

Attachment 2

Enforcement and Subsequent Actions

The Bureau of Land Management (BLM) provides this enforcement process to verify, document, and ensure that no liable parties exist for permanently plugging a Federal or Indian well and reclaiming the surface of the location of the well. Follow these before designating the well's status as orphaned in the Automated Fluid Minerals Support System (AFMSS2). This guidance follows 43 CFR Subpart 3163 – Noncompliance, Assessments, and Penalties. If you have questions, please refer to these regulatory requirements.

This document lists the appropriate steps for a BLM Field Office (FO) to take when an operator does not comply with the BLM's orders to permanently plug and abandon a well and reclaim the site consistent with the applicable laws and regulations. For a current operator, Record Title Owners (RTOs), and the Operating Rights Holders (ORHs) that are protected under the Bankruptcy Code due to their status as a debtor in a bankruptcy proceeding, please consult with the Solicitor's Office (SOL) prior to implementing any of these enumerated actions so as to ensure that they do not violate Federal bankruptcy laws and regulations. Please refer to the Bankruptcy Protection section at the end of this document. When an entity is given a specific number of days to comply with an order (e.g., 60 days), they should be given the same number of days for subsequent actions (e.g., 1st & 2nd Incident of Noncompliance (INC), etc.), unless an emergency situation arises and warrants fewer days (e.g., public health and safety concerns). Please consult with your State Office (SO) Inspection and Enforcement (I&E) coordinator.

The BLM will pursue enforcement actions for potential orphaned wells by putting the current operator on notice first, then the current RTOs and ORHs with rights in the area and horizon(s) that require permanent plugging and abandonment and reclamation (also known as permanent plugging and abandonment and reclamation), then the prior RTOs and prior ORHs. When pursuing potential liable parties on a well, a courtesy copy (cc) provides notice to other parties on the lease (e.g., all current operators on the lease).

The BLM will pursue the interests on a well and lease in this order:

1. Operator - pursuant to 43 CFR 3162.3-4, only the current operator may be held liable for well abandonment. When the BLM acknowledges that there is a change of operator, BLM cannot hold the prior operator liable pursuant to this regulation.
2. Current RTO and ORH with rights in the area and horizon(s) that require decommissioning – pursuant to 43 CFR 3106.7-6(b), the ORH is liable for P&A and reclamation for the “area or horizons in which you acquired rights.”
3. All other current RTO and ORH on the lease and the past RTO and ORH on the lease – pursuant to 43 CFR 3106.7-2 (If I transfer my lease, what is my continuing obligation?)

It is critical that the BLM closely monitor the deadlines/due dates for enforcement actions and timely issue INCs or civil penalties, when warranted. On Indian leases, BLM will coordinate enforcement actions with BIA. BLM and BIA will jointly determine whether enforcement actions, INCs, and penalties will be pursuant to BLM regulations, BIA regulations, or both.

- 1. Enforcement against a Current Operator (No Violation but Failing to Produce).¹**
 - a. Issue a Written Order (WO) instructing the operator to plug or produce the idled well.
 - i. Issue a WO for each well.
 - ii. If compliance is not achieved in the time required, proceed to the next step.
 - b. Issue an INC for failure to comply.
 - i. Close out WO in AFMSS.²
 - ii. Issue an INC for each well.
 - iii. If compliance is not achieved in the time required, proceed to the next step.
 - c. Issue a second INC for failure to comply. Note: At this stage, the FO should notify the SO and the SO I&E coordinator for any recent changes to the procedures and penalty amounts.
 - i. Close out first INC in AFMSS.
 - ii. Issue assessment under 43 CFR 3163.1(a).
 - iii. Issue Notice of Proposed Civil Penalties.³
 - iv. Send a courtesy copy of all documents that were sent to the operator (e.g., original order, 1st & 2nd INC, notice of proposed civil penalties, any other letters or correspondence) to the Record Title Owners (RTO)
 - v. If compliance is not achieved by correcting the violation within 20 days of such notice under 43 CFR 3163.2(b)(1), proceed to the next step.
 - d. Send operator a notice of Increased Civil Penalties under 43 CFR 3163.2(b)(2).
 - i. Send a courtesy copy to the RTOs.
 - ii. If compliance is not achieved, proceed to the next step.
 - e. Close out second INC and enter civil penalty INC into AFMSS.
 - i. Wait 60 days from the original notice of proposed civil penalties for the order to become final. If the operator requests a State Director review, the FO must wait for the State Director to issue a final decision. If the operator appeals the final decision to the Interior Board of Appeals (IBLA), the FO must wait for the IBLA to issue a final decision, or, if the IBLA decision is appealed to district court, for a court to issue a final judgment in favor of the Secretary of the Interior. See 43 CFR 3163.4 (Failure to pay). Any appeals of BIA enforcement actions on Indian leases would go through the BIA appeals process in 25 C.F.R. Part 2 to the Interior Board of Indian Appeals (IBIA).

¹ Note: There is a separate process for lessee/operator in bankruptcy proceedings. Offices must submit draft notice to the SOL attorney who is handling the bankruptcy case for review before issuing notices to the violator. See explanation at the end of this document.

² This process may be modified as the BLM moves to the AFMSS2 platform.

³ By regulation, there is no dollar limit imposed on the civil penalties amount, or the number of days that may be covered for the timeframe that the BLM may issue the first civil penalties notice. In fact, the authorized officer has the authority to suspend a civil penalties amount. Typically, the BLM State Director issues this suspension decision when a State Director review is requested. However, where orphaned wells are concerned or suspected, capping the time limit at 60 days is reasonable as the agency is unlikely to collect the current \$669,600 per well civil penalty from the operator. The BLM should then direct its attention to requiring other potentially liable parties such as the lessees and operating rights holders to perform permanent plugging and abandonment and site reclamation for these wells.

- ii. If compliance is not achieved, proceed to the next step.
- f. Close out the civil penalties in AFMSS.
 - i. Issue bill for civil penalties to the operator.
 - ii. Proceed to enforcement against current RTOs.

2. Enforcement against a Current Operator (Violation).

- a. Issue an INC for the violation or failure to comply with a written order (or whatever the violation may be).
 - i. Issue an INC for each well.
 - ii. If compliance is not achieved, proceed to the next step.
- b. Issue a second INC for failure to comply.
 - i. Close out first INC in AFMSS.
 - ii. Issue assessment under 43 CFR 3163.1(a).
 - iii. Issue Notice of Proposed Civil Penalties.
 - iv. Send a courtesy copy of all documents that were sent to the operator (e.g., original order, 1st & 2nd INC, notice of proposed civil penalties, any other letters or correspondence) to the RTO.
- c. If the operator does not comply by correcting the violation within 20 days under the second INC, send operator a notice of Increased Civil Penalties under 43 CFR 3163.2(b)(2).
 - i. Send a courtesy copy to the RTOs.
 - ii. If compliance is not achieved, proceed to the next step.
- d. Close out second INC and enter civil penalty INC into AFMSS.
 - i. Wait 60 days from the original notice of proposed civil penalties for the order to become final. If the operator requests a State Director review, the FO must wait for the State Director to issue a final decision. If the operator submits an appeal from the final decision to the IBLA, the FO must wait for the IBLA to issue a final decision, or, if the IBLA decision is appealed to district court, for a court to issue a final judgment in favor of the Secretary of the Interior. See 43 CFR 3163.4 (Failure to pay). BIA enforcement actions on Indian leases would go through the BIA appeals process in 25 C.F.R. Part 2 to the Interior Board of Indian Appeals (IBIA).
- e. If compliance is not achieved, proceed to the next step.
 - i. Close out the civil penalties in AFMSS.
 - ii. Issue bill for civil penalties to the operator.
 - iii. Proceed to enforcement against current RTOs.

3. Final steps against Current Operator.

- i. Review bond coverage. Prepare a preliminary cost estimate of the work required to permanently plug and abandon the well(s), reclaim the site, and any other remaining obligations associated with the well(s).
- ii. Submit FO memorandum to the SO. Please see the example memorandum on the following page for additional details.
- iii. If the bond covers the cost for BLM to obtain a contractor to perform all of the operator's obligations, the FO should collect the bond and start the process to obtain a contractor to perform this work. This well is not considered an orphaned well.

- iv. If the bond does not cover the operator's obligations, the FO should issue a written order to the current RTO(s) and the ORH(s), if known.
- v. Place the operator on the Nationwide 17(g) List, established under 30 U.S.C. § 226(g). For Indian leases, notify the BIA, the relevant Indian Tribe, and any individual Indian mineral owners.

4. Enforcement against current RTO and ORH. (Step 3 in Attachment 1)

- a. Work with the SO to determine current ORHs, if not listed on serial register page in LR2000.
- b. Enter the RTOs/ORHs into AFMSS as contacts for the non-responsive operator. Include "RTO" or "ORH" at the end of the party's name.
- c. Issue a WO to RTOs/ORHs from the serial register page.
 - i. A WO per well per RTO/ORH (i.e., 5 wells with 5 RTOs/ORHs for a total of 25 WOs).
 - ii. If compliance is not achieved in the time required, proceed to the next step.
- d. Issue an INC to the RTOs/ORHs for failure to comply.
 - i. Close out WOs in AFMSS.
 - ii. Issue an INC for each WO (i.e., 25 WOs will require 25 INCs).
 - iii. If compliance is not achieved in the time required, proceed to the next step.
- e. Issue a second INC to the RTOs and ORHs for failure to comply.
 - i. Close out first INC in AFMSS.
 - ii. Issue assessment for each INC (i.e., 25 INCs will require 25 assessments) under 43 CFR 3163.1(a).
 - iii. Issue Notice of Proposed Civil Penalties to the RTOs and ORHs (i.e., 25 Notices of Proposed Civil Penalties).
 - iv. If compliance is not achieved by correcting the violation within 20 days of such notice under 43 CFR 3163.2(b)(1), proceed to the next step.
- f. Send RTOs and ORHs a notice of Increased Civil Penalties under 43 CFR 3163.2(b)(2) for each continued failure to comply.
 - i. If compliance is not achieved, proceed to the next step.
- g. Close out second INC(s) and enter civil penalty INC into AFMSS.
 - i. Wait 60 days from the original notice of proposed civil penalties for the order to become final. If the operator requests a State Director review, the FO must wait for the State Director to issue a final decision. If the operator submits an appeal of the final decision to the IBLA, the FO must wait for the IBLA to issue a final decision, or, if the IBLA decision is appealed to district court, for a court to issue a final judgment in favor of the Secretary of the Interior. See 43 CFR 3163.4 (Failure to pay). BIA enforcement actions on Indian leases would go through the BIA appeals process in 25 C.F.R. Part 2 to the Interior Board of Indian Appeals (IBIA).
 - ii. If compliance is not achieved, proceed to the next step.
- h. Close out the civil penalties in AFMSS.
 - i. Issue bill to the RTOs and ORHs for civil penalties.
 - ii. Proceed to enforcement against the previous interest owner(s).
- i. Final Steps against RTOs and ORHs.
 - i. Place the RTOs and ORHs on the Nationwide 17g List. For Indian leases, notify the BIA, the relevant Indian Tribe, and any individual Indian mineral owners.

- ii. Determine if a 60-day lease termination letter is appropriate.
- iii. Transmit the enforcement document(s) to the Department of Treasury using the appropriate collections procedures in Collection and Billings System (CBS).

5. Enforcement against previous RTOs and ORHs.

- a. Work with the SO to determine previous RTOs and ORHs.
 - i. All RTOs and ORHs from the well spud date or commencement of surface disturbance may be held liable for permanent plugging and abandonment of the well(s) and reclamation of the surface, as provided in 43 CFR §§ 3106.7-2 and 3106.7-6.
- b. Enter previous RTOs and ORHs into AFMSS as contacts.
 - i. Include “PRTO” for previous RTOs at the end of the party’s name.
 - ii. Include “PORH” for previous ORHs at the end of the party’s name.
- c. Issue a WO to previous RTOs and ORHs using the lease adjudication information.
 - i. A WO per well per previous RTOs and ORHs (i.e., 5 wells with 5 previous RTOs and 5 previous ORHs for a total of 50 WOs)
 - ii. If compliance is not achieved, proceed to the next step.
- d. Issue an INC for failure to comply.
 - i. Close out WOs in AFMSS.
 - ii. Issue an INC for each WO (i.e., 50 WOs will require 50 INCs).
 - iii. If compliance is not achieved, proceed to the next step.
- e. Issue a second INC for failure to comply.
 - i. Close out first INC in AFMSS.
 - ii. Issue assessment for each INC (i.e., 50 INCs will require 50 assessments) under 43 CFR 3163.1(a).
 - iii. Issue Notice of Proposed Civil Penalties (i.e., 50 Notices of Proposed Civil Penalties).
 - iv. If compliance is not achieved by correcting the violation within 20 days of such notice under 43 CFR 3163.2(b)(1), proceed to the next step.
- f. Send to the previous RTOs and ORHs a notice of Increased Civil Penalties.
 - i. If compliance is not achieved in the time required, proceed to the next step.
- g. Close out second INC and enter civil penalty INC into AFMSS.
 - i. Wait 60 days from the original notice of proposed civil penalties for the order to become final. If the operator requests a State Director review, the FO must wait for the State Director to issue a final decision. If the operator submits an appeal of the final decision to the IBLA, the FO must wait for the IBLA to issue a final decision, or, if the IBLA decision is appealed to district court, a court to issue a final judgment in favor of the Secretary of the Interior. See 43 CFR 3163.4 (Failure to pay). BIA enforcement actions on Indian leases would go through the BIA appeals process in 25 C.F.R. Part 2 to the Interior Board of Indian Appeals (IBIA).
 - ii. If compliance is not achieved, proceed to the next step.
- h. Close out the civil penalties in AFMSS.
 - i. Issue a bill to the previous RTOs and ORHs for civil penalties.
- i. Final Steps against the previous RTO/ORH.

- i. Place the previous RTOs and ORHs on the Nationwide 17g List. For Indian leases, notify the BIA, the relevant Indian Tribe, and any individual Indian mineral owners.
- ii. Determine if a 60-day lease termination letter is appropriate.
- iii. Transmit enforcement document(s) to the Department of Treasury using the appropriate collections procedures in CBS.

Bankruptcy Protection: Once a violator files for bankruptcy protection or is protected under the bankruptcy laws due to its debtor status, the BLM should not take any action, including issuing an INC or notice of civil penalties, without consulting with the Office of the Solicitor (SOL) first. The BLM needs to make sure that its proposed action does not violate the Bankruptcy Code's automatic stay provision. A notice letter that simply provides notice but does not seek to collect a debt/monies owed/penalty amount/accrued interest may still be issued during a bankruptcy proceeding (submit draft notice to SOL attorney who is handling the bankruptcy case for review before issuing it to the violator).

Outside of bankruptcy, follow the applicable regulations at 43 CFR Subpart 3163.

Do not collect on a bond during a bankruptcy proceeding, until the SOL approves. If the BLM was in the process of collecting the bond when the violator filed for bankruptcy or is afforded protection under bankruptcy laws as a debtor, BLM should not take further action until it obtains SOL's legal guidance. The SOL must ensure that the bond forfeiture (including continuing to pursue one after a violator has filed for bankruptcy) does not violate the automatic stay, and potentially other Bankruptcy Code provisions.

Subsequent Actions*

1. The BLM FO will mark the status of a well as orphaned and develop cost estimates for permanent plugging and abandonment and reclamation.

- a. In the well header screen of AFMSS, mark the well status as orphaned. Refer to Attachment 1 for guidance on this AFMSS entry.
- b. Confirm that necessary access exists to the well location.
- c. Inspect the subject well sites and document the work that needs to be done. Please refer to Attachment 5 for items the BLM may need to address at the location.
- d. Prepare a cost estimate and Statement of Work (SOW) to plug the subject well(s) and/or complete necessary surface reclamation. Please refer to Attachment 5 - Estimating Costs Associated with Orphaned Well(s)
- e. Reconfirm amount of collected bond money to complete the necessary work.
- f. Coordinate with SO to confirm escrow location of collected bond.
- g. Transmit 60-day lease termination letter and last production memorandum to SO.
- h. Transmit enforcement document(s) to the Department of Treasury using the appropriate collections procedures in CBS.
- i. Transmit cost estimates and SOW to the SO to determine the appropriate mechanism to close the orphaned wellsite (contract or agreement) and to allocate/request necessary funding to close the orphaned well site.
- j. The FO should work with their SO to obtain funding to plug identified orphaned well(s).

- k. The work to be undertaken when permanently plugging, abandoning, and reclaiming an orphaned well must conform to the requirements set forth in the National Environmental Policy Act (NEPA) as discussed in the BLM's NEPA Handbook (H-1790-1). The FO must be able to demonstrate to the SO that the potential environmental impacts from the work to be undertaken is either described in an existing NEPA document, or will be assessed in a new NEPA document, and complies with all applicable NEPA requirements.

2. The BLM FO will complete the 11-factor priority scoring sheet in Attachment 4 using the following guidance:

- a. Submit one individual well priority worksheet for each orphaned well.
- b. Use only the factors that apply to the orphaned well. If a factor does not apply, the FO should assign a factor value of zero.
- c. For locations with multiple wells, each well should have its own worksheet.
- d. The weight of each factor ranges from zero to five points. The weight of each factor will depend on the potential impact the well poses to public health, safety, and the environment.
- e. For orphaned wells identified prior to the issuance of this policy, the BLM will verify that no liable parties exist. The BLM then will complete the priority determination worksheet followed by a cost estimate for permanent plugging and abandonment and reclamation.

3. The BLM FO will pursue funding for addressing orphaned well permanent plugging and abandonment and reclamation.

- a. The FO will complete Attachment 4 for each identified orphaned well and will submit Attachment 4 to the SO.
- b. The SO will evaluate the FOs submittals and prepare Attachment 6.
- c. The SO will submit Attachment 6 to the Division of Fluid Minerals (HQ-310) by October 31st annually.

The FOs and SO should use available funding or pursue end-of-year funding, and work with their appropriate state regulatory agency(s) to develop a cost share agreement to plug and reclaim identified orphaned wells.

Offices must ensure that any funding used for orphaned well plugging or reclamation includes **WBS code LX.SLOWEL0000** to systematically track the actual costs incurred by the BLM when reclaiming orphaned wells.

***Note:** Subsequent Action steps 1, 2, and 3 may occur concurrently rather than sequentially. Multiple FOs may be involved in these steps based on the well's location, ownership on the lease, and office jurisdiction.

Example of Memorandum to State Office Regarding Confirmed Orphaned Well

Memorandum

To: State Director, (Fluid Minerals Adjudication Code)

From: Fluid Minerals Field Office Operations

Subject: Identification of an Orphaned Well

Per the orphaned well instruction memorandum, this office has confirmed that the _____ well (API No. __-__-____) is orphaned. The potentially liable party/ies has/have failed to comply with the BLM's orders for it/them to permanently plug and abandon the well(s) and to reclaim the site. Accordingly, the BLM has added these entities to the 17(g) list for noncompliance. The orphaned well has a priority rating of __ for plugging and reclamation.

This office estimated the cost of permanent well plugging and abandonment to be \$_____. *(Specify how the costs was estimated in this paragraph.)*

This office estimated the cost of site reclamation to be \$_____. *(Specify how the costs was estimated in this paragraph.)*

The operator posted a bond of \$_____. *(Specify what, if anything, was done with the bond money.)*

This office does not have sufficient funding in its budget to address permanent plugging and abandonment and reclamation of the orphaned well. This office identified a need for \$_____ which is the additional funding required to permanently plug and abandon the well(s) and reclaim the location.

Please direct any questions regarding this memorandum to _____ at _____ or email _____.

Attachment

- 1 – Cost Estimate for Plugging and Reclamation
- 2 – Priority Rating for the Orphaned Well

Cc to others on the lease with all letters.