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January 2, 2020

Ms. Florene Davidson
Commission Clerk
Administration and Compliance Bureau
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RE: Comments for Proposed Administrative Penalties Rule

Armstrong Energy Corporation ("AEC") appreciates the opportunity to comment on the proposed Administrative Penalties Rule (the "Proposed Rule"). AEC is a small independent oil and gas exploration and production company with fewer than 30 employees, and the Proposed Rule has the potential to adversely impact our daily operations, and unnecessarily increase operating expenses at a time when the industry is already under economic stress.

Proposed Rule 19.15.5.10 must be revised because the enforcement provision exceeds the authority granted to the OCD under NMSA 1978 70-2-31 (2019). Pursuant to 70-2-31(B), a notice of violation "shall provide notice of *potential* sanctions" (emphasis added), and does not authorize the division to propose sanctions. However, under proposed 19.15.5.10(C)(1)(d), the division is allowed to propose sanctions which are then included in any stipulated final order that results from informal review.


Further, under proposed 19.15.5.10(D), the division shall calculate a proposed civil penalty for each alleged violation. However, 70-2-31(C), explicitly provides that if the notice of violation is not resolved informally within thirty days after service of notice, "the division *shall hold a hearing and determine whether ... any sanctions, including civil penalties, shall be assessed.*" (emphasis added) Based on a plain reading of 70-2-31, the division is not authorized to assess sanctions, to include civil penalties, without holding a hearing.

NMSA 1978 70-2-31 (2019) authorizes the division to assess sanctions during a hearing held after failure of the parties to informally resolve the notice of violation. Any rule which purports to authorize the division to assess civil penalties without a hearing would exceed the authority granted under the statute and should be revised to conform to the language and intent of the statute.

Thank you for your consideration of these comments.

Sincerely,

ARMSTRONG ENERGY CORPORATION

By: 
Ronald D. Hillman, Vice President
and General Counsel