Section 4 – Administration | 4.1.3 Enforcement | *4.1.3.2 Penalty Guidance*

2019.2 Edition:

States should develop guidance for calculations of penalties that include factors such as the economic benefit resulting from the violation, willfulness, harm to the environment and the public, harm to wildlife, fish or aquatic life or their habitat, expenses incurred by the state in removing, correcting, or terminating the effects of the unauthorized activity, conservation of the resource, timeliness of corrective action, notification of appropriate authority, and history of violations. Benefits of guidance for calculation of penalties include consistency in the assessment of penalties and development of readily defensible assessments. Penalties should be such that an operator does not benefit financially from unlawful conduct and should provide compliance incentive to other operators. States should evaluate their enforcement options and policies to assure that the full range of actions available are effectively used.

2022 Edition:

States should develop guidance for calculations of penalties that include factors such as:

1. the economic benefit resulting from the violation,
2. willfulness,
3. harm to the environment and the public,
4. harm to wildlife, fish or aquatic life or their habitat,
5. expenses incurred by the state in removing, correcting, or terminating the effects of the unauthorized activity,
6. conservation of the resource,
7. timeliness of corrective action,
8. notification of appropriate authority,
9. history of violations, and
10. location of the violation relative to disproportionately affected communities.

Benefits of guidance for calculation of penalties include consistency in the assessment of penalties and development of readily defensible assessments. Penalties should be such that an operator does not benefit financially from unlawful conduct and should provide compliance incentive to other operators. When supplemental environmental projects (SEP) are considered, states should ensure that project outcomes benefit the affected community. When considering SEP options, states should consult with residents of the affected community to gain insight about potential projects. States should evaluate their enforcement options and policies to assure that the full range of actions available are effectively used.

Section 4 – Administration | 4.2.2 Public Participation | *4.2.2.1 Notice and Records*

2019.2 Edition:

The affected public should be provided with adequate notice of the agency's consideration to issue a permit or license for appropriate E&P activities. Such efforts should balance efficient permit processing with meaningful opportunity for input from the affected public. The agency should establish guidance on determining the degree of public input for different types of permits or licenses. Where public input is sought, the agency should utilize communication methods that will most effectively reach the affected public, including options for non-English speakers where necessary. The agency should consider methods to enhance the responsiveness of its public participation such as responding to comments and sharing how the program considered comments in its decision making. Where possible, notice should be coordinated with the requirements of other concurrently applicable state or federal programs. The agency may also require operators to provide written notice to adjacent landowners of record for such areas and in such manner as may be prescribed by the agency.

Agency records related to this program should generally be available for review by the public in accordance with applicable state and federal laws and agency practices. Such records are to include waste disposal and pit locations and any required analytical data. Where information submitted by an operator is of a "confidential business" nature, an agency should have procedures for segregating that information and protecting it from disclosure. In all cases, spill and violation records should be available to the public. Agencies should establish a minimum record keeping time period of three years that should be automatically extended while any unresolved enforcement action regarding the regulated activity is pending.

2022 Edition:

Affected communities should be provided with adequate notice of the agency's consideration to issue a permit or license for appropriate E&P activities. Such efforts should balance efficient permit processing with meaningful opportunity for input from the affected public. The agency should establish guidance on determining the degree of public input for different types of permits or licenses. In addition, the agency head should have the authority to convene a public hearing when s/he determines it to be in the public interest. Where public input is sought, the agency should utilize communication methods that will most effectively reach affected communities. Effective communication should include creating short, plain-language summaries of proposed actions that are understandable by people with a variety of educational attainment and levels of English proficiency. States should consider factors that may limit meaningful involvement of affected communities in public comment opportunities, such as non-English speaking populations, timing of meetings, and availability of internet access. When translation is required comment periods should be extended to allow adequate time for both translation and outreach to the population. States should interface with community groups in the affected community to inform and plan for translation needs. States should also consider offering interpretation services for any hearings or public meetings about proposed permits or licenses, to make those meetings accessible to non-English speakers.

The agency should consider methods to enhance the responsiveness of its public participation such as responding to comments and sharing how the program considered comments in its decision making. Where possible, notice should be coordinated with the requirements of other concurrently applicable state or federal programs. The agency may also require operators to provide written notice to adjacent landowners of record for such areas and in such manner as may be prescribed by the agency.

Agency records should generally be available for review by the public in accordance with applicable state and federal laws and agency practices. Where information submitted by an operator is of a confidential business nature, an agency should have procedures for segregating that information and protecting it from disclosure. In all cases, spill, violation, and waste disposal and pit location records should be available to the public. Agencies should establish a minimum record keeping period of three years that should be automatically extended while any unresolved enforcement action regarding the regulated activity is pending.

Section 4 – Administration | 4.2.2 Public Participation | *4.2.2.2 Program Information*

2019.2 Edition:

States should provide for the dissemination of program information to the regulated industry and the public. Such educational materials should include information or guidance on contingency planning, spill response, permitting, operating, monitoring and other requirements. Such efforts should be part of an ongoing process through which information is exchanged in an open forum. Because E&P environmental requirements are undergoing numerous changes, states have the obligation to inform the regulated industry and the public of changes.

Industry associations and other organizations may provide a convenient and effective mechanism for dissemination of information. States should actively make use of seminars, newsletters, special mailings, association committees, incentive programs and other mechanisms.

2022 Edition:

States should provide for the dissemination of program information to the regulated industry and the public. Such educational materials should include information or guidance on contingency planning, spill response, permitting, operating, monitoring and other requirements. Wherever possible, educational materials should be concise and written in plain language that is easily understood by members of the public with a variety of levels of educational attainment and English proficiencies. Educational materials should be provided in the two most commonly spoken languages[1] within the state (or a smaller geographic unit such as a county where applicable). Such efforts should be part of an ongoing process through which information is exchanged in an open forum. Because E&P environmental requirements are undergoing numerous changes, states have the obligation to inform the regulated industry and the public of changes.

Industry associations, community groups, religious organizations, community centers, and other organizations may provide opportunities for convenient and effective dissemination of information. States should actively make use of seminars, newsletters, special mailings, association committees, incentive programs and other mechanisms.

[1] The U.S. Department of Justice makes map of the most commonly spoken non-English languages by county available on its website: https://www.lep.gov/maps

Section 4 – Administration | 4.2.2 Public Participation | *4.2.2.3 Advisory Groups*

2019.2 Edition:

States should use advisory groups of industry, government, and public representatives, or other similar mechanisms, to obtain input and feedback on the effectiveness of state programs for the regulation of E&P activities. Provision should be made for education or training as is appropriate to give such advisory groups a sound basis for providing input and feedback.

2022 Edition:

States should use advisory groups of industry, government, and public representatives, or other similar mechanisms, to obtain input and feedback on the effectiveness of state programs for the regulation of E&P activities. Provision should be made for education or training as is appropriate to give such advisory groups a sound basis for providing input and feedback. States should seek opportunities to partner with community groups to gather information on unique community needs and input. States should seek to foster positive relationships with such community groups to develop open lines of communication and improve the transparency and availability of data. When community members serve on advisory groups in a purely volunteer capacity (i.e., are not paid by their employer for their participation), states should explore providing stipends or participation incentives (i.e., gift cards) to compensate the community members for their time.

Section 4 – Administration | *4.4 Coordination Among Agencies*

2019.2 Edition:

Many state programs regulating E&P activities have their roots in oil and gas conservation programs that were established during the early part of the last century. In most cases, these programs have evolved to accommodate other state and federal objectives such as protection of human health and the environment.

In most states, multiple agencies are involved in the management of E&P activities. Different agencies are often responsible for the regulation of oil and gas wells, pits and impoundments, disposal wells, surface water discharges, spill prevention and response, and disposal of drill cuttings and muds. Each agency has its own administrative requirements relating to permitting, operational requirements, and financial assurance, and develops its own budget priorities. Each has its own inspection and enforcement authorities. Unless a high level of formal interagency coordination exists, such unilateral program development and implementation can lead to duplication of personnel effort, duplication of regulation with sometimes conflicting standards for the industry, and duplication of funding. Duplication of programs often diminishes the effectiveness of spill response, permitting, inspection, enforcement, training, and other regulatory activities.

Where multiple state agencies have jurisdiction over the management of E&P activities, budget development should be coordinated and the agencies should develop formal coordination procedures, such as the development of interagency Memoranda of Agreement, interagency task forces with periodic meetings, and/or interagency legislative and regulatory review panels to ensure jurisdictional clarity and regulatory consistency.

Additionally, states should review existing agreements to assure that they are current and effective. Finally, interagency mechanisms should be developed to facilitate the sharing of information among and between involved agencies so that each agency can carry out its program responsibilities.

2022 Edition:

Many state programs regulating E&P activities have their roots in oil and gas conservation programs that were established during the early part of the last century. In most cases, these programs have evolved to accommodate other state and federal objectives such as protection of human health and the environment.

In most states, multiple agencies are involved in the management of E&P activities. Different agencies are often responsible for the regulation of oil and gas wells, pits and impoundments, disposal wells, surface water discharges, spill prevention and response, and disposal of drill cuttings and muds. Each agency has its own administrative requirements relating to permitting, operational

requirements, and financial assurance, and develops its own budget priorities. Each has its own inspection and enforcement authorities. Unless a high level of formal interagency coordination exists, such unilateral program development and implementation can lead to duplication of personnel effort, duplication of regulation with sometimes conflicting standards for the industry, and duplication of funding. Duplication of programs often diminishes the effectiveness of spill response, permitting, inspection, enforcement, training, and other regulatory activities.

Where multiple state agencies have jurisdiction over the management of E&P activities, budget development should be coordinated and the agencies should develop formal coordination procedures, such as the development of interagency Memoranda of Agreement, interagency task forces with periodic meetings, and/or interagency legislative and regulatory review panels to ensure jurisdictional clarity and regulatory consistency. Where state oil and gas environmental regulatory agencies interface with other state agencies on permitting, enforcement, and other activities with a nexus to environmental justice[2] (EJ) issues, they should evaluate the alignment of their EJ definitions to ensure that affected communities are given equal consideration.

Additionally, states should review existing agreements to assure that they are current and effective. Finally, interagency mechanisms should be developed to facilitate the sharing of information among and between involved agencies so that each agency can carry out its program responsibilities.

[2] The US EPA defines environmental justice (EJ) as, “The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”2 Definitions of environmental justice may differ from state to state, or from agency to agency within a state, but generally refer to low-income communities or minority communities or communities of color such as would be identified by US EPA’s EJSCREEN mapping tool.