

OIL CONSERVATION DIVISION
CIVIL PENALTY CALCULATION METHOD
VERSION 2021-01

I. INTRODUCTION

This Civil Penalty Calculation Method ("Method") provides guidance for calculating a civil penalty that complies with the Oil and Gas Act ("Act"), NMSA 1978, Section 70-2-1, *et seq.* The Act authorizes the Oil Conservation Division ("Division") to assess a penalty for a violation of the Act or a rule, order, permit, or authorization issued pursuant to the Act. The penalty must account for the seriousness of the violation, the good faith effort to comply, the history of noncompliance, and other relevant factors. Additionally, the penalty shall not exceed two thousand five hundred dollars (\$2,500) per day of noncompliance for each violation, unless the violation presents a risk to public health or safety or may cause significant environmental harm, or the noncompliance continues beyond the time specified in the notice of violation, whereupon the penalty shall not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. Finally, the penalty for a violation shall not exceed two hundred thousand dollars (\$200,000).

II. EFFECTIVE DATE

The Method is effective upon the signature of the Division Director. Each subsequent version of the Method supersedes all previous versions and applies to all penalties calculated after the applicable effective date.

III. OBJECTIVES

The objectives of the Method are to:

- A. ensure the fair and consistent determination of penalties;
- B. impose penalties that account for the statutory and other relevant factors;
- C. comply with the statutory limitations;
- D. deter noncompliance and encourage voluntary compliance and reporting; and
- E. ensure a level playing field for economic competitors.

Compliance is required in all circumstances. The assessment or payment of a penalty does not excuse delay in compliance or continued noncompliance with the Act or a rule, order, permit, or authorization issued pursuant to the Act.

IV. DISCLAIMER

The Method is guidance only, does not constitute final agency action, and does not create any right, duty, obligation, defense, or cause of action in any person. The Division may revise this Method at any time without public notice or comment.

V. NOTICE

The Method will be posted on the Division's website.

VI. PENALTY CALCULATION

A. GENERAL

The Method is applied by:

1. determining the Base Penalty;
2. determining the number of days of violation;
3. applying the statutory and other relevant factors; and
4. adjusting the penalty to comply with the statutory limits.

B. BASE PENALTY

A penalty may be assessed for each violation of the Act or a rule, order, permit, or authorization issued pursuant to the Act (“requirement”) that results from an independent act or failure to act. Examples of Base Penalties are found in Appendix A. A violation results from an independent act or failure to act when it requires at least one element of proof not required to prove another violation. Examples include (1) a violation of two different requirements; (2) a violation of the same requirement on different days; or (3) a violation of the same requirement at different locations. A violation does not result from an independent act or failure to act when it arises from the identical requirement in different forms, such as a requirement in a rule is repeated in a condition of a permit, or when it arises directly from and only because another requirement was violated, such as the failure to submit the results of a test occurs because the test was not performed.

The Base Penalty accounts for the seriousness of a violation, which ranges from negligible to severe. Seriousness is a measure of a violation's potential to harm public health or safety or the environment or to undermine the regulatory scheme. Actual harm is not required. A violator should not receive a benefit because its act or failure to act did not cause actual harm due to the intervention of chance or a third party.

A violation may cause both direct and indirect potential for harm. Direct potential for harm occurs when the violation involves a requirement that protects the public or environment from exposure to a contaminant or an unsafe or dangerous practice. Indirect potential for harm

occurs when the violation involves a requirement that undermines the regulatory scheme, such as failing to post financial assurance or impeding the Division's ability to enforce the rules.

The Division reserves the right to assess a penalty not to exceed ten thousand dollars (\$10,000) per day if it determines that the violation presents a risk to public health or safety or may cause significant environmental harm.

C. NUMBER OF DAYS OF VIOLATION

A penalty may be assessed for each day of violation. After the initial day of violation, the violation is presumed to occur on each subsequent day until the day for which the violator presents credible evidence demonstrating that the violation has been abated.

The Base Penalty will be assessed for the initial day of violation. For subsequent days of violation, the Division may assess the Base Penalty or some percentage thereof.

The Division reserves the right to assess a penalty not to exceed ten thousand dollars (\$10,000) per day if the noncompliance continues beyond the time specified in the notice of violation.

D. STATUTORY AND OTHER RELEVANT FACTORS

The following factors are considered to adjust the sum of the Base Penalty and multiday component. *See* Appendix B.

1. Effort to Comply

The Base Penalty may be adjusted to reflect the violator's effort to comply with the requirement. A violator is expected to cooperate with the Division to address the violation, mitigate harm from the violation, and implement policies and procedures to prevent the violation in the future. A downward adjustment may be appropriate when the violator reports the violation and takes prompt action to correct it. An upward adjustment may be appropriate when the violator fails to disclose the violation or delays action to correct it.

2. History of Noncompliance

The Base Penalty may be adjusted to reflect previous noncompliance with the Act or a rule, order, permit, or authorization issued pursuant to the Act by the violator, its parent, or a person or entity with an ownership interest. Previous noncompliance includes violations that were resolved by settlement, regardless whether the violations were denied.

3. Other Relevant Factors

a. Negligence and Willfulness

The Base Penalty may be adjusted to reflect the violator's negligence and willfulness that resulted in the violation. A violator who knew or should have known about the act or

failure to act that resulted in the violation is negligent. A violator whose deliberate or intentional act or failure to act resulted in the violation is willful.¹ Relevant considerations include:

- (1) degree of control over the act or failure to act;
- (2) foreseeability of the act or failure to act;
- (3) reasonable precautions that could have been taken to avoid the violation;
- (4) knowledge regarding the requirement; and
- (5) level of sophistication in the industry regarding the requirement.

b. Economic Impact

The Base Penalty may be adjusted to reflect the economic impact of the penalty on the violator. For a violator which is a subsidiary, joint venture, or similar entity, the economic impact on the parent or other person or entity with an ownership interest may be considered.

c. Economic Benefit

The penalty may be adjusted to recover the economic benefit obtained as a result of the violation.

E. PROCEDURE FOR RELEASES UNDER PART 29

Part 29 prohibits major and minor releases. OCD may exercise enforcement discretion to assess a reduced civil penalty for major and minor releases in the following circumstances:

1. The operator complies with applicable requirements for immediate response (19.15.29.8(B) NMAC) and reporting (19.15.29.10 NMAC);
2. no later than 60 days after discovery of the release, the operator:
 - (a) demonstrates that the release was not reasonably preventable by use of appropriate equipment and prudent management practices, or
 - (b) if the operator cannot demonstrate that the release was not reasonably preventable by use of appropriate equipment and prudent management practices,

¹ A knowing or willful violation also may be prosecuted under the criminal provisions of the Oil and Gas Act. *See* NMSA 1978, § 70-2-31(F).

demonstrates that such equipment and practices have been deployed to prevent the same or similar releases in the future; and

3. The release does not cause actual harm to public health or the environment.

F. COMPLIANCE WITH STATUTORY REQUIREMENTS

The penalty for a violation will be reduced to the statutory maximum amount if it exceeds the applicable statutory limit.

G. RECALCULATION OF PENALTY AMOUNT

The penalty may be recalculated whenever new information becomes available that affects the basis for the calculation.

H. SETTLEMENT

No credit will be given for supplemental environmental projects, donations, or similar actions.

VII. RELEASE OF INFORMATION

The Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 *et seq.*, and EMNRD policy and procedures govern the release of public records related to penalties.



Adrienne Sandoval
Director, Oil Conservation Division

Date: 8/24/2021

APPENDIX A
BASE PENALTY
FOR VIOLATIONS OF NEW MEXICO ADMINISTRATIVE CODE
TITLE 19, CHAPTER 15

CITATION	DESCRIPTION	AMOUNT (\$)
5.9(A)(4)(a)	each inactive well exceeding the threshold	250
5.9(A)(4)(b)	each inactive well exceeding the threshold	500
5.9(A)(4)(c)	each inactive well exceeding the threshold	500
5.9(A)(4)(d)	each inactive well exceeding the threshold	1000
5.11	fail to comply with term, condition, or provision of a permit, administrative order, authorization, or approval	250 500 1000 2500
7.8	fail to keep books and records	500
7.11	fail to obtain OCD approval	1000
7.13(C)	fail to submit amended form	250
7.14 to 7.42	fail to file C-115 (<i>see</i> 7.24) fail to file other form or obtain approval, as applicable	1000 500
8.9	fail to provide financial assurance per well	250
8.16	fail to report notice of bankruptcy filing	1000
9.8	fail to register as operator	2500
9.8(C)	fail to change address or contact information of operator	1000
9.9(A)	fail to file C-145	1000
9.9(B)	commence operation before approval of C-145	1000
9.10(B)	fail to file C-146	500
10	fail to remove rubbish or debris fail to comply with other safety procedure	250 1000
11	fail to comply requirement related to hydrogen sulfide gas	2500
12.9	commingling without OCD approval	1000
14.8(A)	fail to obtain permit to drill, deepen, or re-enter a well	2500
16.8	fail to post sign fail to change operator name on sign fail to comply with other requirement	500 500 250
16.9	fail to comply with requirement related to sealing off strata	1000
16.10	fail to comply with subsection (A) for casing and tubing well fail to comply with subsections (B)-(J) fail to file C-103	1000 500 250
16.11	fail to report defective casing or cementing	2500
16.12	fail to comply with requirement related to blowout prevention	1000
16.13	fail to comply with requirement related to pulling casing	1000

16.14	fail to obtain approval for unorthodox well location fail to obtain permit to directionally drill fail to test vertical or deviated well fail to comply with other requirement related to well bores	500 500 500 250
16.15	construct a horizontal well that does not comply with setbacks drill well that is projected to violate setback without OCD approval produce well drilled at unorthodox location without OCD approval fail to submit directional survey	1000 500 500 250
16.16	fail to obtain OCD approval before well completion fail to obtain OCD approval before producing from Bradenhead gas well	500 500
16.17	fail to report waste or injury to formations, intervals, casing, or casing seals	1000
16.18	fail to comply with requirement related to well and lease equipment	500
16.19	fail to file log, or completion or workover report, or FracFocus disclosure	1000
16.21	fail to file water use report, including specified information for each category of water identified in 19.15.16.21(A) NMAC	1000
17.8	construct or use pit without permit fail to register below-grade tank	1000 500
17.9 to 17.14	fail to comply with requirement related to siting, design, construction, operation, closure, reclamation, or emergency action for a pit, closed-loop system, below-grade tank, or sump, except as provided below fail to provide notice or maintain record fail to comply with sign requirement	1000 500 500
18.8	fail to comply with requirement related to gas-oil ratio or production test	250
18.9	fail to comply with requirement related to bottom-hole pressure test	250
18.10	fail to segregate common sources of supply	500
18.11	fail to meter and report casinghead gas	250
18.12	vent or flare casinghead gas after 60 days following well completion without OCD approval fail to meter and report casinghead gas produced, sold, transported, or burned	1000 500
18.13	fail to comply with requirement related to operation at below atmospheric pressure	500
18.14	fail to report produced water	500
18.15	use or accept delivery of oil through automatic custody transfer equipment without OCD approval	500

	fail to comply with other requirement related to automatic custody transfer equipment	500
18.16	fail to post sign for oil or other tanks, tank battery, or automatic custody transfer equipment fail to comply with other requirement regarding signs fail to comply with other requirement related to oil storage or retention	500 250 500
18.17	clean sediment tank, remove sediment oil from lease, or destroy sediment oil without OCD approval fail to test representative sample of sediment oil prior to transport or commingling fail to report sediment oil removed from storage fail to report emergency requiring delivery of miscellaneous hydrocarbons to treating plant or other facility	1000 500 250 250
18.19	waste of economically salvageable drip fail to file C-104 or plat before moving and selling drip fail to keep records record and maintain C-112 showing amount, source, and disposition of drip handled each month fail to file map of gas gathering and transportation system	1000 250 250 500
19.8	fail to report gas well test fail to test gas well in accordance with procedure in manual fail to meter or report produced gas fail to report well volume fail to report disconnection of well from transportation facility	250 250 250 250 250
20.9	produce unit in excess of allowable plus tolerance fail to report oil in lease storage in excess of 5 days allowable plus rerun allowable fail to maintain record of unrun allowable in lease storage	500 250 250
20.11	sell oil produced during completion, recompletion, or testing of well without OCD approval	500
20.15	fail to report recovered load oil	250
21.13	produce gas well after shut-in for purpose other than test fail to conduct test	500 250
22.12	produce hardship gas well without OCD approval	250
23.8	transport oil off-lease without OCD approval transport oil off-lease without documentation	1000 1000
25.8	fail to properly plug and abandon or approved temporarily abandon well	1000
25.9	fail to give notice related to plugging well	500
25.10	fail to comply with requirement related to plugging well	1000
25.11	fail to report plugging well	500
25.13	commence temporary abandonment procedure without OCD approval	500
25.14	fail to comply with requirement related to mechanical integrity	500

	test	
26.8	inject produced water or other fluids without permit	2500
26.9	fail to prevent leakage from injection well	1000
26.10	fail to comply with requirement related to operation and maintenance of injection well	1000
26.11	fail to comply with requirement related to test of injection well	500
26.12	fail to comply with requirement related to commencement, discontinuance, or abandonment of injection well	250
26.13	fail to report regarding injection well	250
29.8(A)	minor or major release	1500
29.8	fail to comply with an initial response requirement	1000
29.9 to 29.10	fail to notify OCD within 24 hours of discovery	2500
	fail to file complete and accurate C-141 for release	2500
	fail to send complete and accurate C-141 for release to land management agency	1000
29.11	fail to submit release characterization	1000
	fail to submit additional information requested by OCD	500
29.12	fail to submit remediation plan	1000
	fail to comply with remediation plan	1000
	fail to submit C-141 for closure	500
	fail to notify OCD before final sampling	250
	fail to comply with other requirement related to closure	1000
	fail to notify OCD regarding completion of reclamation or revegetation	250
	fail to comply with other requirement related to restoration, reclamation, or revegetation	1000
30.11	fail to comply with abatement plan	1000
	fail to submit financial assurance for abatement of facility operating under discharge plan	500
	fail to give notice to transferee and OCD	250
30.13	fail to submit abatement plan	1000
30.14	fail to allow OCD to enter facility, collect samples, inspect or copy records, or inspect works or equipment	2500
34.8	dispose produced water without OCD's prior approval of C-147	2500
	handle, store or dispose produced water in a manner not authorized by OCD rules (including disposal on the surface, failure to protect public health, environment and fresh water resources, or inconsistent with H ₂ S or NORM requirements)	2500
	fail to obtain permit from New Mexico Environment Department for a use regulated under Water Quality Act	2500
34.9	fail to register or permit a recycling facility	1000
	fail to keep accurate records	500
	fail to file C-148 for volumes of water	250

	fail to remove all fluids after cessation of operation	1000
34.10	fail to register recycling containment operate without valid registration fail to comply with requirement for siting, design, construction, operation, closure, reclamation, and financial assurance	2500 1000 1000
34.17	transport produced water, drilling fluid, or liquid oilfield waste without C-133 approved by OCD fail to maintain copy of approved C-133 in transporting vehicle allow removal of produced water, drilling fluid, or liquid oilfield waste from lease or field facility by person not possessing approved C-133	2500 1000 1000
34.20	dispose produced water or other oil field waste in a manner prohibited by OCD rules	2500
34.21	fail to comply with notice to remove recycling facility or recycling containment	1000
35.8	dispose certain oil field waste without OCD approval	1000
35.10	abandon pipeline containing NORM without OCD approval fail to notify OCD prior to abandoning pipeline	1000 500
35.11	dispose NORM in commercial or centralized surface waste facility without OCD approval	1000
35.12 & 13	dispose NORM in well without OCD approval fail to comply with requirement for disposing NORM	1000 1000
36.8	operate a surface waste management facility without permit	2500
36.11	fail to maintain financial assurance fail to notice regarding changes affecting financial assurance fail to report notice of bankruptcy filing	1000 500 1000
36.13	fail to comply with requirement related to records or signs at surface waste management facility fail to comply with other requirement	250 1000
36.14	fail to comply with requirement for landfill	1000
36.15	fail to comply with requirement for landfarm	1000
36.16	fail to register small landfarm fail to comply with requirement related to records or signs fail to comply with other requirement	1000 500 1000
36.17	fail to comply with requirement for evaporation, storage, treatment, or skimmer pond	1000
36.18	fail to comply with notice regarding closure fail to comply with other requirement related to closure	250 1000
37.8	fail to file C-113 (refinery)	250
37.9	fail to file C-111 (gasoline, cycling, or other plant)	250
39	fail to comply with requirement	500
Other	any violation not specified in Appendix AOCD will determine the Base Penalty on a case-by-case basis.	250/ 500/1000/2500

APPENDIX B

ADJUSTMENT FACTORS

TOTAL ADJUSTMENT = SUM OF ADJUSTMENT FACTORS + 1

EFFORT TO COMPLY	
Self-Reported Violation	-0.4
Compliance Prior to NOV Deadline	-0.2
Cooperation and Compliance	0.0
Minimal Cooperation and Compliance	0.3
No Cooperation or Compliance	0.6
HISTORY OF NONCOMPLIANCE	
No history	0.0
Different requirement	0.2
Same or similar requirement	0.4
Substantial history	0.6
NEGLIGENCE AND WILLFULNESS	
None	0.0
Negligence	0.2
Gross Negligence	0.4
Probable or Actual Willfulness	0.6
ECONOMIC IMPACT	
Less than 50 wells or gross sales less than \$500,000	0.0
51-100 wells or gross sales between \$500,000-\$5,000,000	0.2
101-500 wells or gross sales between \$5,000,000-\$10,000,000	0.4
More than 500 wells or gross sales more than \$10,000,000	0.6