Operator that was selected for this notice are displayed on this screen. The first column indicates the wells/facilities that have been selected/associated with the notice. To select (associate) a well or facility record, place the cursor in the "Sel" column in front of the appropriate record and double click to insert an "X" into the column. That record will then be associated with the notice. Multiple selections may be made; however, remember that for INCs, each violation must be addressed separately. Only Verbal Warnings and Written Orders can be associated with multiple records.

INC INFO TAB

INC Number:	Required Field. A unique number must be assigned to each INC, Written Order, Notice to Shut Down Operations, or Verbal Warning. A suggested format would be inspector initials, fiscal year, and sequential numbers, such as JD-07-001.
◉ Certified Mail ○ Hand Delivered:	Select the appropriate option. The default option is Certified Mail.
CM RRR# /Delivered to:	This corresponds to the selection above. Enter the Certified Mail receipt number, or the name of the person to whom the INC was delivered.
Inspector:	Select the appropriate inspector name from the pull down picklist.
Type:	Select the appropriate type of INC - operative or administrative.
INC Action Type:	Select the appropriate option. Choices are: INC, Written Order, Verbal Warning, or Shut-Down Order.
INC Id Date:	Enter the date the violation was identified.
INC Id Tm:	Enter the time the violation was identified. (AFMSS format: 0800 for 8 a.m., 1300 for 1 p.m., etc.).
INC Eff. Date:	Enter the date as 7 business days after the INC will be mailed, or the date the operator receives the notice if it was hand delivered.
Shut Dn Date:	If appropriate, enter the date operations were shut down.
Authority Reference:	Enter the appropriate CFR, Onshore Order reference, approved permit reference or COA item number. Be as specific to the nature of the violation as possible.
Act Type:	Select the type of inspection or activity code that indicates the inspection that was being conducted when the violation or problem was found.
Description:	This automatically populates with the description you have selected for the INC Type below.
INC Type:	Select the appropriate description for the type of violation that has been identified. For example, if a well sign is missing, select the description "Location is not properly identified." To correctly identify those instances where the BLM requested that the operator submit paperwork (for example, Sundry Notices, Well

Completion Reports, production record requests, and so on) use Item 51 from the listing. Refer to Section XIII for information on recommended INC Type/Category designations.

Category: The category will default to the appropriate code based on the INC type selected above. Review the code to ensure it is appropriate for the type of violation.

F - FOGRMA (production related)
N - NON-FOGRMA (for example, well signs, an so on)
E - Environmental

Refer to Section XIII for recommended INC Type/Category designations.

Gravity: Select the appropriate code:

○ Major (Noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income).

◉ Minor (Noncompliance that does not rise to the level of a "major" violation).

Abatement: Enter the date the corrective action is to be completed. This must be entered before printing and mailing the INC to inform the operator of the date the action is to be completed.

Trm Lse: If termination of the lease is considered appropriate, select the option that indicates the AO's action.

Y – Yes
N – No
BLANK - not applicable (default)

INC TEX TAB

The entry field on this screen is where you MUST enter the text that will print on the forms. The text must contain language to tell the operator what the violation is and what must be done to correct the violation. For example, "No well sign on location. Install well sign with all of the required information per 43 CFR..."

NOTE: DO NOT enter any remarks that are not pertinent to the operator and are for internal tracking or internal information. This text will print on the form. A method for entering internal remarks is discussed below.

ASSESSMENT/PENALTY TAB

Amount Assessed: Enter the assessment amount to be paid by the operator in whole dollars, that is, $250, not $250.00.

Amount of Penalty: Enter the amount of the civil penalty in whole dollars. Do not enter administrative fees or interest that result from an assessment.

Assessment Schedule: Select the appropriate schedule for the assessment.
S - Single payment
P - Per day payment
BLANK - not applicable

Assmt Reference: Select the appropriate 43 CFR 3163 reference that applies to this assessment.
b - 43 CFR 3163.1(b)
a1 - 43 CFR 3163.1(a)(1)
a2 - 43 CFR 3163.a (a)(2)

RESOLUTION TAB

Date Corrected: When you have been notified that the violation or problem has been corrected, or a field visit has verified correction, enter the correction date.

NOTE: In issuing another INC for an uncorrected violation, or when the severity changes from Minor to a Major, close the first INC record by entering a correction date that corresponds to the issuance date of the second INC. When issuing a second INC with an assessment for an uncorrected violation, it is suggested that users enter the same INC number as the first violation notice with an "A" designation on the end. If the violation goes to civil penalties, change the unique INC number to a "C". This will allow you to more easily track and recall all of the actual enforcement actions taken for a particular violation.

Exten Date: The AO may extend the abatement date for the violation, up to three extensions. As any extensions are granted, enter the extension date(s) for the violation, if appropriate.

Follow-Up Date: Enter the date when follow-up occurred to ensure that the violation has been corrected. If a field visit was made, enter the date a follow-up inspection was conducted. If no field visit was made enter the date paperwork was reviewed in the office.

Trips:	Optional. If a follow-up must be accomplished by field visit(s), enter the number of follow-up trips conducted to ensure that the violation was corrected. If an office review was used as a follow-up, leave this field blank.
SDR Filed:	If a State Director Review is requested by the operator, enter the date that the operator filed a request.
SDR No.:	Enter the number assigned to the SDR.
Appeal Date:	If the operator files an appeal to the IBLA, enter the date the appeal is filed.
IBLA No.:	Enter the number assigned by IBLA.
Follow-Up Remarks:	Enter remarks that pertain only to the follow-up for this notice. Follow-up remarks are required if a follow-up date is entered.

SAVE THE RECORD!!!!

REMARKS BUTTON

Text that was entered under the INC Text Tab will print on the *Notice of Incidents of Noncompliance*, Form 3160-9, the *Notice to Shut Down Operations*, Form 3160-12, and the *Notice of Written Order*, Form 3160-18 as appropriate with the selection of the "INC Action Type" discussed earlier. Those remarks will be displayed on the Remarks screen with the appropriate category code. Also, any follow-up remarks entered under the Resolution Tab will also be displayed on the Remarks screen with the appropriate category. The entry of other remarks for internal purposes is optional and should only be entered **AFTER** the form has been printed. Any remarks with the "General" category will print on the form.

If internal remarks are desired, use the Remarks Button to enter the INC Remarks (IEP.43r) screen. CLICK THE "ADD NEW" BUTTON PRIOR TO ENTERING REMARKS. Select the appropriate "Category" code – General or Follow-up. The "Remark Date" will fill with today's date. It may be changed if necessary.

Enter remarks into the large text field. Indicate that these are internal or subsequent remarks and they are not to be printed on the form. SAVE the remarks.

In the display above these fields, there are eight columns which show all remarks associated with this notice.

Identifier:	Displays the Unique INC Number assigned to each record.
Date:	Displays the date the remarks were entered/saved.
Author:	Displays the name of the person who entered the remarks.
Subject:	Displays INC, even though the remarks can be associated with a Written Order, etc.
Category:	Will display either General or Follow-up.
API/Fac ID:	Displays the API Number for the well or Facility ID for the facility associated with this notice. If multiple wells/facilities were selected, it will display "Various."
Well/Fac Name:	Displays the Well Name or Facility Name associated with the notice. If multiple wells/facilities were selected, it will display "Various."
Number:	Displays the well number for the API Number associated with the notice. If multiple wells were selected, it will display "Various."

To view remarks listed in this display, click on the desired row and the corresponding remarks will be displayed in the text field below.

Association of Remarks to Records within AFMSS

When remarks are entered, there are three options available for the association of the remarks to various documents within AFMSS.

* This INC only – all remarks entered for a specific notice will only be associated for this particular record. THIS IS THE DEFAULT SELECTION AND IS RECOMMENDED FOR THE MAJORITY OF NOTICES. The remarks for this notice will only be displayed in the Remarks screen for the notice.

All INCs for Case and Operator – This option can be used if you wish to associate the remarks for the notice to all other notices for the Case/Operator.

All INCs for Same Wells/Facilities – This option can be used if you wish to associate the remarks for the notice to all general remarks for wells/facilities selected for the current notice.

Remark Display

Three additional options are available on the Remarks screen. These options affect the display of remarks associated with the Case/Operator for the current notice.

To view the remarks associated to inspections or undesirable events, associated wells and facility records, and/or associated Sundry Notices for the Case/Operator the INC is associated with, click in the box to turn these options on. Click on the "Query" button and all remarks will be displayed. You may select one or more of these selections.

XIV. INC Category Codes.

The following list of violation types contains the recommended category default. Users are encouraged to refer to this listing to ensure consistent application of the Category designation for compliance rating purposes.

Users will be able to edit the INC category field as necessary to meet site-specific conditions.

AFMSS automatically sets the INC Category Code to the appropriate classification listed below. However, it will be necessary to verify the code when documenting compliance actions. The INC Category Codes are:

F=FOGRMA-related
N=Non-FOGRMA
E=Environmental

Oil and Gas Program Compliance Procedures

Production Violations		AFMSS Category Default
1.	Site is not properly identified.	N
2.	Well equipment is not satisfactory.	N
3.	Environmental protection is not satisfactory	E
4.	Temporary or emergency pits are not approved	E
5.	Pits are not satisfactory	E
6.	Surface use is not in accordance with approved plan	E
7.	Monthly Report of Operations is not complete and current	(No Longer Valid)
81.	MRO confirms the reasonableness of Production vs. Sales	(No Longer Valid)
82.	MRO confirms the reasonableness of Tank capacity vs. inventory	(No Longer Valid)
83.	MRO confirms the reasonableness of Well status vs. actual status	(No Longer Valid)
10.	Off-lease measurement is not approved. (Oil)	**F
12.	Other method of measuring oil and condensate is not approved.	**F
13.	Method of measuring oil and condensate is not satisfactory	F
14.	Valves are not sealed in accordance with minimum standards	F
15.	Site Facility diagram is not satisfactory	N
17.	Off lease storage of oil and condensate is not approved	**F
18.	Liquid handling equipment is not satisfactory	**F
20.	Commingling is not approved	F
23.	Flaring or venting or other is not approved	F
24.	Off-lease measurement is not approved. (Gas)	**F
27.	Method of measurement (other than orifice meter) of natural gas not approved	**F
28.	Method of measuring natural gas is not satisfactory	F
29.	Natural gas handling/treating equipment is not satisfactory	**F
31.	Collection of liquids is not satisfactory	F
33.	Water disposal method is not approved	N
35.	Disposal of water is approved but not satisfactory	N
37.	Tank batteries are not properly equipped	**F
38.	Warning signs are not properly installed	N
39.	If required, the contingency plan is not available	N
40.	Personnel are not properly protected	N
41.	Sales & mgmt. of oil and condensate are not documented according to standards	F
42.	Operator has not established a site security plan in accordance with standards	F
43.	Operator does not maintain a seal record	F
44.	Operator does not have a self-inspection program	N
50.	Failed to comply with a notice, written order, or instruction of the AO	**F
51.	Operator is required to submit requested paperwork	N
50.	Failed to comply with a notice, written order, or instruction of the AO	**F
52.	Prepared, maintained or submitted false, inaccurate or misleading reports etc.	F
53.	Failure to obtain approval for specific operations	F

**General Rule -- Those categories with two asterisks may be FOGRMA-or non-FOGRMA-related based upon site-specific conditions. AFMSS will default to the category indicated, and the user must review to ensure the category is correct for the actual violation. The user will have the capability of editing the field if it is actually a non-FOGRMA-related violation or order. Those items classified as FOGRMA in the listing are related to the proper production handling and measurement of product as well as items 50 and 52, which are specifically addressed in the Act itself.

Drilling Violations:		Category
1D.	Approved drilling permit and plan are not on location.	N
2D.	Drill site is not properly identified.	N
3D.	Operations are not conducted in a workmanlike manner.	N
4D.	Operator failed to report spills.	E
5D.	Drill-stem test was not conducted according to minimum standards.	N
6D.	Hole deviation is not within approved tolerance.	N
7D.	Surface use is not in accordance with approved plan.	E
8D.	Well control and assoc. equip. is not installed, used, etc to maintain well control.	N
23D.	Casing or cementing operations were not conducted according to approved plan.	N
28D.	Mud system is not according to approved plan.	N
33D.	Air and gas drilling op's are not according to approved plan or minimum stand.	N
37D.	Hydrogen sulfide op's do not meet minimum standards or approved plan.	N
50D.	Failed to comply with a notice, written order, or instruction of the AO.	N
51D.	Operator is required to submit requested paperwork.	N
52D.	Prepared, maintained or submitted false, inaccurate or misleading reports, etc.	N

Plugging Violations:		Category
1P.	Plugging/Abd. operations are not conducted according to approved plan.	N
2P.	Rehabilitation does not meet approved plan	E
50P.	Failed to comply with a notice, written order, or instruction of the AO.	N
51P.	Operator is required to submit requested paperwork.	N
52P.	Prepared, maintained or submitted false, inaccurate or misleading reports.	N

XV. PROCEDURES FOR COLLECTION OF ASSESSMENTS AND PENALTIES FOR NONCOMPLIANCE ON FEDERAL AND INDIAN OIL AND GAS LEASES

A. Overview/General Requirements

If a *Bill for Collection*, Form 1371-22 is sent to the operator and the operator fails to pay the amount owed, the FO will send a demand letter to the operator. If the operator fails to make payment within the time allowed, the lease can be shut down (for Indian leases, only upon concurrence of the appropriate BIA office, tribe and allottee as appropriate), and a second demand letter will be sent. If the operator fails to make payment within the timeframe allowed in the second letter, the BLM will attach the bond for the amount owed without further notice.

If lease shutdown or bond attachment is not available or advisable (for example, the lease is already shut down, there are other higher priority demands on the bond, the Indian lessor does not support such action, etc.), the BLM may be able to collect the outstanding debt through administrative offset or litigation against the operator. The BLM also may pursue lease cancellation as a result of continued noncompliance.

The following procedures provide detailed guidance on collecting outstanding assessments/civil penalties. This guidance modifies existing guidance found in the debt collection portion of the BLM Collections Reference Guide. The modification applies only to outstanding debts from noncompliance on Federal and Indian oil and gas leases. Detailed guidance for attachment of a bond is found in the Fluid Minerals Bond Processing User Guide, formally referred to as the 3104-1 Bond Manual and Handbook. (The Handbook can be found on the following web site: www.mt.blm.gov/oilgas/leasing/handbooks/3104/3104.html)

B. Steps for Issuing a Billing Notice for Assessments or Civil Penalties

1. When an INC or an order of the AO has been issued and an assessment and/or civil penalties have resulted, a *Bill for Collection*, Form 1371-22, is to be sent to the operator. A bill for an assessment can be sent with the INC notice; however, by regulation civil penalties cannot be assessed/billed until the party charged with the violation has either elected not to appeal the notice or has exhausted all appeal rights.

   In order to determine whether bills originated from assessments or civil penalties on Federal or Indian leases, the preprinted alpha prefix "A" in the bill number is to be changed to an "I" for Indian Leases.

   The bill must include:
   - Lease Number
   - INC Number
   - Due Date (30 days from receipt).

- A statement that failure to pay will result in additional enforcement actions, including civil penalties, lease shut-in and/or attachment of the bond.
- A statement that failure to pay and subsequent attachment of the bond may also put the lease in jeopardy of cancellation (43 CFR 3104.7, 3108.3, and 3163.1(a)(5) for Federal leases and 25 CFR 211.27, 212.23, 213.40 or 225.36 for Indian leases).

2. The FO shall mail the bill to the operator by certified mail, return receipt requested, with a courtesy copy sent to the lessee(s) and the party holding the bond, that is, surety. If the lease is an Indian lease, the appropriate BIA office shall also receive a copy.

3. After the bill is sent, the operator has 30 days from receipt of the bill to make payment. If, after 30 days, the operator fails to pay the assessment/civil penalty, a demand letter must be sent (refer to Item C for demand letter instructions). Under normal circumstances the BLM will shut in the lease before it takes steps to attach the bond or initiate litigation or lease cancellation. Prior to shut in however, the AO may take into consideration such things as operator history, number and amount of outstanding assessments/civil penalties, BIA concurrence if applicable, lease production, and existing bond coverage in deciding the appropriate action to take.

   Examples of when shutdown action should not be initiated include: the lease is already shut down for other infractions or is in a temporarily abandoned status; BIA does not support the shut down of an Indian lease; shut down would result in damage to the well or loss of resources; or the lease is in bankruptcy and the trustee does not allow shut down. If the lease situation does not meet these examples, then the FO should proceed with shut-down procedures.

   Since continued operator noncompliance will result in additional enforcement actions ranging from lease shutdown to lease cancellation, it is important that the lessee of record is made aware of pending enforcement activities. As such, the lessee(s) shall receive copies of the bill and all subsequent correspondence to the operator.

C. First Demand Letter

1. The first demand letter is to be sent to the operator by certified mail, return receipt requested, with a copy sent to the lessee and the party holding the bond. The letter shall include information that the payment is due 15 days from receipt and a statement that failure to pay the assessment/civil penalty, plus handling charges and accrued interest, will result in lease shutdown. The demand letter must also provide information on appeal rights under 43 CFR 3165.3(b).

   In the case where lease operations are already shut down due to nonabatement, the FO is to start with the second demand letter.

2. If an Indian lease is involved, the BLM must consult with the BIA prior to sending out the letter to determine if lease shut down is an acceptable option to the tribe or allottee. If it is acceptable, the operator is to be reminded that the lease may be terminated if production ceases as provided for in the lease terms.

3. For Federal leases, a copy of the first demand letter must be sent to the appropriate fluid mineral adjudication personnel in the State Office to place in the lease case file and to the surety company or party holding the personal bond at the time the bond demand is made. If Indian leases are involved, the appropriate BIA office must receive a copy.

4. The operator has 15 days from receipt of the first demand letter to make the payment. If the operator has not made payment after 15 days, the BLM may shut down lease operations using BLM Form 3160-12, *Notice to Shut Down Operations*. The operator then has 30 days from receipt of the *Notice to Shut Down Operations* to make payment. If payment is not received, the BLM will send a second demand letter. Failure to comply with the second demand letter will also result in assessments or civil penalties.

D. Second Demand Letter

1. If lease operations have been shut down and the operator has not responded within the specified timeframe (30 days), a second demand letter shall be sent to the operator by certified mail, return receipt requested, with a copy sent to the lessee and the party holding the bond. The second demand letter shall state that the operator has 15 days from the date of receipt to make the payment and that it is the final notice before the BLM/BIA takes action to attach the bond under which operations are being conducted.

   The letter shall include a statement that failure to pay will result in:

   a. A request for payment by the surety or collection from other collateral posted as bond (after elapse of 15 days from date of receipt), and

   b. If the amount owed is not fully covered by the bond, any amount outstanding after the attachment of the bond shall be reported as income to the Internal Revenue Service on Form 1099-G, *Certain Government Payments*.

2. For Federal leases, a copy of the second demand letter must be sent to the appropriate fluid mineral adjudication personnel in the State Office to be placed in the lease case file. Adjudication is required to send a copy of the letter to the surety company or party holding the personal bond at the time the bond demand is made. When the adjudication staff makes the decision to attach the bond, copies must be directed to the lessee, operator, surety company, and principal or the party holding a personal bond. If Indian leases are involved, the appropriate BIA office takes the necessary action to attach the bond.

E. Attachment of Bond

If the operator fails to pay the assessment and accrued interest within 15 days after receipt of the second demand letter, the following steps are to be taken:

1. For Federal leases, the BLM FO requesting bond attachment must send a memorandum to the appropriate State Office fluid minerals adjudication personnel to initiate attachment of the bond for the outstanding amount. The bond to be attached is the bond under which the operations are conducted whether it is the operator's or lessee's bond. The standard procedures found in the BLM Interim Guidance Handbook H-3104-1, Bonds, are to be followed, including notification to other agencies, such as, the Minerals Management Service (MMS), that the BLM will be attaching the bond. For Indian leases, the BLM FO shall send a letter to the appropriate BIA office with a request that the bond be attached.

2. After the bond has been attached, the principal/obligor has 6 months, or less at the discretion of the AO, to restore the bond to the face amount, post a new bond, or to establish alternate bonding coverage for the operator (see 43 CFR 3104/7(b)). The AO may require an increase in the amount of bond whenever it is determined that the operator poses a risk, as provided in 43 CFR 3104.5(b) or in 25 CFR 211.6(c), 212.10, 213.15(c) or 225.30(e). If the bond is not reestablished as required, lease operations shall remain shut down and the lease may be subject to cancellation under the provisions of 43 CFR 3108.3 for Federal leases, and 25 CFR 211.27, 212.23, 213.40 or 227.28 for Indian leases.

F. Surety Fails to Pay

In accordance with the Interim Guidance Handbook H-3104-1, Bonds, failure of a surety company to submit payment will result in a BLM recommendation to the Department of the Treasury for removal of the surety from the list of certified, acceptable sureties. See section J below for referring the case to the Department of Justice for litigation.

G. Bankrupt Entities

Bankruptcy proceedings do not stop the BLM's regulatory responsibilities. If violations are discovered and they are not abated timely, assessments and civil penalties shall be imposed. Close coordination with the Regional or Field Solicitor's Office is required for liabilities involving bankrupt parties. The Bankruptcy Court must be notified by the State Office minerals adjudication personnel through the Regional or Field Solicitor's Office that the bond is being attached. If a bankrupt operator has incurred assessments and/or civil penalties and has failed to pay, the bond covering the operations is to be attached with an information copy provided to the Regional or Field Solicitor's Office.

H. Credit Bureau Reporting

If there is still a portion of the debt outstanding after the bond is attached or if for some reason the bond is not attached, the FO must send written notification to the National Business Center (NBC), Division of Finance requesting that the details of the debt be reported to the appropriate credit bureaus.

I. Administrative Offset

The use of an administrative offset procedure allows agencies to collect debts from monies that otherwise would be refunded to the debtor for overpayment to other Federal agencies such as the MMS or the Internal Revenue Service. Although this procedure is not widely used at this time, opportunities for administrative offset should be pursued where available. Contact the NBC, Division of Finance concerning administrative offset.

J. Litigation

In instances where there is no appeal pending, the statute of limitations has not been exceeded, the amount due, and the right to collect the debt are clear, the Department of Justice (DOJ) has established a system of direct referral, which makes it unnecessary to send a request to the Regional or Field Solicitor's Office to initiate litigation. Using this process, debts over $600 can be referred to the DOJ's National Center Intake Facility (NCIF) for litigation. The DOJ will consider litigation for amounts under $600 if it is important to the enforcement of some agency program (see Page 2 of 7, Claims Collection Litigation Report (CCLR) Instructions). Although debts can now be referred directly to the DOJ, the Regional or Field Solicitor's Office is to be advised that such action is being taken.

1. The DOJ Litigation Referral Process Handbook should be reviewed carefully. When referring a debt to the DOJ, it is important that the seven-page CCLR, Exhibit 3 in the handbook, be filled out as completely as possible. Instructions for completing it are on the back of the form. Items 1, 3, and 4 of the form are particularly important to facilitate timely distribution of the claim and to ensure that all correspondence from the NCIF and U.S. Attorney is sent to the appropriate BLM office.

    a. Item 1 is the agency claim number: enter the document identification number from the Bill for Collection (Form 1371-22).

    b. Item 2 is an address block: enter the address of the U.S. Attorney's Office.

    c. Item 3 is a return address block: enter the address of the BLM office initiating the claim.

2. The CCLR package must also contain certain other information (see page 5 of the CCLR), including a credit report. The NBC, Division of Finance is to be contacted to obtain credit bureau information. Fees for credit reporting must be added to the amount due. In order for credit bureaus to provide the most accurate and up-to-date information possible, the BLM must be able to supply them with a

company (or individual's) name and current address. If the taxpayer identification number (TIN) or Social Security Number (SSN) is available, it also is to be provided. Although the BLM does not require lessees or operators to provide a TIN/SSN, this number may be available from the Debt Collection Section of the MMS, Accounts Receivable Division.

Additional sources of financial information include State Corporation Commissions and special credit bureau reports such as business profiles. Questions relating to the administrative aspects of the direct referral process or forms that are to be submitted can be directed to the NCIF at (301) 585-2391.

3. At the point that the debt is referred to the DOJ, all other agency collection actions for that debt must cease. When the NCIF receives a referral, it screens it prior to legal action. Once the referral has been screened and accepted, the NCIF sends an acknowledgment of receipt to the client agency. The package is then forwarded to either the U.S. Attorney or private counsel, on contract to the DOJ, for action. Any payments that are collected as a result of such action are deposited to a DOJ lock box at a bank in Atlanta, Georgia. The bank processes the payments, wires the funds directly to the appropriate departmental account, and provides any necessary follow-up information to the NCIF. The NCIF is able to provide its client agencies with reports on the debts referred, the litigating office handling the debt, and information on the disposition of closed debts.

4. If there is some question as to whether litigation should be pursued through the Solicitor's Office or by direct referral to the DOJ, or if there is some uncertainty regarding the legal existence or legal merits of the debt, the Solicitor or local U.S. Attorney's Office is to be consulted.

K. Uncollectible Assessments/Civil Penalties

1. When bankruptcy is not involved, or there is no bond, and all available steps have been taken, the matter is to be turned over to the Regional or Field Solicitor's Office for final determination that the debt is uncollectible.

2. If the Solicitor's Office makes a determination that the debt is uncollectible and recommends that the debt be written off, the case is to be turned over to the NBC, Division of Finance for official write-off. A *Cover Sheet for Write-Off* (Form 1370-45) must be submitted by the State Director to the Service Center to write off a debt. In the comments section (item number 19) a notation is to be made that the data is to be sent to the Credit Bureau and the amount being written off will be reported as income to the Internal Revenue Service.

3. The Division of Finance will notify the Internal Revenue Service via Form 1099-G, *Certain Government Payments*, that the amount of uncollected debt is to be considered income for tax purposes.

L. Lease Cancellation

2. For a Federal lease, if the decision is made to initiate lease cancellation, the regulations at 43 CFR 3108.3 provide that a lease may be canceled by the Secretary only if the leasehold does not contain a well capable of producing in paying quantities, or the lease is not committed to a unit or communitization agreement that contains a well capable of production of communitized substances in paying quantities. If the lease does contain such a well or is committed to an agreement with such a well, the lease may be canceled only by judicial proceedings in Federal court. The State Office fluid minerals adjudication personnel handle lease cancellation proceedings (see Handbook 3108.1).

3. For an Indian lease, the BLM shall make a recommendation to the BIA that the lease be canceled under the appropriate sections of Title 25 CFR.

M. Appeals Process

The filing of a request for an SDR will not result in the suspension of the requirement for compliance or stop the accumulation of assessments or civil penalties unless the State Director so determines.

In some instances, the timing of a SDR decision may occur on or shortly after the deadline for payment if the operator waits until the last minute to file an appeal. The FO actions from this point will be contingent upon the decision rendered by the State Director. Questions from FOs may arise on whether or not to continue pursuing payment until the decision is rendered. Such questions should be directed to the State Office for resolution. In most cases, FOs shall continue pursuit of payment of the assessments/civil penalties in a timely manner despite the filing of an appeal.

Instructions for Use of Letter Format for INCs and Orders

April 2007

INSTRUCTIONS FOR USE OF LETTER FORMAT FOR INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER (Order)

Oil and Gas Program Enforcement Procedures sections III. And IV., provide for the basic requirements of formal notification for violations or problems. The policy requires notification to be issued using either the AFMSS forms (INC or Order) or a letter format.

The use of the letter format for issuing INCs, Written Orders, or a combination of INCs and Orders present unique challenges to those issuing the letter, the operators, and if a State Office Review is requested. In order for the letter format to be effective in gaining compliance, and supportable upon review or appeal, certain standards must be followed.

The following information outlines 1) mandatory elements that must be included in the letter format, 2) recommended practices when using a letter, and 3) example letter formats.

I. **Mandatory Elements:** All letters used to notify an operator* of any problem or violation must contain the following information:

1. When using mailing services the letter must be sent via certified mail using the return receipt request. The letter must include the certified mail number and indicate return receipt requested.

2. Operator's* or appropriate party's company name and address.

3. Whenever possible the salutation (e.g. Attention: John Smith) should be addressed to a specific person, or the appropriate designated representative.

4. Announce the purpose of the letter in bold, capitalized, underlined, and centered text:

   a. **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC),**
   b. **NOTICE OF AN ORDER OF THE AUTHORIZED OFFICER**, or
   c. both **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER.**

   Note: Use of the letter format without the emphasized text has been a source of dispute, argument, and problems sometimes ending in review or appeal. The objective of the emphasized text is to ensure there is no confusion on the part of those receiving the letter as to the purpose and importance of the notice. The use of the emphasized text avoids possible miscommunication and misunderstandings on the part of the operator and supports the letter format if appealed.

5. Legal Identification Information:

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* Operator is defined by 43 CFR 3160.0-5, as "... any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof."

a. Lease or agreement number, well or facility name and/or number, legal location information (township, range, ¼-¼, county, state, etc.).

b. Letters that identify multiple problems and/or violations must include the legal identification information for every separate lease, agreement, well, or facility for each problem or violation identified.

c. For approved off-lease operations/facilities with problems or violations, the letter must include both the legal identification information for 1) the off-lease facility and 2) appropriate well(s), facility(s), lease(s), and/or agreement(s) that are connected to or affected by the off lease facility problems or violations.

6. Date and time of the inspection in which a particular problem or violation was found. Again, when multiple problems and/or violations are listed in the letter that involve differing dates or times, each problem or violation or group thereof must indicate the appropriate date and/or time when discovered.

7. Each individual INC or Order identified in the letter must contain the following information:

a. A unique number.
b. A clear and concise description of the problem or violation.
c. Most appropriate regulatory citation or authority (CFR, Onshore Order, Notice to Lessees (NTL), Conditions of Approval (COA), etc.) for the problem or violation. Do not cite the BLM policy or guidance.
d. The corrective action for each individual Order or INC. Do not stipulate how to correct the problem or violation, unless existing regulatory authority (lease stipulations, COAs, NTLs, Onshore Orders, etc) provides specifications for correction.
e. The abatement date or time for correction of each specific Order or INC.
f. Company representative's signature and date lines for each Order or INC (this is to be used by the operator to certify when the violation or problem was corrected.
g. Each INC listed must be assigned the appropriate gravity determination.
h. Each INC, when required and applicable, must assign the proper assessment amounts.

8. Each Letter must include both complete **"WARNING"** and **"REVIEW AND APPEAL RIGHTS"** paragraphs from the INC/Order form.

9. Date and signature of the appropriate authorized office.

Note: Check your local delegation of authority identified in the 1203 BLM manual under BLM form No. 1221-2.

Additionally, 43 CFR 3165.3(a) *Notice,* requires BLM to notify "...an operating rights owner or operator, as appropriate, [on any failure] to comply with any provision of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the appropriate party and the lessee(s) to remedy any defaults or violation." This citation [3165.3(a)] also allows, under certain circumstances, notice to be given to any "...person conducting or supervising operations subject to the regulations in this part..." for major violations, and "...any contractor or field employee or designated representative..." for minor violations. When notice is provided in this manner, a copy must also be mailed to the operator.

II. **Additional Recommended Practices:** Use of the letter format to issue corrective actions for problems or violations, as discussed earlier, has caused confusion and frustration for both the operator and the BLM. These situations have occurred mainly due to how a letter was constructed and/or assumptions about how the instructions will be interpreted. Many of these problems and issues arise when multiple INCs, Orders, or a combination of both are addressed in the letter; or information, like those items required above, are not included in the letter. In an effort to prevent potential problems when using the letter format for enforcement and compliance actions, the following recommendations are provided.

1. When addressing multiple problems and violations for one object on a location, itemize the individual problems and/or violations separately, as required in item I. 7. above. They could be listed under one heading, preferably, rather than combining them into one Order of the Authorized Officer or INC. For example, on an older facility with very few COAs you might find:

Disposal Pit:

Order of the Authorized Officer:
1. Clean trash from pit.
2. Clean up oil-stained dirt within pit enclosure.
3. Install flagging per Gold Book standards for wildlife protection.

Incident of Noncompliance:
1. Repair fence to standards required in item 9 in the APD COAs.
2. Remove all fluids from the pit per Order No.7 emergency pit approval.

2. When issuing both Orders and INCs in the same letter, use separate headings, as shown above, to clarify to the operator which items are violations (requiring INCs) and which items are Orders of the Authorized Officer.

3. Use only the most applicable and specific regulatory authority that applies to the violation or problem. Normally, this would mean only one citation would be used. If multiple citations are used, the problem or violation should be reviewed to ensure there is not more than one violation or problem involved in the action.

4. Unless specifically required by some type of requirement (COA, NTL, Onshore

Orders, etc.), the description of the corrective action should not instruct operators in a specific manner on how the issue must be fixed. The method an operator uses to accomplish the correction is up to the operator, as long as the problem or violation is corrected. If the BLM were to require a specific method of correction not specified by an existing requirement, and the method failed, the BLM could be held liable for damages.

5. Policy and guidance document(s) should never be cited as a requirement with which an operator must comply or a method for correction. Policy and guidance are strictly BLM internal instructions on how its responsibilities should be conducted and have no legal bearing on the oil and gas operator.

6. Be as clear and concise as possible in directions to the operator. Do not assume that an operator necessarily will know or understand what you are attempting to describe. Consider having non-oil-and-gas personnel review your letter to see if they understand what is being conveyed.

SAMPLE LETTER FORMAT

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Field Office
Street
City, State, ZIP
website address

In Reply To:
3160
Case Number

Certified Mail No: [ ]
Return Receipt Requested

[Company Address]

NOTICE OF ORDER(S) OF THE BLM AUTHORIZED OFFICER

and/or

NOTICE OF INCIDENTS OF NON COMPLIANCE (INC)

Use the appropriate title. Orders, INCs, or both.

Use specific company representative, if known.

Dear [ ]:

Insert lease, unit, or case number(s). Also list well name and number (or facility) and legal description, inspection date, and inspector name(s).

An inspection was performed on Federal lease WYW[ ], [Well name and #, ¼ ¼ section, county, State], on 00/00/0000, by [Inspector Name]. It was found that operations were not being conducted in a manner designed to protect the mineral resources, other natural resources, and environmental quality (43 CFR 3162.5).

ORDER(s) OF THE AUTHORIZED OFFICER

Cite pertinent regulation for the order and after…"states" … Insert the pertinent requirement (e.g., 43 CFR 3162.5-1(a), which states "The operator shall conduct all operations in a manner which protects the minerals resources, other natural resources and environmental quality"). If you have multiple environmental problems, some may be pertinent to other regulations. In this case, cite a different regulation for each environmental problem.

The following environmental compliance problems, pursuant to 43 CFR [ ] which states, "…" were identified during the latest inspection of the subject location." Specifically:

Each problem must have a unique number.

- **Environmental Problem No. [ ]:** [Specifically describe the problem (e.g., A substantial head-cut has started in the ditch on the west side of the road coming onto the well location.]

Corrective Action: [Identify what needs to be done to address the problem. Use performance objectives rather than specifically describing exact work. (e.g., take appropriate remedial measures to stabilize head-cut and restore perennial vegetation. Eliminate the source of the problem by diverting and/or slowing water flow from the access road.]

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified environmental problems no later than [ ]. If you fail to comply within the

Insert a specific date by which the problems must be corrected.

time frames specified, you will be subject to further enforcement action as may be deemed necessary.

(If additional environmental problems were identified, list each problem separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- En**vironmental Problem No.:** same format as above

Insert legal location information if different from

Corrective Action: Same as format as above

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified environmental problems no later than [ ]. If you fail to comply within the time frames specified you will be subject to further enforcement action as may be deemed necessary.

Insert a specific date by which the problems must be corrected.

==========

INCIDENTS OF NONCOMPLIANCE

The following violations were identified during an inspection of the subject location." Specifically:

INC No. . [ ]: [Specifically describe the violation and cite the authority.]

•

Corrective Action: [Identify what needs to be done to correct the violation.]

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified violation no later than [ ]. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

(If additional violations were identified, list each violation separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- **INC No.:** same format as above

Insert legal location information if different from

Corrective Action: same format as above

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified violation no later than [ ]. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

WARNING

Orders of the Authorized Officer or Incidents of Non Compliance and reporting time frames begin upon receipt of the Notice or 7 business days after the date it is mailed, whichever is earlier. Each problem or violation must be corrected within the prescribed time from receipt of this Notice and reported to the Bureau of Land Management office at the address shown above (below).

For Incidents of Non Compliance, please note that you already may have been assessed for noncompliance (see amount under "Assessed for Noncompliance"). If you do not comply as noted above

under "Corrective Action To Be Completed By," you may incur additional assessment under (43 CFR 3163.1) and may also incur Civil Penalties (43 CFR 3163.2). All self-certified corrections must be postmarked no later than the next business day after the prescribed time for correction.

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

Insert address for the State Office.

A person contesting a order of the authorized office or violation must request a State Director Review of the Order or Incident of Noncompliance. This request must be filed within 20 working days of receipt of the Incident of Noncompliance with the appropriate State Director at [ ] (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, MS 300-QC, Arlington, Virginia 22203 (see 43CFR 3165.4). Contact the above listed Bureau of Land Management office for further information.

If you have any questions, please contact [ ].

Sincerely,

Field Manager

Attachment: Corrective Action(s) Completed Form

III. CORRECTIVE ACTION COMPLETION FORM

Sample Corrective Action Completion Form

When correction has been completed, fill out the information on this page, sign and return to:

Bureau of Land Management
ATTN:
XXXX BLM Street
Bureau, WY 82000

Environment Problem/Order No.: [ ]
Operator: [ ]
Lease No.: [ ]
Well No.: [ ]
Legal Location: [Section, Township, Range, Qtr]
[County and State}
Environmental Problem(s): [ ]

Complete all of this information from the letter before sending to the Operator. Make a new section for each problem identified in the letter.

Description and Date of Work Completed: [ ]

The Operator will complete the description and date of the work.

Company Representative Title: _____

Signature: _____

Date: _____

Incident of Noncompliance No.: [ ]
Operator: [ ]
Lease No.: [ ]
Well No.: [ ]
Legal Location: [Section, Township, Range, Qtr]
[County and State}
Environmental Problem(s): [ ]

Complete all of this information from the letter before sending to the Operator. Make a new section for each INC identified in the letter.

Description and Date of Work Completed: [ ]

The Operator will complete the description and date of the work.

Company Representative Title: _____

Signature: _____

Date: _____