

## **Processing Drilling Without Approval (DWOA) Cases**

### Entering the well into AFMSS

Upon discovering a DWOA case, the field office (FO) must enter the well into Automated Fluid Minerals Support System (AFMSS) with DWOA preceding the well name (e.g., “Fed 2-12” is entered as “DWOA Fed 2-12”) and enter the well’s status to indicate the actual status of the well.

### Enforcement Actions

The Authorized Officer (AO) will notify the BLM’s Office of Law Enforcement and Security, Special Investigations Group.

#### Incident of Non-Compliance (INC)

The AO must issue an INC for DWOA under 43 C.F.R. § 3162.3-1(c) and an immediate assessment under 43 C.F.R. § 3163.1(b)(2). The assessment is \$500 per day, including the days the violation existed prior to discovery, not to exceed \$5,000. The INC must include corrective actions requiring the operator to submit a complete Application for Permit to Drill (APD) (if the operator had not already submitted) with all the necessary information to conduct a thorough review, including, but not limited to, the drilling plan, surface use plan, well logs, cement logs, and completion report, and establish a reasonable abatement period to submit an APD package. The INC must also include language developed in coordination with the Solicitor’s Office that states the BLM or the Department of Justice (DOJ) may pursue additional penalties. Before issuing the INC, the AO must determine if the BLM issued the operator previous DWOA violation(s). If yes, the AO will consult with the Washington’s Office Division of Fluid Minerals (WO-310) and the Department’s Debarment Program Office to determine the appropriate agency actions. If no, the AO will consult with their Solicitor’s Office to ensure the appropriate language is added to the INC, in the event there is a “Knowing and Willful” case.

#### Additional INC and Civil Penalties

In most (if not all) instances in which a lessee drilled and produced from a well without an approved APD, the operator failed to notify the BLM of the commencement of production within five (5) business days after the well begins production, in violation of regulations at 43 C.F.R. § 3162.4-1(c). The AO must issue an INC for this violation. If the BLM can show that this failure was knowing or willful, then the operator is in violation of 43 C.F.R. § 3163.2 (e)(2) and the BLM must assess civil penalties in accordance with regulations at 43 C.F.R. § 3163.2. Other INCs and/or civil penalties may apply.

#### Shut Down of Operations

In most cases, the AO should also issue an order to shut down operations as authorized under 43 C.F.R. § 3163.1(a)(3) using the *Notice to Shut Down Operation Form 3160-12* in addition to the

measures discussed above. For shut down of operations on tribal or allotted leases, the BLM must first coordinate with the appropriate tribe or with the BIA.

There are some DWOA instances where the BLM may allow some operations to continue to a limited extent. For example, if shutting down a drilling operation would pose a risk to well control, impair cementing operations, harm the reservoir, increase risk for personnel at the well site, or a risk of contamination to water aquifers, the AO might decide to shut down operations long enough to review and approve the planned casing and cementing program but then allow operations to continue until casing is set and cemented. The AO needs to document the well file with the reasons for the continued operations. A Shut Down of Operations order should remain in effect until the BLM reaches a decision on the APD.

#### Mineral Estate Partial-Federal or Partial-Indian

The above enforcement actions may not apply in situations where the mineral estate is partially Federal- or partially Indian-owned and the party conducting the drilling is not a Federal or Indian lessee. If the oil and gas estate is partially Federal- or partially Indian-owned, the owner of a partial (fractional) interest is generally considered a co-tenant with the owners of the remaining fractional interests. In most states, a co-tenant, without the consent of the other co-tenant(s), has the right to develop the oil and gas, subject to an accounting to the non-consenting mineral interest owner(s). If the party conducting the drilling is a co-tenant or lessee or contractor of a co-tenant and is *not a Federal or Indian lessee*, the drilling party's right to drill will be determined under state law.

While the state laws are not uniform, in general, if the co-tenant is allowed to drill without the consent of all mineral owners, the co-tenant is obligated to account to the Federal or Indian lessee (if the Federal or Indian Mineral interest is leased) for the share of production corresponding to the Federal or Indian ownership interest, net of the pro rata share of the costs of production. Under these circumstances, a co-tenant or its lessee or contractor *will not be required to obtain a Federal permit to drill from the BLM*. The AO should coordinate with the Solicitor's Office in situations where the mineral estate is partially Federal- or partially Indian-owned.

#### Violations of the 43 C.F.R. § 2808 regulations

There may be situations where a DWOA case includes a trespass, as defined at 43 C.F.R. § 2808.10 (e.g., road, pipeline). In these instances, the Fluid Minerals staff should coordinate with the Lands and Realty staff to provide written notification of the trespass and adjudicate the trespass case separately.

#### Processing the APD

After the operator submits an APD for the DWOA well, the FO will follow procedures described in WO IM 2013-104 for processing APDs, with some distinctions addressed below.

The FO will also review additional information including, but not limited to; the completion report (if the operator completed the well), the electric logs, and the cementing report to help identify any continued risks. If the FO review identifies any issues with the drilling plan or the existing well, the FO must assess whether those issues present a continued risk. For example, blowout prevention equipment that does not meet the standards required by Onshore Order No. 2 no longer poses a risk if the operator already finished drilling the well. Inadequate cement volumes, however, might present a continued risk. If the FO identifies any items that are a continued risk or create impacts that the operator can mitigate, they must develop the appropriate mitigation measures. If the FO determines remedial work is required to bring the well into compliance with Federal regulations, the AO must include these mitigation measures as a condition of approval of the APD. The AO must also re-evaluate the bond adequacy and consider additional amount commensurate with the increase in liability caused by actions taken by the operator.

Compliance with the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA)

The BLM and the lessee must also comply with Section 106 of the NHPA. Where appropriate, the AO may require that project work stop to allow for an assessment of the full mitigation hierarchy (avoid, minimize, and then, compensate), use of best management practices or mitigation measures that are needed for immediate protection of cultural resources. If DWOA occurs and an archaeological site is damaged, the operator will be required to conduct mitigation under NHPA.

The BLM and the lessee must also comply with Section 7 of the ESA. If the BLM determines that a species that is protected under the ESA has been impacted by a DWOA, then the Fish and Wildlife Service should be contacted to determine the appropriate mitigation measures.

Additional field assessments may need to be conducted to support civil and/or criminal penalties, if violations of the ESA, NHPA or ARPA have occurred. In accordance with Lease Form 3100-1 (1992), the *Lessee shall cease any operations that would result in the destruction of such species or objects.*

The BLM must comply with the NEPA and the Council on Environmental Quality's NEPA regulations, 40 C.F.R. § 1500-1508, even if the lessee or operator has already drilled a well. The NEPA document must analyze all direct and indirect impacts to all resources from the surface and sub-surface disturbance caused by the DWOA. The NEPA document will describe the proposed action, issues identified for analysis, alternatives to the proposed action, affected environment, and environmental effects. Alternatives to the proposed action and the mitigation measures must be alternatives and mitigation that are still available (e.g., painting facilities, reducing the disturbance footprint, plugging the well). The three possible outcomes following the analysis of the DWOA include:

1. The BLM approves the APD with no modification.

2. The BLM approves the APD with conditions of approval. Conditions of approval for the approved APD will include mitigation measures identified in the Environmental Assessment.
3. The BLM denies the APD and orders the operator to plug and abandon the well and reclaim all disturbed areas per BLM specifications

#### Approving Agreements Related to the DWOA Case

Before approving any agreements related to a DWOA case, the approving Office must consult with their State Office and the Solicitor's Office.

#### Inspections

If the lessee or operator has not finished drilling the well the FO should notify the Inspection and Enforcement (I&E) staff and rate the well as a high priority for a drilling inspection.

If the well is already producing, the FO must consider assigning the "Rating Factor" of 10.0 to the case that includes the DWOA (AFMSS Risk Strategy – Production Inspection (PI) Priority). The office must notify the I&E staff of the DWOA well for inclusion in the Production Inspection Priorities in order to determine if the production equipment used complies with BLM regulations.

The AO must instruct the operator to report oil, gas, and water production to the Office of Natural Resources and Revenue (ONRR). Once the operator submits the Oil and Gas Operations Report to ONRR (OGOR Form ONRR 4054), the Production Accountability Technician (PAT) or Petroleum Engineering Technician (PET) should confirm the reported volumes are correct. When the FO assigns a PET/PAT to the DWOA case, either a PI or Record Review (RR) inspection must be conducted for the purpose of verifying that the production has been reported correctly. If red flags are identified during the RR, the case may be elevated to a Record Analysis (RA) inspection for in-depth review of production data.

Field office environmental/surface inspection staff, in coordination with the appropriate resource specialists, should designate and conduct high priority Environmental Surface (ES) inspections on well site and appurtenant facilities for DWOA cases to ensure operations provide for adequate protection of affected environmental resources. If sensitive environmental conditions do not exist, then the DWOA case can be downgraded from a high priority status.