

522. PROCEDURES FOR ALLEGED VIOLATIONS

a. Identification of Alleged Violations

If, on the Director's own initiative or based on a complaint, the Director has reasonable cause to believe that a violation of the Act, or of any Commission rule, order, or permit has occurred, the Director will require the operator to remedy the violation and may commence an enforcement action seeking penalties by issuing a Notice of Alleged Violation (NOAV). Reasonable cause requires, at least, physical evidence of the alleged violation, as verified by the Director.

b. Complainant's Rights and Responsibilities

(1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation.

(2) The Director will investigate all complaints made pursuant to Rule 522.b.(1) to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, no further action will be taken by the Director.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(3) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, pursuant to subpart 522.e.(1).

(4) A Complainant who has filed a written complaint on a Form 18, Complaint Report, may apply for an Order Finding Violation (OFV) hearing before the Commission pursuant to Rule 503 to hear the Complainant's objections to:

A. The Director's decision not to issue an NOAV for an alleged violation specifically identified in the written complaint; or

B. The settlement terms in a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the written complaint.

(5) Complainants must file an application for an OFV hearing with the Commission within 28 days of notification of the Director's decision not to issue an NOAV or of the settlement terms in a final proposed AOC. Applications filed later than 28 days following notification will not be heard.

(6) The Complainant must serve its OFV hearing application on the alleged violator pursuant to Rule 521 within 7 days of the filing of the application.

(7) The Complainant bears the burden of proof in an OFV hearing initiated by the Complainant.

c. Resolution of Alleged Violations without Penalties

(1) When the Director has reasonable cause to believe a violation has occurred, the Director may resolve the alleged violation without seeking a penalty if all of the following apply:

A. The rule allegedly violated is not a Class 3 rule and the degree of actual or threatened impact is minor or moderate under the Commission's Penalty Schedule, Rule 523.c.(1);

B. The operator has not received a previous Warning Letter or Corrective Action Required Inspection Report regarding the same violation;

C. The Director determines the alleged violation can be corrected without undue delay; and

D. The operator timely performs all corrective actions required by the Director and takes any other actions necessary to promptly return to compliance.

(2) The Director retains discretion to seek penalties for any violation of the Act, or a Commission rule, order, or permit, even if all of the factors in subpart 522.c.(1) apply.

(3) When the Director determines it is appropriate to resolve an alleged violation pursuant to subpart 522.c.(1), the Director will issue the operator either a Warning Letter or Corrective Action Required Inspection Report that identifies the provisions of the Act, or Commission Rules, orders, or permits allegedly violated, the facts giving rise to the alleged violation, any corrective actions required to resolve the violation, and a schedule for conducting the corrective actions.

A. If the operator timely performs required corrective actions and otherwise returns to compliance, the alleged violation will be resolved and the matter closed without further action.

B. If the operator fails to fully perform all corrective actions required by a Warning Letter or a Corrective Action Required Inspection Report, or otherwise fails to return to compliance within the timeframe specified by the Director, the Director will initiate an enforcement action seeking penalties pursuant to subpart 522.d. for any unresolved alleged violation.

d. Enforcement Actions Seeking Penalties for Alleged Violations

When the Director determines subpart 522.c.(1) does not apply or otherwise elects to seek penalties for an alleged violation, the Director will commence an enforcement action by issuing a Notice of Alleged Violation (NOAV).

(1) Content of an NOAV

An NOAV will identify the provisions of the Act, or Commission rules, orders, or permits allegedly violated and will contain a short and plain statement of the facts alleged to constitute each alleged violation. The NOAV may propose appropriate corrective action and an abatement schedule required by the Director to correct the alleged violation. The NOAV may propose a specific penalty amount or refer generally to Rule 523.

(2) Answer

An answer to an NOAV must be filed within 28 days of the operator's receipt of an NOAV, unless exception or an extension is granted by the Director. If the operator fails to file an answer within 28 days, the Director may request the Commission to enter a default judgment.

(3) Procedural matters

A. Service of an NOAV constitutes commencement of an enforcement action or other proceeding for purposes of § 34-60-115, C.R.S.

B. Issuance of an NOAV does not constitute final agency action for purposes of judicial review.

C. A monetary penalty for a violation may only be imposed by Commission order.

D. The Secretary of the Commission will docket enforcement actions for hearing by issuing a Notice and Application for Hearing pursuant to Rule 507.

e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising directly from their written complaint may file an application for a –hearing pursuant to Rule 522.b.(4), within 28 days of the Complainant receiving the finalized settlement terms of a proposed AOC.

C. Administrative Orders by Consent will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:

i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;

ii. The Director alleges the operator has engaged in a pattern of violations; or

iii. A Complainant files a timely application for an OFV hearing pursuant to Rule 522.b.(4).

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. A Complainant may file an application for an OFV hearing pursuant to Rule 522.b.(4).

~~(1) iv. The Commission may conduct a hearing to consider whether to issue an OFV upon 21 days' notice to the affected operator under the following circumstances:~~

~~On the Commission's own initiative an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes that the Director has failed to enforce a provision of statute, the Act, or a Commission rule, regulation, order, or permit or permit condition subject to Commission jurisdiction.~~

~~A. On the application of a complainant pursuant to Rule 503.b.(4), provided that such complainant has first made a written request to the Director to issue an NOAV and the Director has determined in writing not to do so. An application for hearing by a complainant shall be filed within forty-five (45) days of the receipt of the Director's written determination. For purposes of this rule, the Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.~~

~~(2) Upon an operator's request, a settlement conference shall be held with the Director no less than seven days before the hearing on an OFV. If an agreement is reached, an AOC containing such agreement shall be prepared and presented for review and approval by the Commission, at its discretion. Upon such approval, the AOC shall become a final order. Such approval may be granted without hearing, unless an objection is filed by a complainant. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.~~

~~(3) A complainant who objects to a proposed AOC may file an application for an OFV with the Commission. A complainant's application for an OFV must be filed no more than 45 days following receipt of the Director's written determination of a final AOC pursuant to Rule 503.b.(4). The Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.~~

~~(4) A hearing to consider whether to issue an OFV shall be a de novo proceeding, unless the parties stipulate as to the facts, or as to the appropriate corrective action and abatement~~

~~schedule, in which case the hearing may be accordingly limited.~~

~~(5) The Director is always a necessary party to a hearing on an OFV. The operator against which an OFV is sought is always a necessary party but need not present a case. Any person, which is not the applicant for an OFV, but whose complaint initiated the enforcement proceeding, shall be granted intervenor status if so requested, pursuant to Rule 509, except that the filing fee shall be waived.~~

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may participate as a non-party observer and may submit a Rule 510 statement, or may move to intervene pursuant to Rule 509.

iv. If a Complainant initiates an OFV hearing pursuant to Rule 522.b.(4), the Director may intervene as a matter of right.

(3) Rescinding an NOAV

If, after issuance of an NOAV to an operator, the Director no longer has reasonable cause to believe a violation of the Act, or of any Commission rule, order, or permit occurred, the Director will rescind the NOAV in writing.

f. Failure to Comply with Commission Orders

An operator's failure to diligently implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to additional penalties or corrective action requirements.

g. Cease and Desist Orders-

~~(6)~~(1) The Commission or the Director may issue a cease and desist order whenever an operator fails to when an operator's alleged violation of the Act, or a Commission rule, order, or permit, or failure to take required corrective action required by final AOC or OFV.

~~Whenever the Commission has evidence that a violation of any provision of the Act, any rule, permit, or order of the Commission has occurred under circumstances deemed to constitute creates an emergency situation, the Commission or the Director may issue a . If the cease and desist order . If the order is entered by the Director, it shall will be immediately reported to the Commission for review and approval. Except as provided in subsection (3) below, such order shall be considered a final order for purposes of judicial review not later than the next regularly scheduled Commission hearing, unless the matter is heard pursuant to the expedited procedure under §34-60-121(5)(b), C.R.S.~~

(2) The cease and desist order shall will be served by personal delivery or by certified mail, return receipt requested, or by confirmed electronic or facsimile copy followed by a copy provided by certified mail, return receipt requested, on the operator or the operator's designated agent and shall pursuant to Rule 521 within seven days after it is issued.

(3) The cease and desist order will state the provision provisions of the Act, or Commission rules, orders, or permits alleged to have been violated, and will contain a short and plain statement of the facts alleged to constitute the violation, the time by which the acts or

practices cited are required to cease, and any corrective action the Commission or the Director elects to require of the operator. ~~Any protest by an operator to a cease and desist order issued by the Director shall automatically stay the effective date of the order, in which case the order shall not be considered final for purposes of judicial review until such protest is heard.~~

(4) Any protest by an operator of a cease and desist order will be heard by the Commission pursuant to §34-60-121(5)(b), C.R.S. An operator's protest of a cease and desist order shall not stay the order pending a Commission hearing on the matter, unless the operator obtains an injunction enjoining enforcement of the cease and desist order.

(5) In the event an operator fails to comply with a cease and desist order, the Commission may request the attorney general to bring suit pursuant to §34-60-109, C.R.S.

PROCEDURE 523. PROCEDURES FOR ASSESSING FINES/PENALTIES

Fines. a. General

~~An operator who violates any provision of the Act, or any Commission rule, order, or permit, or order issued by the Commission shall may be subject to a fine which shall be penalty imposed only by Commission order of the. Penalties will be calculated based on the Act and this Rule 523. The Commission's Enforcement Guidance and Penalty Policy also provides non-binding guidance to the Commission, after hearing, or by an AOC approved by the Commission. All fines shall and interested persons evaluating a penalty for an alleged violation.~~

b. Days of Violation

~~The duration of a violation presumptively will be calculated using in days as follows:~~

~~(1) A reporting or other minor violation not involving actual or threatened significant adverse impacts begins on the day that the base fine amount for report should have been made or other required action should have been taken, and continues until the particular violation as set forth in report is filed or the fine schedule in subparagraph c. of this Rule 523. subject required action is commenced to the following: Director's satisfaction.~~

~~(1) The Commission may in its discretion find that each day a violation exists constitutes a separate violation; however, no fine for any single violation shall exceed one thousand dollars (\$1,000) per day.~~

~~(2) All fines shall be subject to adjustment based upon the factors listed in subparagraph d. of this Rule 523.~~

~~For a violation which does not (2) All other violations begin on the date the violation was discovered or should have been discovered through the exercise of reasonable care and continues until the appropriate corrective action is commenced to the Director's satisfaction.~~

~~With respect to violations that result in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on actual or threatened adverse impacts to public health, safety or, and welfare, including the environment or wildlife resources, the maximum penalty for any single violation shall not exceed ten thousand dollars (\$10,000) regardless of the number of days of such violation. and wildlife resources, commencing appropriate corrective action includes, at a minimum:~~

~~(3) Fines for violations for which no base fine is listed shall be determined by the Commission at its discretion subject to subparagraphs (1), (2), and (3) of this Rule 523.a.~~

~~b. Voluntary disclosure. Any operator who conducts a voluntary self-evaluation as defined in the 100~~

~~Series of the rules and makes a voluntary disclosure to the Director of a significant adverse impact on the environment or of a failure to obtain or comply with any necessary permits, shall enjoy a rebuttable presumption against the imposition of a fine for any violation relating to such impact or failure, under the following conditions:~~

- ~~(1) The disclosure is made promptly after the operator learns of the violation as a result of the voluntary self-evaluation;~~

~~(2) The operator making the disclosure cooperates with the Director regarding investigation of the issue identified in the disclosure; and~~

~~(3) The operator making the disclosure has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.~~

~~The Commission shall deny the presumption against the imposition of fines only if, after hearing, it finds that any of the preceding conditions have not been met, or that the use of this process was engaged in for fraudulent purposes.~~

~~c. **Base fine schedule.** The following table sets forth the base fine for violation of the rules listed~~

RULE NUMBER	BASE FINE
205	\$1000
205A	\$1000
206	\$1000
207	\$1000
208	\$1000
209	\$1000
210	\$500

RULE NUMBER	BASE FINE
301	\$1000
302	\$1000
303	\$1000
305	\$1000
306	\$1000
307	\$500
308	\$1000
309	\$1000
310	\$1000
311	\$500
312	\$500
313	\$500
313A	\$1000
314A	\$500
315	\$500
316A	\$1000
316B	\$1000
317	\$1000
317A	\$1000
317B	\$1000
318	\$1000
319	\$1000
320	\$1000
321	\$1000
322	\$1000
323	\$1000
324	\$1000
325	\$1000
326	\$1000
327	\$1000

328	\$1000
329	\$1000
330	\$1000
334	\$1000
332	\$1000
333	\$1000
344	\$1000

RULE NUMBER	BASE FINE
404	\$1000
403	\$1000
404	\$1000
405	\$500

RULE NUMBER	BASE FINE
602	\$1000
603	\$1000
604	\$1000
606A	\$1000
606B	\$1000
607	\$1000
608	\$1000

RULE NUMBER	BASE FINE
703	\$1000
704	\$1000
705	\$1000
706	\$1000
707	\$1000
708	\$1000
709	\$1000
711	\$1000
712	\$1000

RULE NUMBER	BASE FINE
802	\$1000
803	\$500
804	\$500
805	\$1000

RULE NUMBER	BASE FINE
901	\$1000
902	\$1000
903	\$1000
904	\$1000
905	\$1000
906	\$1000
907	\$1000
908	\$1000
909	\$1000
910	\$1000

A. Performing immediate actions necessary to assess and evaluate the actual or threatened adverse impacts; and

B. Performing all other near-term actions necessary to stop, contain, or control actual or threatened adverse impacts in order to prevent, minimize, or mitigate damage to public health, safety, and welfare, including the environment and wildlife resources. Such actions may include, without limitation, stopping or containing a spill or release of E & P Waste; establishing well control after a loss of control event; removing E & P Waste resulting from surface spills or releases; installing fencing or other security measures to limit access (including wildlife access) to affected areas; providing alternative water supplies; notifying affected landowners, local governments, and other persons or businesses; and, in cases of actual adverse impacts, mobilizing all resources necessary to fully and completely remediate the affected environment.

(3) The Commission will assess a penalty for each day the evidence shows a violation continued.

(4) The number of days of violation does not include any period necessary to allow the operator to engage in good faith negotiation with the Commission regarding an alleged violation if the operator demonstrates a prompt, effective, and prudent response to the violation.

c. Penalty Calculation

The base penalty for each violation will be calculated based on the Commission's Penalty Schedule which considers the severity of the potential consequences of a violation of a specific rule combined with an assessment of the degree of actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources. The maximum daily penalty cannot exceed \$15,000 per day per violation.

(1) Penalty Schedule. The Commission's Penalty Schedule is the following matrix that establishes a daily penalty based on the classification of the rule violation (Class 1, 2, or 3) and the degree of actual or threatened adverse impact resulting from the violation (minor, moderate, or major).

		Rule Classification		
		Class 1: Paperwork or other ministerial rules, a violation of which presents no direct risk or threat of harm to public health, safety, and welfare, including the environment and wildlife resources.	Class 2: Rules related at least indirectly to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a possibility of distinct, identifiable actual or threatened adverse impacts to those interests.	Class 3: Rules directly related to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a significant probability of actual or threatened adverse impacts to those interests.
Degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife	<u>Major:</u> Actual significant adverse impacts	\$5,000	\$10,000	\$15,000
	<u>Moderate:</u> Threat of significant adverse impacts, or moderate actual adverse impacts	\$1,500	\$5,000	\$10,000
	<u>Minor:</u> No actual adverse impact and little or no threat of adverse impacts	\$200	\$2,500	\$5,000

d. ~~Adjustment.~~ The fine may be increased (if base fine is less than \$1000) or decreased by application of the aggravating and mitigating factors set forth below.

Aggravating factors:

~~(1) The violation was intentional or reckless.~~

~~(2) The violation had a significant negative impact, or threat of significant negative impact, on the environment or on public health, safety, or welfare.~~

(2) Degree of actual or threatened adverse impact. The base penalty for a violation may be increased based on the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources resulting from the violation. The Commission will determine the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission will consider the following, non-exclusive, list of factors in making its determination:

A. Whether and to what degree the environment and wildlife resources were adversely affected or threatened by the violation. This factor considers the existence, size, and proximity of potentially impacted livestock, wildlife, fish, soil, water, air, and all other environmental resources.

B. Whether and to what degree Waters of the State were adversely affected or threatened by the violation.

C. Whether and to what degree drinking water was adversely affected or threatened by the violation.

D. Whether and to what degree public or private property was adversely affected or threatened by the violation.

E. The quantity and character of any E & P waste or non-E & P waste that was actually or threatened to be spilled or released.

F. Any other facts relevant to an objective assessment of the degree of adverse impact to public health, safety, or welfare, including the environment and wildlife resources.

(3) Penalty Adjustments for Aggravating and Mitigating Factors.

The Commission may increase a penalty up to the statutory daily maximum amount if it finds any of the aggravating factors listed in subpart A, below, exist. The Commission may decrease a penalty if it finds that the violator cooperated with the Commission and other agencies with respect to the violation and that any of the mitigating factors listed in subpart B, below, exist.

A. Aggravating factors

1. The violator acted with gross negligence or knowing and willful misconduct.

2. The violation resulted in significant waste of oil and gas resources.

3. The violation had a significant negative impact on correlative rights of other parties.

~~(3) The violation resulted in or threatened to result in significant loss or damage to public or private property.~~

4. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.

5. The violator falsified reports or records.

~~(4) 6. The violator benefited economically from the violation involved recalcitrance or recidivism upon the part of the violator.~~

~~(5) The violation involved intentional false reporting or recordkeeping.~~

~~The violation resulted in economic benefit to the violator, including the economic benefit associated with noncompliance with the applicable rule, in which case the amount of such benefit may shall be taken into consideration.~~

~~(6) The violation results in significant, avoidable loss of wildlife or wildlife resources, including the ability of the land to produce vegetation supportive of wildlife.~~

7. The violator has engaged in a pattern of violations.

B. Mitigating factors:

1. The violator self-reported the violation.

2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

~~(1) The violator cooperated with the Commission, or other agencies with respect to the violation.~~

3. The cause(s) of the violation was (were) outside of the violator's reasonable control and responsibility, or is (are) customarily considered to be force majeure.

4. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

5. The cost of correcting the violation reduced or eliminated any economic benefit to the violator, excluding circumstances in which increased costs stemmed from non-compliance.

6. The violator has demonstrated a history of compliance with the Act, and Commission rules, ~~regulations and orders,~~ and permits.

~~Public projects. In lieu of~~ (4) Penalty adjustments based on duration of violation. In its discretion, the Commission may decrease the daily penalty amounts for violations of long duration to ensure the total penalty is appropriate to the nature of the violation.

d. Pattern of Violations, Gross Negligence or ~~in~~ Knowing and Willful Misconduct

(1) The Director will apply for an Order Finding Violation hearing before the Commission when the Director determines an operator has:

A. Engaged in a pattern of violations; or

B. Acted with gross negligence or knowing and willful misconduct that resulted in an egregious violation.

(2) If the Commission finds after hearing that an operator is responsible for the conduct described in subparagraph d.(1), the Commission may suspend an operator's Certification of Clearance, withhold new drilling or oil and gas location permits, or both. Such suspension will last until such time as the violator demonstrates to the satisfaction of the Commission that the operator has brought each violation into compliance and that any penalty assessed (not subject to judicial review) has been paid at which time the Commission may vacate the order.

(3) The Commission will consider an operator's history of violations of the Act, or Commission rules, orders, or permits and any other factors relevant to objectively determining whether an operator has engaged in a pattern of violations. For an operator's history of violations, the Commission may only consider violations confirmed by Commission order through an AOC or OFV.

e. Voluntary disclosure

(1) An operator who maintains a regulatory compliance program and voluntarily discloses to the Director a violation of the Act, or any Commission rule, order, or permit discovered as a direct result of such a program will have a rebuttable presumption of a penalty reduction, of ~~fine amounts, an AOC~~ at least 35% for a disclosed violation, if:

A. The disclosure is made promptly after the operator learns of the violation as a result of its regulatory compliance program;

B. The operator cooperates with the Director regarding investigation of the disclosed violation; and

C. The operator has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

(2) This presumption will not apply if:

A. The disclosure or the regulatory compliance program was engaged in for fraudulent purposes;

B. The disclosed violation was part of a pattern of violations; or

C. The disclosed violation was egregious and the result of the operator's gross negligence or knowing and willful misconduct.

(3) If the Director determines that any of the factors in subpart (1) are not met or that the factors in subpart (2) are met, the Director may consider the fact that the operator self-reported the violation as a mitigating factor under Rule 523.c.(3)B.(1).

f. Public Projects. In its discretion, the Commission may allow an operator to satisfy a penalty in whole or in part by a Public Project that the operator is not otherwise legally required to undertake. The costs of the Public Project may offset the penalty amount dollar for dollar, or by some other ratio determined by the Commission. A Public Project must provide ~~for the initiation of or participation in operator projects which are beneficial~~tangible benefit to public health, safety and welfare, ~~including or~~ the environment ~~and/or~~ wildlife resources, ~~and the Commission encourages AOCs which so.~~ The Commission favors Public Projects that benefit the persons or communities most directly affected by a violation, or that provide ~~education or training to local government entities, first responders, the public, or the regulated community related to the violation.~~

g. Payment of fines/penalties. An operator ~~against whom the will pay a penalty imposed by~~ Commission ~~enters an order to pay a fine must pay the amount due~~ within ~~3530~~ days of the effective date of the order, unless the Commission grants a longer period or unless the operator files for judicial appeal, in which event payment of the penalty ~~shall~~will be stayed pending resolution of such appeal. An operator's obligations to comply with the provisions of a Commission order requiring compliance with the Act, ~~a permit condition, or these Commission rules and regulations shall,~~ orders, or permits will not be stayed pending resolution of an appeal ~~unless the stay is ordered~~except by ~~the court~~order.