



U.S. Department of the Interior

# Office of Natural Resources Revenue (ONRR)

## Office of Enforcement Civil Penalties for Reporting Errors

Presented by:

*Sarah Inderbitzin, Program Manager, Office of Enforcement*

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*Industry Compliance*

• *Accurate Revenues and Data* • *Professionalism & Integrity*



# Civil Penalty Assessment Process

## *How do we find out about reporting errors?*

- Enforcement begins when the Office of Enforcement (OE) receives a referral from ONRR employees, states, Tribes, outside entities, or through its own initiatives

## *How do we investigate reporting errors?*

- OE investigates to determine reason for violation – this helps determine whether the violation is “knowing or willful”
  - Interviews source of referral and other witnesses including company
  - Checks database for priors
  - OE profiles the company via Internet, “Public” Databases, Data Warehouse, OE Tracking, LR 2000, and TIMS (for ownership, size, working interests, priors, financial status, etc.)



# Civil Penalty Assessment Process

## *What happens after we investigate reporting errors?*

- OE either informally resolves, issues a Notice of Noncompliance (NONC), or an immediate liability Civil Penalty Notice (from up to \$500 to as much as \$25,000 per day per violation). OE will:
  - Select and apply the standard assessment (rate) or justify departure
  - Each 2014 line or OGOR well line you do not submit or correct may be a separate violation
  - Count violation days from day of NONC receipt or when knowing or willful violations began
  - Apply the rate to the days until compliance
  - Conduct a pre-penalty teleconference with company
  - Issue a penalty notice



# Civil Penalty Assessment Process

*Will OE notify me of a reporting error in advance so I can correct it before OE assesses a penalty?*

- **30 C.F.R. § 1210.30** gives you 30 days to correct any reporting errors you discover. Failure to do so may result in a NONC or a civil penalty for maintaining incorrect information
- **NONCs** give you a 20-day “cure period” to correct the specified errors we discover without penalty
  - **Civil penalties for failure to cure a NONC** may be as much as \$500 per violation per day for the first 40 days, escalated to as much as \$5,000 per violation per day after 40 days
- **Knowing or willful Civil Penalty Notices** unlike NONCs, do not give you an advance opportunity to correct prior to assessment of penalties of as much as \$25,000 per violation per day



# NONC and Civil Penalty Hearing Process

## *Who in the Department conducts NONC and Civil Penalty Hearings?*

- The hearing process for ONRR NONCs and civil penalty assessments is to an Administrative Law Judge (ALJ) in the Office of Hearings and Appeals Hearings Division, not the Interior Board of Land Appeals (IBLA), and is a full-blown administrative hearing with associated discovery and trial procedures. An ALJ conducts the hearing and issues a decision. 30 C.F.R. § 1241.72

## *Can I appeal an ALJ's decision?*

- If you are adversely affected by the ALJ's decision, you may appeal that decision to the IBLA under § 1241.73





# NONC and Civil Penalty Hearing Process

## *How do I appeal an NONC?*

- Recipients of NONCs issued under 30 C.F.R. § 1241.51 and associated civil penalties under § 1241.53 may request a hearing on the merits of the notice of noncompliance, § 1241.54, and/or on the amount of the penalty under § 1241.56
  - You must file requests for a hearing on the merits of an NONC within 30 days after you receive the NONC
  - You must file requests for a hearing on the amount of the civil penalties assessed for not complying with the NONC within 10 days after you receive the civil penalty notice



# NONC and Civil Penalty Hearing Process

## *How do I appeal a Knowing or Willful Civil Penalty Notice?*

- Recipients of knowing or willful notices of civil penalties issued under § 1241.60 may request a hearing on the merits of the civil penalty notice, § 1241.62, and/or on the amount of the civil penalty under 30 C.F.R. § 1241.64
  - You must file requests for a hearing on the merits of a knowing or willful civil penalty notice within 30 days after you receive the civil penalty notice
  - You must file requests for a hearing on the amount of the civil penalties assessed within 10 days after you receive the civil penalty notice



# What types of royalty issues and practices are OE currently penalizing?

*Any the Federal Oil and Gas Royalty Management Act authorizes.* This includes:

- **Regulatory violations** - unresolved reporting errors including incorrect agreement or property = **NONC**
- **False information** (knowing or willful submission or maintenance of false, misleading, or inaccurate (incorrect) information submitted)
  - **Maintenance** – means you provided information to an ONRR data system, or otherwise to ONRR for ONRR’s official records, later learn the information you provided was false, inaccurate, or misleading, and do not timely correct that information or other information you provided to ONRR you know contains the same false, inaccurate, or misleading information. *See Statoil USA E&P Inc., No. ONRR 2012-03, Case No. CP11-098 (Dep’t of the Interior Mar. 7, 2013) (order)*
  - **Submission** – means that you provide information to an ONRR data system, or otherwise to ONRR for ONRR’s official records, and you knew, or should have known, the information you submitted was false, inaccurate, or misleading at the time you submitted the information





# What types of royalty issues and practices are OE currently penalizing?

## *What is an example of “maintenance” of false, misleading, or inaccurate (incorrect) information?*

- Assume you unknowingly submit Forms MMS-2014 (2014) to ONRR with incorrect property or agreement numbers for 2008 to 2009 for gas produced from leases in State X
- Further, assume ONRR informs you in January 2010 of the incorrect property or agreement number and you fail to timely correct the information on the 2014s you provided to ONRR for years 2008 through 2009 for gas produced from leases in State X
- In that case, we would consider you to have knowingly or willfully maintained false, inaccurate, or misleading information on the 2014s you provided to ONRR for years 2008 through 2009 for gas produced from leases located in State X and you would be subject to a knowing or willful civil penalty
- Also, if you knew you also had provided other 2014s to ONRR for the years 2008 through 2009 for gas produced from leases in State Y with the same inaccurate information, and fail to correct those 2014s, we would consider you to have knowingly or willfully maintained false, inaccurate, or misleading information on the 2014s for the years 2008 through 2009 for gas produced from leases in State Y. Thus, you would be subject to an additional civil penalty for those violations



# What types of royalty issues and practices are OE currently penalizing?

*What is an example of “submission” of false, misleading, or inaccurate (incorrect) information?*

- Assume that, like the example above, you provide to ONRR 2014s with an incorrect property or agreement number for the years 2008 through 2009
- Further, assume that ONRR informs you of the incorrect product code in January 2010 and yet you continue to provide 2014s to ONRR with an incorrect product code after January 2010
- In that case, we would consider you to have knowingly or willfully submitted false, inaccurate, or misleading information and you would be subject to a civil penalty assessment



# What does “knowing or willful” mean?

***Knowing or willful is a very broad term and does not require proof of specific intent to defraud or a correlation to nonpayment of royalties.***

***Includes:***

- Actual knowledge of the falsity of the information
- Reckless disregard of the truth or falsity of the information
- Deliberate ignorance of the truth or falsity of the information

***Indicators:***

- Intentional or accidental admission
- Submission of contradictory documents
- Inaction on orders, unfulfilled promises to correct errors, or repeated “mistakes”
- Adverse inspection/audit report findings which company has failed to resolve
- Complaints from other agencies or the public



# How does company size impact the penalties that are assessed?

*The size of the penalty assessed is lower for very small and small companies.*

- Our civil penalty regulations at 30 C.F.R. 1241.70, provide that when we determine the amount of a civil penalty, we will consider whether the company is a “small business”
- We follow Small Business Administration rules regarding company size. “Very small” means less than 25 employees, “small” means up to 500 employees, above 500 is “large”



# When does an Order have civil penalties tied to it?

*An Order may result in civil penalties for a false information violation for knowing submission or maintenance of false, misleading, or inaccurate (incorrect) information submitted.*

- ***Maintenance*** - If you receive an order and fail to make the corrections to your reporting as ordered, we may consider your failure to correct knowing or willful maintenance of false, inaccurate, or misleading information
- ***Submission*** - If you receive an order, and continue the same practice identified in the order after you receive the order, we may consider that to be knowing or willful submission of false, inaccurate, or misleading information





# What is the status of amendments to the civil penalty regulations?

*Amendments are in the surnaming (approval) process.*

- We hope to issue a proposed rule by Summer 2013
- ONRR will post its penalty assessment matrix after publication



# Specific Initiatives Now and in the Future

## *Reporting errors.*

- *Failure to timely correct Reporting Errors.* May result in an **NONC** or knowing or willful **Civil Penalty Notice** depending on facts and your violation history
- *Repeat Reporting Errors/Noncompliance.* Will result in **civil penalties**. If ONRR previously warned you about a reporting error or other noncompliance, we may consider the same error or noncompliance in the future to be knowing or willful preparation, submission, or maintenance of a false, inaccurate, or misleading report



# What role does the Office of Inspector General (OIG) play in enforcement?

*OE must refer to the OIG Energy Investigations Unit any cases that may involve a crime under Title 18.*

- The OIG uses its broad authority to investigate the referral and coordinates with the Department of Justice (DOJ) to investigate any cases that may involve crimes or violations of the False Claims Act
- If the OIG and DOJ decline to pursue the case, the OIG remands it back to ONRR for follow-up enforcement
- ONRR also refers cases it believes constitute “false claims” under the False Claims Act to the OIG



# What role does the Department of Justice (DOJ) play in enforcement?

*After ONRR refers cases it believes constitute “false claims” under the False Claims Act to the OIG, the OIG informs DOJ and DOJ and the OIG jointly investigate (DOJ also has broad subpoena authority).*

- The Assistant U.S. Attorney’s Office (AUSA) in the District of Colorado has a dedicated Office working energy cases
- The DOJ Civil Division in Washington, D.C. also actively participates in some cases



# What role does the DOI Suspension and Debarment Office play in enforcement?

*OE refers companies it believes should be debarred to the DOI Debarment Office to investigate.*

- Suspension – agency official temporarily excludes a contractor from government contracting and government-approved subcontracting, or temporarily excludes a person from participating in covered transactions
- Debarment – agency official excludes a contractor from government contracting and government-approved subcontracting for a specific time, or excludes a person from participating in covered transactions for a specific time