

Instructions for Use of Letter Format for INCs and Orders

April 2007

Oil and Gas Program Compliance Procedures

INSTRUCTIONS FOR USE OF LETTER FORMAT FOR INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER (Order)

Oil and Gas Program Enforcement Procedures sections III. And IV., provide for the basic requirements of formal notification for violations or problems. The policy requires notification to be issued using either the AFMSS forms (INC or Order) or a letter format.

The use of the letter format for issuing INCs, Written Orders, or a combination of INCs and Orders present unique challenges to those issuing the letter, the operators, and if a State Office Review is requested. In order for the letter format to be effective in gaining compliance, and supportable upon review or appeal, certain standards must be followed.

The following information outlines 1) mandatory elements that must be included in the letter format, 2) recommended practices when using a letter, and 3) example letter formats.

- I. **Mandatory Elements:** All letters used to notify an operator* of any problem or violation must contain the following information:
 1. When using mailing services the letter must be sent via certified mail using the return receipt request. The letter must include the certified mail number and indicate return receipt requested.
 2. Operator's* or appropriate party's company name and address.
 3. Whenever possible the salutation (e.g. Attention: John Smith) should be addressed to a specific person, or the appropriate designated representative.
 4. Announce the purpose of the letter in bold, capitalized, underlined, and centered text:
 - a. **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC)**,
 - b. **NOTICE OF AN ORDER OF THE AUTHORIZED OFFICER**, or
 - c. both **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER**.

Note: Use of the letter format without the emphasized text has been a source of dispute, argument, and problems sometimes ending in review or appeal. The objective of the emphasized text is to ensure there is no confusion on the part of those receiving the letter as to the purpose and importance of the notice. The use of the emphasized text avoids possible miscommunication and misunderstandings on the part of the operator and supports the letter format if appealed.

5. Legal Identification Information:

* Operator is defined by 43 CFR 3160.0-5, as "... any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof."

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- a. Lease or agreement number, well or facility name and/or number, legal location information (township, range, ¼-¼, county, state, etc.).
 - b. Letters that identify multiple problems and/or violations must include the legal identification information for every separate lease, agreement, well, or facility for each problem or violation identified.
 - c. For approved off-lease operations/facilities with problems or violations, the letter must include both the legal identification information for 1) the off-lease facility and 2) appropriate well(s), facility(s), lease(s), and/or agreement(s) that are connected to or affected by the off lease facility problems or violations.
6. Date and time of the inspection in which a particular problem or violation was found. Again, when multiple problems and/or violations are listed in the letter that involve differing dates or times, each problem or violation or group thereof must indicate the appropriate date and/or time when discovered.
7. Each individual INC or Order identified in the letter must contain the following information:
- a. A unique number.
 - b. A clear and concise description of the problem or violation.
 - c. Most appropriate regulatory citation or authority (CFR, Onshore Order, Notice to Lessees (NTL), Conditions of Approval (COA), etc.) for the problem or violation. Do not cite the BLM policy or guidance.
 - d. The corrective action for each individual Order or INC. Do not stipulate how to correct the problem or violation, unless existing regulatory authority (lease stipulations, COAs, NTLs, Onshore Orders, etc) provides specifications for correction.
 - e. The abatement date or time for correction of each specific Order or INC.
 - f. Company representative's signature and date lines for each Order or INC (this is to be used by the operator to certify when the violation or problem was corrected).
 - g. Each INC listed must be assigned the appropriate gravity determination.
 - h. Each INC, when required and applicable, must assign the proper assessment amounts.
8. Each Letter must include both complete “**WARNING**” and “**REVIEW AND APPEAL RIGHTS**” paragraphs from the INC/Order form.
9. Date and signature of the appropriate authorized office.

Note: Check your local delegation of authority identified in the 1203 BLM manual under BLM form No. 1221-2.

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Additionally, 43 CFR 3165.3(a) *Notice*, requires BLM to notify "...an operating rights owner or operator, as appropriate, [on any failure] to comply with any provision of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the appropriate party and the lessee(s) to remedy any defaults or violation." This citation [3165.3(a)] also allows, under certain circumstances, notice to be given to any "...person conducting or supervising operations subject to the regulations in this part..." for major violations, and "...any contractor or field employee or designated representative..." for minor violations. When notice is provided in this manner, a copy must also be mailed to the operator.

II. **Additional Recommended Practices:** Use of the letter format to issue corrective actions for problems or violations, as discussed earlier, has caused confusion and frustration for both the operator and the BLM. These situations have occurred mainly due to how a letter was constructed and/or assumptions about how the instructions will be interpreted. Many of these problems and issues arise when multiple INCs, Orders, or a combination of both are addressed in the letter; or information, like those items required above, are not included in the letter. In an effort to prevent potential problems when using the letter format for enforcement and compliance actions, the following recommendations are provided.

1. When addressing multiple problems and violations for one object on a location, itemize the individual problems and/or violations separately, as required in item I. 7. above. They could be listed under one heading, preferably, rather than combining them into one Order of the Authorized Officer or INC. For example, on an older facility with very few COAs you might find:

Disposal Pit:

Order of the Authorized Officer:

1. Clean trash from pit.
2. Clean up oil-stained dirt within pit enclosure.
3. Install flagging per Gold Book standards for wildlife protection.

Incident of Noncompliance:

1. Repair fence to standards required in item 9 in the APD COAs.
2. Remove all fluids from the pit per Order No.7 emergency pit approval.

2. When issuing both Orders and INCs in the same letter, use separate headings, as shown above, to clarify to the operator which items are violations (requiring INCs) and which items are Orders of the Authorized Officer.
3. Use only the most applicable and specific regulatory authority that applies to the violation or problem. Normally, this would mean only one citation would be used. If multiple citations are used, the problem or violation should be reviewed to ensure there is not more than one violation or problem involved in the action.
4. Unless specifically required by some type of requirement (COA, NTL, Onshore

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Orders, etc.), the description of the corrective action should not instruct operators in a specific manner on how the issue must be fixed. The method an operator uses to accomplish the correction is up to the operator, as long as the problem or violation is corrected. If the BLM were to require a specific method of correction not specified by an existing requirement, and the method failed, the BLM could be held liable for damages.

5. Policy and guidance document(s) should never be cited as a requirement with which an operator must comply or a method for correction. Policy and guidance are strictly BLM internal instructions on how its responsibilities should be conducted and have no legal bearing on the oil and gas operator.
6. Be as clear and concise as possible in directions to the operator. Do not assume that an operator necessarily will know or understand what you are attempting to describe. Consider having non-oil-and-gas personnel review your letter to see if they understand what is being conveyed.

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SAMPLE LETTER FORMAT



In Reply To:
3160
Case Number

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Field Office
Street
City, State, ZIP
website address



Certified Mail No: []
Return Receipt Requested

[Company Address]

NOTICE OF ORDER(S) OF THE BLM AUTHORIZED OFFICER

and/or

NOTICE OF INCIDENTS OF NON COMPLIANCE (INC)

Use specific company representative, if known.

Dear []:

Use the appropriate title. Orders, INCs, or both.

An inspection was performed on Federal lease WYW[], [Well name and #, ¼ ¼ section, county, State], on 00/00/0000, by [Inspector Name]. It was found that operations were not being conducted in a manner designed to protect the mineral resources, other natural resources, and environmental quality (43 CFR 3162.5).

Insert lease, unit, or case number(s). Also list well name and number (or facility) and legal description, inspection date, and inspector name(s).

ORDER(S) OF THE AUTHORIZED OFFICER

The following environmental compliance problems, pursuant to 43 CFR [] which states, "... were identified during the latest inspection of the subject location." Specifically:

Each problem must have a unique number.

- **Environmental Problem No.** []: [Specifically describe the problem (e.g., A substantial head-cut has started in the ditch on the west side of the road coming onto the well location.)]

Corrective Action: [Identify what needs to be done to address the problem. Use performance objectives rather than specifically describing exact work. (e.g., take appropriate remedial measures to stabilize head-cut and restore perennial vegetation. Eliminate the source of the problem by diverting and/or slowing water flow from the access road.)]

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified environmental problems no later than []. If you fail to comply within the

Cite pertinent regulation for the order and after..."states" ... Insert the pertinent requirement (e.g., 43 CFR 3162.5-1(a), which states "The operator shall conduct all operations in a manner which protects the minerals resources, other natural resources and environmental quality"). If you have multiple environmental problems, some may be pertinent to other regulations. In this case, cite a different regulation for each environmental problem.

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Insert a specific date by which the problems must be corrected.

time frames specified, you will be subject to further enforcement action as may be deemed necessary.

(If additional environmental problems were identified, list each problem separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- **Environmental Problem No.:** same format as above

Insert legal location information if different from _____

Corrective Action: Same as format as above

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified environmental problems no later than [____]. If you fail to comply within the time frames specified you will be subject to further enforcement action as may be deemed necessary.

Insert a specific date by which the problems must be corrected.

=====

INCIDENTS OF NONCOMPLIANCE

The following violations were identified during an inspection of the subject location.” Specifically:

INC No. . [____]: [Specifically describe the violation and cite the authority.]

-

Corrective Action: [Identify what needs to be done to correct the violation.]

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified violation no later than [____]. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

(If additional violations were identified, list each violation separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- **INC No.:** same format as above

Insert legal location information if different from _____

Corrective Action: same format as above

In accordance with 43 CFR 3163.1(a), please comply with the corrective action(s) for the identified violation no later than [____]. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

WARNING

Orders of the Authorized Officer or Incidents of Non Compliance and reporting time frames begin upon receipt of the Notice or 7 business days after the date it is mailed, whichever is earlier. Each problem or violation must be corrected within the prescribed time from receipt of this Notice and reported to the Bureau of Land Management office at the address shown above (below).

For Incidents of Non Compliance, please note that you already may have been assessed for noncompliance (see amount under “Assessed for Noncompliance”). If you do not comply as noted above

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under “Corrective Action To Be Completed By,” you may incur additional assessment under (43 CFR 3163.1) and may also incur Civil Penalties (43 CFR 3163.2). All self-certified corrections must be postmarked no later than the next business day after the prescribed time for correction.

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who “knowingly or willfully” prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information required by this part shall be liable for a civil penalty of up to \$25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

Insert address for the State Office.

A person contesting a order of the authorized office or violation must request a State Director Review of the Order or Incident of Noncompliance. This request must be filed within 20 working days of receipt of the Incident of Noncompliance with the appropriate State Director at [] (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, MS 300-QC, Arlington, Virginia 22203 (see 43CFR 3165.4). Contact the above listed Bureau of Land Management office for further information.

If you have any questions, please contact [].

Sincerely,

Field Manager

Attachment: Corrective Action(s) Completed Form

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III. CORRECTIVE ACTION COMPLETION FORM

Sample Corrective Action Completion Form

When correction has been completed, fill out the information on this page, sign and return to:

Bureau of Land Management
ATTN:
XXXX BLM Street
Bureau, WY 82000

Environment Problem/Order No.: []

Operator: []

Lease No.: []

Well No.: []

Legal Location: [Section, Township, Range, Qtr]

[County and State]

Environmental Problem(s): []

Complete all of this information from the letter before sending to the Operator. Make a new section for each problem identified in the letter.

Description and Date of Work Completed: []

The Operator will complete the description and date of the work.

Company Representative Title: _____

Signature: _____

Date: _____

Incident of Noncompliance No.: []

Operator: []

Lease No.: []

Well No.: []

Legal Location: [Section, Township, Range, Qtr]

[County and State]

Environmental Problem(s): []

Complete all of this information from the letter before sending to the Operator. Make a new section for each INC identified in the letter.

Description and Date of Work Completed: []

The Operator will complete the description and date of the work.

Company Representative Title: _____

Signature: _____

Date: _____