

## FINAL

### RULE A-5 ENFORCEMENT PROCEDURES

- a) Definitions:
- 1) “Commission” shall mean the full Arkansas Oil and Gas Commission, consisting of nine members, on which the Director serves as secretary, but is a non-voting member.
  - 2) “Director” shall mean the Commission Director of Production and Conservation.
  - 3) “Regulated Entity” shall mean all operators, owners, producers or persons subject to Commission regulatory authority in accordance with Ark. Code Ann. § 15-71-110 or § 15-76-302.
  - 4) “UIC” shall mean the Underground Injection Control program of the Federal Safe Drinking Water Act.
- b) Any regulated entity engaged in the drilling, operation or plugging of any production, injection, or other well or drill hole regulated by the Commission; or the operation of any crude oil or gas production or injection facility; or the operation of any natural gas line or crude oil flowline regulated by the Commission; or transporter by tank truck of any oilfield production or completion fluid; or seismic activity; or any other activity regulated by the Commission, is subject to this rule for violation of any oil, gas and/or brine statutes, or any rule, regulation, order, or permit condition of the Commission.
- c) In accordance with Ark. Code Ann. § 15-72-103(c) or § 15-76-303(~~bc~~), any person knowingly and willfully aiding or abetting any other person in the violation of any statute relating to the conservation of oil, gas and/or brine, or the violation of any provision of the state oil, gas and/or brine statutes, or any rule, regulation, order, or permit condition, shall be subject to the same penalties as are prescribed herein for the regulated entity.
- d) Notice of Non-Compliance
- 1) A Notice of Non-Compliance may be issued, prior to the issuance of a Notice of Violation as specified in subparagraph (e) below, when any regulated entity is in non-compliance with any requirement of the Arkansas oil, gas and/or brine statutes, or rules, regulations, orders, or any permit condition, and:
    - A) That the non-compliance was not caused by the regulated entity’s deliberate action;

- B) That any action necessary to abate the non-compliance was commenced immediately and was or will be completed within a specified date certain, as established by the Director, or his or her designee, not to exceed thirty (30) days from the date of the determination that the regulated entity was determined to be in non-compliance; and
  - C) That the non-compliance has not caused and cannot reasonably be expected to cause significant environmental harm or damage to property.
- 2) The notice of non-compliance shall be documented in writing and, delivered via first class mail to the regulated entity or to the regulated entity's representative as reported on the AOGC Form 1 Organization Report. The written notification shall indicate the nature and circumstances of the non-compliance, and the time within which and the means by which the non-compliance is to be abated.
  - 3) If abatement was not completed as specified in the written notification, the Director, or his or her designee, may issue a formal Notice of Violation in accordance with subparagraph (e) below.
  - 4) The provisions of this subparagraph (d), shall not apply to the following types of incidents, which require a Notice of Violation to be issued in accordance with subparagraph (e) below:
    - A) Commencing any regulated activity specified in paragraph (b) above prior to issuance of the appropriate Commission permit;
    - B) Operating an annular or casing injection/disposal well or a well with pressure on the annulus;
    - C) Failure to maintain required performance bond or pay annual well fees;
    - D) Failure to establish mechanical integrity on any UIC well prior to operation, or failure to repair any UIC well following failure of mechanical integrity;
    - E) Commencing any work or activity on a well or its related production facility or well site that has been placed in the Abandoned and Orphan Well Plugging Program;
    - F) Failure to provide emergency response for a crude oil or saltwater spill;

- G) Improper discharge or disposal of produced fluids; or
  - H) Operating a well in violation of spacing requirements or permit conditions.
- e) Notice of Violation(s)
- 1) A Notice of Violation may be issued, by the Director or his or her designee, when any regulated entity is in violation of any requirements of the Arkansas oil, gas, and/or brine statutes, or rules, regulations, orders, or any permit conditions of the Commission. A regulated entity shall not be held responsible by the Commission for violations of oil, gas and/or brine statutes, or rules, regulations, orders or permit conditions of the Commission in the absence of the issuance of an underlying Notice of Violation.
  - 2) The Notice of Violation shall be in writing and contain:
    - A) A statement regarding the nature of the violation, including a citation to the specific section of the oil, gas and/or brine statutes, or any rule, regulation, order or permit condition of the Commission alleged to have been violated;
    - B) The suggested action needed to abate the violation including any appropriate remedial measures to prevent future violations;
    - C) The time within which the violation should be abated; and
    - D) A notice of any civil penalties, as specified in subparagraph g) below, the Director will request to be issued by the Commission.
    - E) A notice of any civil penalties for violations of natural gas line regulations under United States Department of Transportation, Office of Pipeline Safety jurisdiction in accordance with appropriate federal regulation specified in 49 CFR 190.223, the Director will request to be issued by the Commission.
  - 3) The Notice of Violation may include a well, lease, or unit cessation requirement for the following types of violations:
    - A) Violation of production allowable;
    - B) Failure to maintain required well specific performance bond;

- C) Drilling or operating, without a Commission permit or permit transfer, a well required to be permitted or transferred;
  - D) Operating a well that has been determined to be abandoned by the Commission;
  - E) Failure to plug a leaking well or a well ordered to be plugged by the Commission;
  - F) Operating an annular or casing injection/disposal well;
  - G) Operating a UIC Class II or V well with a failed mechanical integrity test;
  - H) Operating a UIC Class II or V well with pressure on the annulus indicating tubing and/or casing failure;
  - I) Failure to provide emergency response or remediate a crude oil or produced water spill; or
  - J) Improper disposal or discharge of produced fluids;
- 4) The Notice of Violation may also include a state-wide cessation requirement for the following types of violations:
- A) Failure to maintain required blanket financial assurance as specified in General Rule B-2;
  - B) Failure to pay annual well fees as specified in General Rule B-2; or
  - C) Failure to pay any monies due the Abandoned and Orphaned Well Plugging Fund as specified in General Rule G-1;
- 5) The Director, or his or her designee, shall send via certified mail the Notice of Violation to the regulated entity, or the regulated entity's representative as reported on the AOGC Form 1 Organization Report, charged with the violation(s), or provide personal delivery of a copy of the notice to the regulated entity, or the regulated entity's representative.
- 6) The regulated entity charged with the violation(s) may request a Director's Review of the Notice of Violation and provide the Director, in writing, any information in mitigation of the violation(s) on or before thirty (30) calendar days of the mailing or personal delivery of the original Notice of Violation, unless a shorter time period is specified in the Notice of

Violation for instances where there is a condition that creates an imminent danger to the health or safety of the public or threatens significant environmental harm or damage to the property. Such written information may include a proposed alternative to the required action needed to abate the violation(s). Upon receipt of such information from the regulated entity, the Director, shall conduct a review.

- 7) During the review, the Director may consider any of the following criteria in reaching a Final Director's Decision regarding the violation(s):
  - A) The regulated entity's history of previous violations, including violations at other locations and under other permits;
  - B) The seriousness of the violation, including any irreparable harm to the environment or damage to property;
  - C) The degree of culpability of the regulated entity; and
  - D) The existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by the regulated entity.
  
- 8) Upon completion of the review, the Director shall issue a Final Director's Decision to:
  - A) affirm the violation; or
  - B) vacate the violation; or
  - C) amend or modify the type of violation and abatement requirements specified in the violation; or
  - D) establish probationary or permanent modification or conditions to any underlying permit related to the violation, which may include special monitoring or reporting requirements; or
  - E) enter into a settlement agreement to extend the amount of time provided to complete remedial actions necessary to abate the violations or reduce the amount of the requested assessed civil penalty.
  
- 9) The Final Director's Decision shall be delivered to the regulated entity, or the regulated entity's representative, as reported on the AOGC Form 1 Organization Report, via first class mail. The Final Director's Decision may be appealed to the Commission by filing an application in accordance with General Rule A-2, A-3, and other applicable hearing procedures. The

application to appeal the Final Director's Decision is required to be received by the Director within thirty (30) days of the mailing of the Final Director's Decision. The application shall state the reason for the appeal and shall be scheduled to be heard by the Commission in accordance with General Rule A-2, A-3, and other applicable hearing procedures.

- 10) A Notice of Violation for which a Director's Review has not been requested, shall become a final administrative decision of the Commission thirty (30) days following the mailing of the Notice of Violation.
  - 11) A Final Director's Decision not appealed to the Commission within thirty (30) days of mailing of the Final Director's Decision shall become a final administrative decision of the Commission.
  - 12) All violations specified in a Notice of Violation(s) which have become a final administrative decision in accordance with subparagraph e) 10), a Final Director's Decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 11), or by Order of the Commission, shall be fully abated within the time frame specified in the original Notice of Violation, Final Director's Decision, or Order of the Commission. No further permits or authorities shall be issued to the regulated entity until all outstanding violations specified in a Notice of Violation which has become a final administrative decision in accordance with subparagraph e) 10), a Final Director's Decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 11), or by Order of the Commission have been fully abated.
- f) In addition to the issuance of a Notice of Violation(s), the Director may initiate further enforcement proceedings, as provided for in statute, as follows:
- 1) Assessment of a civil penalty as provided in Ark. Code Ann. § 15-71-114, § 15-72-103, § 15-72-202, or § 15-76-303;
  - 2) The revocation of a certificate of clearance on a state-wide basis, as provided for in Ark. Code Ann. § 15-71-110 (11);
  - 3) The filing of a civil complaint in a court of competent jurisdiction in the County where the violation occurred, as provided for in Ark. Code Ann. § 15-72-108 or § 15-76-304;
  - 4) The filing of a criminal complaint in any court of competent jurisdiction, as provided for in Ark. Code Ann. § 15-71-114, § 15-72-104 or § 15-76-303.
- g) Civil Penalties

- 1) The Director shall determine whether to request the assessment of civil penalties based on failure to comply with the applicable abatement requirements. If a penalty is requested by the Director, the Director or his designee may file an application, in accordance with General Rule A-2, A-3, and other applicable hearing procedures, to request the issuance of the requested civil penalty. The Director's requested penalty shall be computed as provided in subparagraphs (g) (2) through (5) below.
- 2) Administrative violations, defined as failure to file required reports and forms and to provide required notices (excluding spill notice), including, but not limited to regulated activities such as, the failure to file production and well reports or other reports required by Commission rules, regulations, orders or permit conditions; failure to notify the Commission before the setting of surface casing, or the plugging of a well; failure to maintain required performance bond in force for the wells under permit; or pay annual well fees within the specified time. The Director may request the assessment of up to \$1000 per administrative violation and up to \$1000 per day for each day the violation remains unabated after the specified compliance date. The per administrative violation civil penalty request shall be calculated as follows:
  - A) No previous violation of the same rule: \$250. One previous violations of the same rule: \$500. Two or more previous violations of the same rule: \$1000.
  - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding three full calendar years before the issuance of the violation.
- 3) Operating violations, defined as failure to maintain compliance with Commission rules on well drilling and operation, and production facility, pipeline and seismic operations and/or commencing operations requiring a permit prior to issuance of the required permit. These operations include, but are not limited to regulated activities such as, operating a well or natural gas line system without the proper permit or transfer of ownership, failure to maintain a well or crude oil flow line in a leak-free condition, failure to comply with non-jurisdictional natural gas line requirements, failure to notify of a spill occurrence, failure to maintain containment dikes. Multiple incidents of the same violation against a regulated entity on the same occasion shall not be considered separate violations. The Director may request the assessment of up to \$2500 per operating violation and up to \$2500 per day for each day the violation remains unabated after the specified compliance date, with the exception that operating violations as specified in Ark. Code Ann. § 15-72-202, 15-71-114 and 15-76-303 are limited to a maximum of \$1,000 per operating

violation. The per operating violation civil penalty shall be calculated as follows:

- A) No previous violation of the same rule \$500. One previous violation of the same rule, \$750; two or more previous violations of the same rule, \$1000.
  - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding three full calendar years before the issuance of the violation; plus
  - C) If the violation had a low degree of probability to cause environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$250; or, if the violation had a high degree of probability to cause environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$500; or, if the violation caused environmental impact to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife, add \$1000, or
  - D) If the violation created a hazard to the safety of any person, such as the contamination of a potable water well or emission of hydrogen sulfide gas, add \$2000.
- 4) Except as limited in Ark. Code Ann. § 15-72-202, 15-71-114 and 15-76-303, significant violations may result in the issuance, by the Director or his or her designee, of a civil penalty of up to \$2500 per violation for the types of violations specified in this subparagraph and up to \$2500 per day for each day the violation. Civil penalties shall be assessed at the time of the issuance of Notice of Violation for the following types of violations: failure to comply with United States Department of Transportation, Office of Pipeline Safety jurisdictional natural gas line requirements, operating a UIC well without a permit, operating an annular or casing injection/disposal well, operating a UIC well prior to establishing mechanical integrity, operating a UIC well with a failed mechanical integrity test, operating a UIC well with pressure on the annulus, failure to provide emergency response or remediate a crude oil or produced water spill; or the improper disposal or discharge of produced fluids shall result in a request computed as follows:
- A) An initial amount of \$1000; plus
  - B) One or more previous violations of the same type: add \$500 per violation; plus

- C) If the violation caused environmental impact to surface water, ground water or wildlife: add \$1000, or if the violation created a hazard to the safety of any person, such as the contamination of a potable water well or emission of hydrogen sulfide gas: add \$1500.
- h) All civil penalties assessed and paid to the Commission shall be deposited in the Commission operating fund. Additionally, all civil penalties assessed and paid, for violations specified in Ark. Code Ann. § 15-72-202 shall be turned into the general fund of the county where the violation occurred to be used on roads, bridges, and highways at the discretion of the county court.

(Source: new rule September 14, 2008)

## FINAL

### RULE D-17 - GENERAL RULE FOR THE REGULATION OF NATURAL GAS PIPELINES LINES

a) Definitions

- 1) Jurisdictional Pipeline means any onshore pipeline regulated under Federal Regulation 49 CFR Part 192, which transports natural gas from the well to the custodial transfer meter.
- 2) Non-Jurisdictional Pipeline means any onshore pipeline, including but not limited to flowlines, production lines, or gathering lines, not under jurisdiction of Federal Regulation 49 CFR Part 192 which transports natural gas from the well to the custodial transfer meter.
- 3) Perennial Stream means: a stream that has flowing water year-round during a typical year, the water table is located above the stream bed for most of the year, groundwater is the primary source of water for stream flow, and runoff from rainfall is a supplemental source of water for stream flow.
- 4) Pipeline Operator means any person who owns or operates and is responsible for the construction, operation and maintenance of a pipeline which transports natural gas from the well to the custodial transfer meter.

b) Applicability

Every Pipeline Operator transporting natural gas by pipeline from the well to the custodial transfer meter is subject to the applicable provisions of this rule. Natural gas pipelines from the well, to a custodial transfer meter located on the well pad, are exempt from the provisions of this rule.

c) General Requirements for all Jurisdictional and Non-Jurisdictional Pipelines:

- 1) Each pipeline operator shall apply, on a form prescribed by the Director, for an initial statewide permit to construct and operate a natural gas pipeline system. The initial permit application shall contain at a minimum the following:
  - A) Name, address and contact information for the gas pipeline operator;
  - B) Map, or other media acceptable to the Director, showing the location of all natural gas pipelines from the producing wells through any production or processing equipment or treating facility, and to the custodial transfer meter, including all public road, railroads and perennial stream crossings;
  - C) A determination as to what pipelines are jurisdictional;
  - D) Submission of the applicable permit fee as follows:

- (i) no permit fee is required for 1 mile or less, provided the pipeline does not cross a public road, railroad or perennial stream.
    - (ii) less than 50 miles of pipeline, including pipelines in (c)(1)(D)(i) above which cross public roads, railroads or perennial streams - \$500.00
    - (iii) 50 miles to less than 100 miles of pipeline - \$1,500.00
    - (iv) 100 miles to less than 250 miles of pipeline -\$2,500.00
    - (v) greater than 250 miles of pipelines - \$5,000.00
  - 2) Each pipeline operator shall be required to submit an annual permit renewal by January 31 of each year.
  - 3) The renewal permit shall include a revised pipeline map showing any new pipeline additions constructed during the previous year, an annual report on a form prescribed by the Director, along with a permit renewal fee in accordance with paragraph (c)(1)(D) above. The renewal permit shall also contain the operator's determination as to which pipelines are jurisdictional.
- d) Requirements for all Non-Jurisdictional Pipelines
- 1) Each pipeline operator shall submit a Notice of Construction or Repair, on a form prescribed by the Director, prior to commencing construction or within 48 hours after completing repair, for each segment or project length of pipeline constructed during the year. The Notice shall indicate the location and extent of the pipelines to be constructed or repaired.
  - 2) Each pipeline operator shall submit a Notice of Incident, on a form prescribed by the Director for each incident of release due to pipeline failure which results in a total cost of repair, including the value of natural gas lost, of fifty thousand dollars (\$50,000) or more.
  - 3) All pipelines crossing any streams or stream bed shall comply with applicable state and federal rules and regulations. Additionally, any stream crossing of perennial streams, constructed on or after December 16, 2007, shall maintain a minimum of fifty (50) feet of undisturbed stream bank for the protection of the stream.
  - 4) Each pipeline operator shall place and maintain appropriate signage at all pipeline crossings of public roads and railroads. The marker should include the words "Warning", "Caution" or "Danger" followed by the words "Gas Pipeline" along with the operators name and telephone number where the operator can be reached at all times.
  - 5) Each pipeline operator which operates pipelines within the limits of any incorporated or unincorporated city, town or village, shall be a member of a qualified one-call program.

- 6) All pipelines, constructed after the effective date of this rule, shall be buried at least twenty-four (24) inches below ground surface, or in accordance with other applicable state or federal laws.
- e) Requirements for Jurisdictional Pipelines
- 1) All jurisdictional pipelines shall be in compliance with construction, operation and maintenance requirements contained in Federal Regulations 49 CFR Part 192 Subpart A thru Subpart O which are herein incorporated by reference.
  - 2) All jurisdictional pipelines shall be subject to the applicable enforcement provisions of Federal Regulation 49 CFR Part 190 which are herein incorporated by reference.
  - 3) All jurisdictional pipelines shall be subject to the applicable incident and other reporting requirements contained in Federal Regulation 49 CFR Part 191 which are herein incorporated by reference.
  - 4) All pipeline operators of jurisdictional pipelines shall be subject to the applicable drug and alcohol testing requirements contained in Federal Regulation 49 CFR Part 199 which are herein incorporated by reference.
  - 5) All jurisdictional lines which contain over 100 PPM hydrogen sulfide shall also be subject to the provisions of subparagraph (f) below, unless the provisions of subparagraph (f) are less stringent than any applicable requirement of this subparagraph (e).
- f) Additional Requirements for All Pipelines Containing 100 PPM or Greater Hydrogen Sulfide.
- 1) Construction Requirements:
    - A) All pipeline materials must be chemically compatible with any natural gas transported by the pipeline and such pipeline shall maintain structural integrity under the anticipated temperatures and environmental conditions for which the pipeline may be exposed, and
    - B) All piping must be of sufficient thickness or must be installed with adequate protection to withstand anticipated external pressures and loads that will be imposed on the pipe after installation, and
    - C) No pipeline may be operated after new construction, repair or relocation until it has been successfully tested for at least one hour with a minimum pressure of 1.25 times the maximum operating pressure to substantiate the maximum operating pressure with all leaks located and eliminated, and
    - D) All metallic pipelines must be adequately protected from both external and internal corrosion and the operator is required to submit an annual report, by March 31<sup>st</sup> of every year for the preceding calendar year, of the

effectiveness of the company's corrosion program, with such protection efforts performed by an independent contractor specializing in the control of corrosion.

- 2) Each operator shall prepare, maintain and follow for each pipeline, a manual of written procedures for conducting operations, maintenance activities and emergency response. This plan must be reviewed and updated as often as necessary. A review must be conducted annually but not to exceed 15 months between reviews.
- 3) Each operator shall have a procedure for continuing surveillance of its facilities and take appropriate action regarding, failures, corrosion and operating conditions.
- 4) Each operator must develop and carry out a damage prevention program to prevent damage to its pipelines from excavation activities. Each operator shall be a member of the state wide "one-call" system. The plan must have a method of communicating to excavators in the area where the pipeline is located of the existence of the pipeline, provide a means of receiving and recording notification of planned excavation activities, provide for temporary marking of the pipeline and inspection of the pipeline when the operator has reason to believe it could be damaged by excavation activities.
- 5) Each operator shall establish written procedures to minimize the hazards resulting from a gas pipeline emergency event. Each plan must include at a minimum:
  - A) Methods of receiving and identifying an event which requires immediate response; and
  - B) Methods for establishing and maintaining adequate communication with appropriate emergency response and public officials; and
  - C) Methods for determining safe areas related to evacuation and security during an event; and
  - D) Methods for training employees of their duties and responsibilities during an event.
- 6) Each operator shall develop and implement a written continuing public awareness plan which includes provisions for educating the public, appropriate governmental organizations and persons engaged in excavation activities. Use of a one-call notification prior to conducting excavation, possible hazards associated with unintended releases from the pipeline, physical indications that such a release may have occurred, steps that should be taken for the safety of the public, procedures for reporting such an event. The program must include activities to advise affected municipalities, schools, businesses and residents along the pipeline right of way. The program and media used must be as comprehensive as necessary to reach all areas in which the operator shall transport gas.

- 7) Each operator shall establish procedures for analyzing accidents and failures for the purpose of determining the cause of the failure and minimizing the possibility of subsequent reoccurrence.
- 8) Each operator shall not operate any pipeline at a pressure that exceeds the documented pressure at which the pipeline may be safely operated.
- 9) Each operator shall have a patrol program to observe surface conditions on and adjacent to its pipeline right-of-way for indications of leaks, construction activity, erosion, condition of signage, conditions at public road and railroad crossings and other factors affecting safety and operation of the pipeline. Patrols shall be conducted and documented at least twice each calendar year, not to exceed 7 ½ months between patrols.
- 10) Each operator shall maintain appropriate pipeline markers at all public road and railroad crossings and along the pipeline at intervals necessary to identify the location of the buried pipeline. The marker should include the words "Warning", "Caution" or "Danger" followed by the words "Gas Pipeline" along with the operators name and telephone number where the operator can be reached at all times.
- 11) Each pressure relieving device in a compressor station, pressure limiting station or regulator station must be inspected, tested and operated at the pipelines maximum operating pressure, once each calendar year and not to exceed 15 months to determine proper operation.
- 12) Each remote controlled shutdown device must be inspected and tested once each calendar year and not to exceed 15 months to determine proper operation.
- 13) Each line valve that serves to block a segment of pipeline and or might be used in an emergency, must be inspected and partially operated once each calendar year and not to exceed 15 months.
- 14) Each operator shall maintain records associated with operation and maintenance of the pipeline required in this section.
- 15) Each pipeline abandoned in place must be disconnected from all sources of gas, purged of gas, filled with freshwater or inert material and sealed at both ends. When a pipeline is being purged all efforts must be taken to (i) prevent the formation of a hazardous mixture of gas and air, (ii) ensure that all safety equipment necessary is present, (iii) remove all non-essential persons from the area and (iv) ensure the public is adequately protected.

(Source: (Order No. 90-97) October 28, 1997; amended December 16, 2007; amended September 14, 2008)