dugan production corp.

709 E. MURRAY DR. • P. O. BOX 420 • FARMINGTON, N.M. 87499-0420 • PHONE: (505) 325-1821 • FAX# (505) 327-4613

FAX TRANSMITTAL

DATE: 10-4-05 TIME: _____

TO: Ms. Florene Davidson
NMOCD @ 505-476-3462

You should receive 3 pages including this cover sheet. If you did not receive all pages or are unable to read any pages, please contact:

FROM: John Roe TELEPHONE NO. (505) 325 - 1821

Florene,

Attached is Dugan's comments for NMOCD's proposed Enforcement Rules (NMOCC case No. 13564). I will also mail the original for the case file.

Regards

John Roe

dugan production corp.

October 4, 2005

FAX NO.
505-476-3462

Mr. Mark Fesmire, Director
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Industry Comments
Proposed OCD Enforcement Rules
NMOCC Case No. 13564

Dear Mr. Fesmire,

Dugan Production Corp. is an independent oil and gas producer with our primary area of operation being the San Juan Basin of Northwest New Mexico. We currently operate approximately 800 wells and drill approximately 40 wells per year. We have been in business since 1959 and have seen many changes in the oil and gas industry during the past 46 years.

We have reviewed the proposed rule changes/additions and offer the following comments:

1. We are concerned about what appears to be a strong OCD emphasis being placed upon rules and regulations dealing with enforcement and compliance issues at a time that industry activity is focused upon efforts to develop and produce oil and gas resources. In the OCD's 9/7/05 press release about the subject rules, it was stated that the OCD "wants to stop the bad guys" and that the OCD's "mission is to protect human health and the environment". To an uninformed "stakeholder", this message presents the oil and gas industry in a generally negative manner. It is our belief that typically producers earnestly attempt to comply with all rules and regulations governing their operations and that the OCD already has the "tools" necessary to protect human health and the environment. The OCD also has the charge to prevent waste, protect correlative rights and conserve the natural resources of New Mexico, in addition to protecting human health and the environment.

2. We do not understand the urgency that appears to have been placed upon these rules. As we understand it, the subject application was first filed on 9/2/05 and first posted for public access and review on 9/6/05. A public meeting was held on 9/21/05 to take input from "stakeholders" and a commission hearing is scheduled for 10/13/05. It is also our understanding that the OCD is requesting that the proposed rules be adopted at the conclusion of the hearing. This schedule does not provide sufficient time for the proposed rule changes and additions to be reviewed, especially considering the current activity levels of most producers in addition to the extra turmoil that may have been caused to some operators headquartered in Houston, by hurricanes Katrina and Rita. It is our understanding that at the public meeting on 9/21, it was requested that "stakeholders" be given more time to address the proposed rules which resulted in the deadline for comments being extended from 9/28 to 10/4, a total extension of six days. This urgency is not justified and we request that the hearing date be postponed at least 30 days and the comment period correspondingly be extended.

3. OCD's proposal to establish provisions for the "knowing and willful" violation of rules and orders is believed to be nothing more than an attempt to increase revenues produced through collections of fines and penalties. We are of the opinion that prudent operators will not "knowingly and willfully" violate any established rule or regulation, however it is conceivable that considering there seems to be a perpetual effort to revise, amend, add to or modify existing rules, an operator might inadvertently be in violation of

the rules and could easily appear to be showing a "consistent pattern or performance or failure to perform" which to an aggressive regulatory person, might be "sufficient to establish the conduct's knowing and willful nature". We predict that if implemented, most rule violations will be presented as being knowing and willful and in response, most operators will be guilty of nothing more than an honest mistake or an inadvertent act.

4. OCD's proposal to implement a new enforcement program that will allow them to deny "privileges" to well operators that are determined to not be "in good standing" is based upon arbitrary factors and has a great potential to completely stall the operations of an operator. Wells out of compliance with Rule 201 (ie, idle for more than one year plus 90 days and/or not formally TA) has been a significant issue recently. The current proposal allows an operator having fewer than 100 wells to have two wells out of compliance with Rule 201 and still maintain a "good standing" status. While an operator having more than 100 wells can have five wells out of compliance with Rule 201 and still be considered to be in good standing. The arbitrary number of wells permissible to be out of compliance with Rule 201 is not equitable for larger operators. For operators of 100 wells or less, 2% of the wells can be out of compliance with Rule 201 and that operator will still be in good standing. For Dugan Production, any more than five wells being out of compliance with Rule 201 will put us on the OCD's list of operators not in good standing. Five wells represents only 0.6% of our total wells, and for operators such as Burlington Resources which has over 7200 active wells in New Mexico, the five permissible wells only represents 0.07% of their total. This places a significant operational burden upon larger operators.

In addition, an operator that has completed corrective actions ordered by the OCD is required to file a motion that the order be declared satisfied. The OCD or OCC "may grant the motion without hearing, or may set the matter for hearing". This process may keep an operator on the OCD's list of "operators not in good standing" longer than necessary and will basically keep that operator from being able to carry on routine operations, such as obtaining approvals for permits to drill, deepen or plugback, C-104's (request for allowable and authorization to transport), change of operator, change of operator name, or obtaining an injection permit. Also, Dugan Production does not consider these things to be "privileges" granted by the OCD, but procedures and forms required by rules and regulations governing operations necessary to develop the mineral resources associated with the oil and gas leases acquired, typically through competitive lease sales. The OCD has a responsibility to approve each of these things provided the operator has met the requirements of each. We see lots of potential for disruption to operators attempting to be prudent.

5. OCD's proposed changes to Rule 101 will create an increased financial and administrative burden for operators (and the OCD) by requiring operators with statewide bonds to also secure an individual well bond for wells formally temporarily abandoned for more than two years. If the well is temporarily abandoned in accordance with the OCD rules, we do not understand why an individual well bond should be required and if an operator has a statewide bond, we do not understand why an individual well bond should also be required. For wells located upon federal or Indian lands, there should be plenty of bonding coverage, especially considering the OCD's proposal to also increase bonding amounts to $5,000 to $10,000 plus $1 per for of depth.

Dugan Production does have additional comments regarding these proposed rules, however to meet the timely filing requirement, submits the above comments for your consideration. Should additional time be provided, we will submit additional comments. Should you have questions, please feel free to contact us.

Sincerely,

Thomas A. Dugan
Dugan Production Corp.

TAD/JDR/tmf

cc: NMOGA - Bruce Gantner & Bob Gallagher

dugan production corp.

October 4, 2005

FAX NO.
505-476-3462

Mr. Mark Fesmire, Director
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

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Proposed OCD Enforcement Rules
NMOCC Case No. 13564

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Sincerely,

Thomas A. Dugan
Dugan Production Corp.

TAD/JDR/tmf

cc: NMOGA - Bruce Gantner & Bob Gallagher

FASKEN OIL AND RANCH, LTD.

303 WEST WALL AVENUE, SUITE 1800
MIDLAND, TEXAS 79701-5116

(432) 687-1777
jimmyc@forl.com

Jimmy D. Carlile
Regulatory Affairs Coordinator

October 5, 2005

Mr. Mark Fesmire
New Mexico Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, NM 87505

Dear Mr. Fesmire,

Re: **CASE No. 13564**
Enforcement Rules

Thank you for the opportunity to comment on the proposed changes to various rules and regulations regarding enforcement issues in New Mexico. Fasken Oil and Ranch, Ltd. strongly support sound, science-based, conservation, environmental and safety regulation of our industry. Bad actors need to be dealt with to help our industry present the image that, by far, most operators truly represent.

Our problem with the current proposal is two-fold. First, the proposal will potentially cause harm to the majority of good operators of New Mexico. Without notice of violations operators will be deemed not in good standing for unintentional errors, overlooked paperwork (by both the operator and the NMOCD) and simple incorrect data entered into the NMOCD computer systems. Second, the short-term in which to evaluate and respond to this proposal, and the lack of dialogue with the NMOCD, does not allow for a complete understanding of the problem(s) trying to be corrected and, therefore, a proper solution. As an independent operator, we are busier now than we have ever been trying to find and produce oil and natural gas to help fuel our country. We are spending more time and financial resources to find fewer and fewer reserves. We have fewer people as an industry than ever before.

What we really need right now are regulatory bodies, both Federal and state, that we can work with to find ways to do our business better, cheaper and faster. This can be accomplished only through open communication of potential problem areas and working together with all stakeholders to find sound, science-based answers that solve real problems. We are not looking for ways to sidestep existing regulations, but ways to streamline processes to make turn-around times on filings faster so we can be a more efficient industry.

Specifically related to these proposed rules, we endorse the comments made by the joint work group of the New Mexico Oil and Gas Association and the Independent Petroleum Association of New Mexico. We agree with the analysis made by this work group and hope that the Oil Conservation Division will adopt the proposed changes as requested by NMOGA/IPANM.

Yours truly,

Jimmy D. Carlile
Regulatory Affairs Coordinator

Fesmire, Mark, EMNRD

From: Dan Girand [dgirand@mackenergycorp.com]
Sent: Wednesday, October 05, 2005 10:55 AM
To: Fesmire, Mark, EMNRD
Subject: OCD rules

MACK ENERGY CORP.
Box 386
Roswell, New Mexico 88201
505 623-8119
October 5, 2005

State of New Mexico
Oil Conservation Commission
Energy, Minerals, Natural Resources Department 1220 South St. Francis Drive Santa Fe, New Mexico 87505

Dear Members of the Commission;

Mack Energy is a locally owned oil and gas exploration and production company headquartered in Artesia, New Mexico. Mack operates oil and gas wells in southeastern New Mexico.

We are pleased to comment on the proposed changes to the enforcement regulations of the Oil Conservation Division. These changes will have a marked impact on the operations of Mack and on the State of New Mexico.

We have made comments in the text of the proposed rule. Purple, underlined words should be deleted. The red text indicates the comments.

The basic question to ask on before any changes and made to OCD rules is how does the change prevent waste, protect corelative rights or the environment, the statutory requirements. The answer to the question whether any of the proposed changes will prevent waste, protect corelative rights or the environment is no.

19.15.1.7 DEFINITIONS:

A. Definitions beginning with the letter "A". I

Approved temporay abandonment shall be the status of a well that is inactive has been approved in accordance with 19.15.4.203 NMAC and is in compliance with 19.15.4.203 NMAC. The word "inactive" needs to be deleted. Definitions and uses of words such as "inactive", "temporarily abandoned" and "approved temporarily abandoned" are not used consistantly throughout the proosed rule. Inactive forr how long? The definition as written could mean a well down for an hour, a day or months could be inactive.

19.15.1.7 DEFINITIONS:

K. Definitions beginning with the letter "K".

Knowinglv and willfully means the voluntary or conscious (intentionally) If a person is awake they are conscious so the standard offered is too broad and could include any act. All the legal definitions I looked up use the word "intentionally". performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes. but does not require. performances or failures to perform that result from a criminal or evil intent This is just inflammatory and gratuitous language that has no place in an OCD rule. It subtly leaves an impression that oil and gas operators are evil.or from a specific intent to violate the law. The conduct's knowingly and willful nature may be established by plain indifference to or reckless disregard of the requirements of the law. rules. orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's

knowingly and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as belief that the conduct is reasonable or legal. I do not see this type language in any other definitions of knowlingly and willfully. It is apparently language that is intended to give OCD the broadest authority to get around the legal requirements of the words, knowingly and willfully. I have no idea what plain indifference means. The idea of being penalized for a consistent pattern of performance for something that is not made clear in that sentence can give OCD authority over anything. Authority broader than anticipated in the Oil and Gas Act.

19.15.1.7 DEFINITIONS:

T. Definitions beginning with the letter "T".

(2) Temporary abandonment shall be the status of a well which/that is inactive. OCD strikes the words "and has been approved for temporary abandonment in accordance with the provisions of these rules" Striking that language seems to be in conflict with defining a temporarily abandoned well in the first definition. It does seem consistent with language in the first definition that fails to define a time frame for "inactive". Why would language which says TA is an inactive well approved in accordance with the rules be struck? A time frame needs to be added.

NEW] 19.15.1.37 GOOD STANDING: The concept of an operator who is in good standing is a giant leap in the regulatory authority of OCD. It exceeds the statutory madate of the Oil and Gas Act and as written, does not provide due process before depriving an operator of the ability to do business in New Mexico.

A. A well operator is in good standing with the division if the operator

(1) currently meets the financial assurance requirements of 19.15.3.101 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action unless such order is pending appeal to District Court; Otherwise the right to an appeal is effectively nullified.

(3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty unless such order is pending appeal to District Court; and

(4) has no more than the following number of wells out of compliance with 19.15.4.201 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.4.201 NMAC and imposing sanctions if the schedule is not met:

(a) two wells if the operator operates fewer than 100 wells;

(b) five wells if the operator operates 100 wells or more.

B. Compliance with financial assurance requirements. The division shall post on its website and update weekly a list of operators who are not in compliance with the financial assurance requirements of 19.15.3.101 NMAC. Cannot agree with this paragraph because we do not agree with the revised financial requirements if 19.15.3.101.

C. Compliance with orders requiring corrective action.

(1) The division shall post on its website a list of operators who are not in compliance with a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action.

(2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. A stay of an order is a separate legal action from an appeal and operators should not have to file both motions. Operators who appeal an order must be in good standing. An order that is stayed pending appeal does not affect an operator's good standing with the division.

(3) An operator who completes the corrective action the order requires may file a motion with the order's issuer to declare the order satisfied. The division or commission, as

applicable, may grant the motion without hearing, or may set the matter for hearing.

D. Compliance with penalty assessments.

(1) The division shall post on its website a list of operators who have a penalty assessment unpaid more than 70 days after issuance of the order assessing the penalty .

(2) An operator who contests an order assessing penalties may appeal and may seek a stay of the order. Same comment as above. An order that is stayed pending appeal does not affect an operator's good standing with the division.

E. Compliance with inactive well requirements.

(1) The division shall post on its web site, and update daily, a "rule 201 non-compliant list" listing each well, by operator, that according to division records:

(a) has not produced or been used for injection for a continuous period of more than one year plus 90 days;

(b) does not have its wellbore plugged in accordance with 19.15.4.202 NMAC;

(c) is not on approved temporary abandonment status in accordance with 19.15.4.203 NMAC; and

(d) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.4.201 NMAC and imposing sanctions if the operator does not meet the schedule.

(2) For purposes of 19.15.1.36 NMAC, the listing of a well on the division's rule 201 non-compliant list creates a rebuttable presumption that the well is out of compliance with 19.15.4.201 NMAC. The burden of overcoming a rebuttable presumption is much more onerous than the current rule.

[NEW] 19.15.1.38 ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS: Any person who conducts any activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of such permit, administrative order, authorization or approval.

[NEW] 19.15.3.100 OPERATOR REGISTRATION; CHANGE OF OPERATOR; CHANGE OF NAME:

A. Prior to commencing operations, every operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address;

(3) the financial assurance required by 19.15.3.101 NMAC. Only if that section is modified as we indicated.

B. The division may deny registration if We are be very concerned about such broad authority to deny a person the ability to engage in the oil business in NM without adequate due process.

(1) ~~the applicant is not~~ in good standing ~~pursuant to 19.15.1.37 NMAC~~; If the applicant is not registered how could he not be in good standing. If they mean someone from another state, 19.15.1.37 only applies to NM. Or do they intend to check all over the world to find if the applicant is a "good operator". If 19.15.1.37 is not changed as we suggest, then we cannot acccept this language.

(2) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 5%, is or was within the past five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing pursuant to 19.15.1.36 NMAC;

(3) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing pursuant to 19.15.1.36 NMAC; It should be made clear that this does not mean an interest in wells, only in the actual company. Five percent is too low a number. Individuals would be penalized when they had no real authority to change the practices of a company who is out of compliance. The authority granted by paragraphs 2 and 3 is just too broad and gives unbridled authority to OCD employees to make decisions.

(4) the applicant is a corporation or limited liability company, and is not registered with the public regulation commission to do business in New Mexico; or

(5) the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico.

C. Operators shall keep the division informed of their current address by submitting address changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

D. The division may require an operator or applicant to identify its current and past officers, directors and partners, and its current and past ownership interest in other operators. More excessive authority.

E. Change of operator.

(1) A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

(2) The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web- based online application. If the operator of record with the division is unavailable, the

new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing, and provide documentary evidence of the applicant's right to assume operations. The new operator may not commence operations until the division approves the application for change of operator.

(3) The division may deny a change of operator if Same problem I had with denying original registration as operator

a) the new operator is not in good standing pursuant to 19.15.1.36 NMAC; or

b) the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.3.201 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

F. Change of name.

(1) A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same but division records are changed to reflect the new operator name.

(3) ~~An operator~~ applies for a change of ~~name by filing a form~~ C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

G. Examples of change of operator and change of name.

(1) Mr. Smith, a sole proprietor, operates five wells under the name "Smith Oil Company".

Mr. Smith changes the name of his company to "Smith Production Company". The name of the entity operating the well has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

(2) Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith Production Company", to a corporation: "Smith Production Company, Inc". The entity responsible for the well has changed, and Mr. Smith and "Smith Production Company, Inc." should apply for a change of operator.

(3) Smith Production Company, Inc., a New Mexico operator, merges with XYZ, Inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith Production

Company, Inc. to XYZ, Inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

(4) Two New Mexico operators, Smith Production Company, Inc. and Jones Production Company, Inc., merge. The surviving corporation is Jones Production Company, Inc. A different entity now operates the wells Smith Production Company,

Inc. formerly operated, and the wells must be placed under that entity's OGRID. Jones Production Company, Inc. and Smith Production Company, Inc. should apply for a change of operator as to the wells Smith Production Company, Inc. operated.

19.15.3.101 Plugging BQND FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Any person, firm, corporation, or association who has drilled or acquired, is drilling, or proposes to drill or acquire any oil, gas, or injection other service well on privately owned or state owned lands "private or state owned" is struck in the draft and must be replaced. The effect will be to have operators acquiring state and federal bonds on the same federal lands. The original wording does not require a state bond on federal lands.

B. The division accents two fonns of financial assurance: a one-well financial This paragraph requires a one well bond for any TA well shut in over two years even if the operator has a state wide blanket bond. There is no evidence that TA wells have been a source of pollution and thus no evidence of a problem with these wells. Especially when they have passed the integrity tests. Why two years when testing is only required every five years? The industry has opposed additional bonding since the mid 1980s when BLM started talking about it. We should continue because bonds are adequate and in NM industry taxed itself to build a plugging and reclamation fund so additional bonding would not be necessary.

The same comments apply to additional bonding. There is no justification for increasing one well bonds from the current amount to $5000 plus $1 a foot. The short answer is no new bonds. Adequate financial assurance is in place now.

[1-1-50,6-17-77,6-5-86,2-1-96; 19.15.3.101 NMAC - Rn, 19 NMAC 15.C.I01, 11-15-01]

19.15.3.102 PERMIT TO DRILL. DEEPEN. OR PLUG BACK:

C. The division may not approve a permit to drill. deepen or plug back if the applicant is not in good standing pursuant to 19.15.1.37 NMAC. We cannot agree to this unless the changes we noted to 19.15.1.37 are made. The authority to deny a drilling permit without adequate procedural safe guards, due process, is a significant change to OCD authority.

D. The division may impose conditions on an approved permit to drill, deepen or plug back. This is entirely too broad. Conditions must be tied to some existing rule. We have already seen BLM and OCD local officials make up rules as they go. What conditions, about what subjects?

E. The operator shall keep a copv of the approved form C-IOI at the well site during drilling ooerations. .

[1-1-50,5-22-73.. .2-1-96; 19.15.3.102 NMAC - RD, 19 NMAC 15.C.I02, 11-15-01]

19.15.4.201 WELLS TO BE PROPERLY ABANDONED,;,

A. The operator of any of the following wells. well drilled for oil, gas or injection; for seismic, core or other exploration, or for a service well, whether cased or uncased, shall be responsible for the plugging thereof: wells drilled for oil or !las: or service wells including but not limited to seismic. core. exQloration or injection wells.

19.15.9.701 INJECTION OF FLUIDS INTO RESERVOIRS:

A. Permit for -The injection of gas,

Iliquefied petroleum gas, air, water, or any other medium into any reservoir for the purpose of maintaining reservoir pressure or for the purpose of secondary or other

enhanced recovery or for storage or the injection of water into any formation for the

purpose of water disposal shall be permitted only by order of the division after notice and hearing, unless otherwise provided herein. The division shall grant a permit for injection under 19.15.9.701 NMAC onlv to an Operator who is in good standing pursuant to 19.15.1.37 NMAC. The division may revoke a permit for injection issued under

19.15.9.701 NMAC after notice and hearingl if the Operator is not in good standing Qursuant to 19.15.1.37 NMAC.

There are plenty of adequate remedies available to OCD in the current laws. The only problem is that those remedies require proof in court and OCD contends that is too difficult. The ability to deny permits for basically all oil field operations because an operator is not in good standing too broad and vague, thus becoming arbitrary and capricious. Notice in the regulations above that an operator must apply to get off the status of a bad operator. Many OCD actions take now months now. An operator, after putting himself back in good standing, could be denied the ability to do business for months. If the abilty to deny, remains, OCD must be required to process a request to return to good status in one day.

(2) The ,Applicant shall furnish, by certified or registered mail, a copy of the application to ~t:Re owner of the surface of the land on which each injection or disposal well is to be located and to each leasehold operator or other "affected person" as defined in Subparagraph (a) ofParaflraDh (2) of Subsection A of 19.15.14.1210 NMAC within one-half mile of the well. We should are very alarmed at the inclusion affected persons. The referenced section does not contain a definition of an affected person, so we do not know who these people will be. As with other sections in this proposed rule, more definitions are required. The current rule adequately protect persons who are affected by oil and gas activities.

D. Hearings!.-If a written objection to any application for administrative approval of an injection well is filed within 15 days after receipt of a complete application, or if a hearing is required pursuant to 19.15.9.701 NMAC Same comment as aove. (1) The division director shall have authority to grant an exception to the

19.15.13.1101 APPLICATION FOR PERMIT TO DRILL, DEEPEN-QR..QB-PLUG I

Section B and C say that OCD can impose conditions of approval and/or deny a permit. Earlier comments apply here.

19.15.13.1103 SUNDRY NOTICES AND REPORTS ON WELLS (Form C-103):

Form C-l 03 is a dual purpose form the oQerator shall filete ~e tiles with the appropriate I district office of the division to obtain division approval prior to commencing certain operations and also to report various completed operations.

date of the proposed plugging operations. The operator shall filelfRet ~fe,,'ieusl~' tiles, a complete log of the well on form C-I05 with the notice of intention to olug the well, if the operator has not oreviouslv filed the log (See 19.15.13.1105 NMAC; the

(1) identifying the operator and any other responsible parties against whom the order is sought, including the surety if the division seeks an order allowing forfeiture of a surety bond;

(2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to that act, allegedly violated;

(3) providing a general description of the facts supporting the allegations; (4) stating the sanction or sanctions sought; and (5) providing proposed legal notice.

D. The division shall provide notice of compliance proceedings as follows: (1) the division shall publish notice in accordance with 19.15.14.1207

NMAC.

(2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.14.1210 NMAC, except that when notifying an operator required to provide the division with a current address pursuant to 19.15.3.100.NMAC, it shall be sufficient for the division to send notice by first class mail to the most recent address the operator provided. For an action as serious as the ones listed above, certified mail must be required.

E. The division director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to that act. The division director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

F. Nothing in 19.15.14.1227 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction underNMSA 1978, Section 70-2-28; collection of penalties pursuant to NMSA 1978, Section 70-2-31 (A).

We appreciate the opportunity to comment.

Sincerely,

Dan Girand

division shall not release the financial assurance until the operator complies with this requirement. The operator's bond should not be held over paper work. There are adequate remedies now in the law.

19.15.13.1104 REQUEST FOR ALLOWABLE AND AUTHORIZATION TO TRANSPORT OIL AND NATURAL GAS (Form C-104):

19.1§.3.111 ~~~.'!.A~G.

A. (5) is in good standing pursuant to 19.15.1.37 NMAC. Same comments on good standing. The entire good standing concept is too vague. What violations could be so serious as to allow OCD to stop all operations conducted by an operator. It would seem necessary to have OCD limit the actions depending on the violation. There should be some connection between the action OCD rejects and the violation causing the rejection.

19.15.13.1115 OPERATOR'S MONTHLY REPORT (Form C-115):

B. The oQerator shall file the+he reports required to be filed by 19.15.13.1115 NMAC shall be tilee b" ~Re ef3efa~ef using the division's web-based online application This change will not allow paper reports and requires an operator to report electronically. Not every operator has a computer capable of communicating with the OCD computer. OCD has no restriction on the type of computer report they require. Must have a system to accept email reports, at no cost to the operator, from a PC type computer. If the OCD computer goes down, then OCD must accept paper reports or suspend reporting until they are back up again.

(3) If an operator fails to file a C-115 that the division accepts.

(4) The language deleted in the proposed rule is the current requirement that OCD notify the operator of the well not reported on, or the well report which contained an error. Under the proposed rule OCD can just cancel an allowable on the well without detailed , adequate notification of the problem. This is a theme throughout these rules. OCD does not want to meet the burden of proof in court, they do not want to notify an operator of what they claim are errors.

[1-1-65...2-1-96; 19.15.13.1115 NMAC - Rn, 19 NMAC 15.M.1115, 06/30/04]

[New] 19.15.14.1227 COMPLIANCE PROCEEDINGS:

A. The provisions in 19.115.14 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.14.1227 NMAC.

B. A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to that act. Such sanctions may include but are not limited to:

(1) requiring compliance with any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to that act;

(2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2- 31(A);

(3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment; Not unless there are definitions of contamination. Removal of surface equipment when, how soon why?

(4) plugging and abandonment of a well, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned;

(5) denial, cancellation or suspension of a permit; Only if we lose and OCD gets such authority to deny

(6) denial, cancellation or suspension of authorization to transport; (7) shutting in a well or wells.

C. The division initiates an administrative compliance proceeding by filing a written application with the division clerk:

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.
ATTORNEYS AT LAW
400 PENN PLAZA, SUITE 700
PO BOX 10
ROSWELL, NEW MEXICO 88202
505-622-6510 (FAX) 505-623-9332
hinklelawfirm.com

WRITER:
Gregory J. Nibert
gnibert@hinklelawfirm.com

October 4, 2005

VIA TELECOPY
476-3462

Oil Conservation Commission
Energy, Minerals and Natural Resources Department
c/o Ms. Florene Davidson
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Member of the Commission:

I am an oil and gas attorney with the Hinkle Law Firm that has a long history of assisting clients with respect to the exploration, drilling and development of oil and gas resources in the State of New Mexico. In fact, our firm represented Humble Oil & Refining Company as it drilled the first well in Lea County in the 1920s. One of our attorneys, Mr. Clarence Hinkle, was the architect of the drafting of the Oil and Gas Act that has served the State of New Mexico since the 1930s. I make these remarks to place in prospective the comments and concerns that are set forth in this letter. The comments expressed herein are specifically directed to the Commission's proposed amendments to Part 15 of the OCD Regulations. The comments expressed herein may also be appropriate with respect to additional rule making that the OCD is currently engaged with respect to other issues over which it has jurisdiction.

In the 1930s, New Mexico recognized that it could by statute avoid many of the problems that plagued the oil and gas industry in the States of Texas and Oklahoma during the infancy of the oil and gas industry. Although New Mexico recognized that it had oil and gas resources, the architects of the Oil and Gas Act could not imagine the tremendous wealth of those resources and the long term prosperity that would be provided to the State of New Mexico through the development of those resources. However, the architects of the Act were keenly aware the implementation of the Act would have broad reaching implications on this growing industry and fully understood that State government played an essential role in ensuring proper development of the resources, recognition of private property rights in the development of the resources, and to protect the public from the necessary dangers involved in the exploration, drilling and production of combustible hydrocarbons. Great thought and attention was paid to the public interest and the private property rights in the drafting of the Act.

The Oil and Gas Act has served the State of New Mexico well. In fact, the statutory provisions and the agency created under that Act have allowed the State of New Mexico to receive the benefit of these resources for over 75 years. It is not by happenstance that New Mexico's oil and gas industry got off to a quick start and became the most efficient in terms of the cooperative relationship that was established between the Oil Conservation Division and the industry as a result of the statute. The efficiencies were recognized not only in the State but throughout the United States as Mr. Clarence Hinkle was called upon by the State of Alaska to draft the Alaska Oil and Gas Act and to set in place a statutory scheme and regulatory scheme that has served that state well since the early 1960s. It is no coincidence that the Alaska statutory and regulatory scheme finds its genesis in the New Mexico statutory and regulatory scheme as a result of the efficiencies of the New Mexico system and the great relationship that was forged between the Oil Conservation Commission and the oil and gas industry.

The statutory charge given by the Legislature to the Commission is to protect correlative rights and to prevent waste of the oil and gas resources in the State of New Mexico. That statutory charge has not changed and it is that charge from the Legislature by which its rules and regulations must be measured.

The proposed rules now before the Commission subtlety, but directly change the relationship between the industry and the OCD. If the proposed rule goes into effect, it will be unfortunate as the tremendous benefits and strong relationship that have prevailed for the last 75 years will be adversely changed and will result in less efficiency and, therefore, less activity and benefits to the State of New Mexico over time. No doubt with existing oil and gas prices, continued development of oil and gas resources in the State of New Mexico will proceed. However, the change in the relationship and the foreseeable additional regulatory burden will have a profound effect on the oil and gas industry in its willingness to do business in the State of New Mexico. Many of our former clients have already made the decision to leave the State of New Mexico due to the burden of regulations with respect to federal lands and they have primarily concentrated on prospects in the State of Texas. With a shift in the rules and the anticipated additional regulatory burden imposed by the OCD, the push by the OCD will cause additional companies to focus on assets in the State of Texas or elsewhere to the detriment of the New Mexico prospects.

I hope that you will seriously consider whether or not the proposed rule making is necessary and request that you not implement the proposed rule making and allow the existing relationship to continue. Set forth below are some specific concerns with various aspects of the proposed rule.

1. Good Standing Requirement: The proposed Section 19.15.1.37 NMAC set forth the criteria for an operator to be considered to be in "good standing." This status has a direct effect on whether the operator can engage in oil and gas activities within the State of

New Mexico. This requirement is not found in the New Mexico Oil and Gas Act and appears to be the mechanism through which the Division by rule circumvents the requirements of the Act for dealing with operators who do not comply with the statute, rules and regulations of the Division. The Act contemplates, and the current rules require, the OCD to proceed to Court against an operator that fails and refuses to comply with the rules and regulations. This provides the OCD with the mechanism to enforce compliance with its rules and regulations, but protects the industry against administrative abuses of power. The effort to insert the good standing requirement is an obvious attempt to change the relationship between the industry and the OCD. With this requirement, the OCD is no longer a partner that is attempting to secure for the State the tremendous benefits of oil and gas exploration and production, but is a true regulator that will assume the regulated entity is not acting in good faith and that the government must strictly and closely watch the regulated entity for wrongdoing.

2. Knowingly and Willfully: Along a similar vain, the requirements in proposed Section 19.15.1.7 regarding the definition of knowingly and willfully will have the practical effect of making all violations subject to civil and criminal penalties. Currently only the most egregious of circumstances with intent rise to the level of civil and criminal penalties. We believe that the current standards are appropriate and the expansion of the definition changes the relationship between the parties which will have adverse consequences on the exploration, production and marketing of oil and gas resources in the State of New Mexico in the future. The proposed definition goes beyond that provided in the Oil and Gas Act and we believe the Rule should follow the language of the Act.

3. Bonding: The proposed bonding requirements will complicate matters as they concern federal lands within the State of New Mexico. In addition, we believe that the current bonding requirements are adequate and the State has a fund from which to draw upon to plug orphaned wells.

4. Compliance: The proposed Section 19.15.14.1227 NMAC provides for compliance proceedings for violations of the Oil and Gas Act or the regulations issued thereunder. Section 70-2-28 NMSA provides that the Division through the attorney general may bring suit against a person that violates the Act or the regulations promulgated thereunder. The proposed rules purport to expand on the authority granted in the Act by allowing an internal procedure for sanctions for such violations as opposed to the statutory requirement of a judicial action.

For the sake of the long term health and vitality of the oil and gas industry in the State of New Mexico and to secure the maximum benefit of the resources that have been discovered within the State, please strike those provisions from the proposed rule that alter the relationship between the OCD and the industry.

Very truly yours,

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

Gregory J. Nibert

GJN/tw

YATES PETROLEUM CORPORATION

105 SOUTH FOURTH STREET
ARTESIA, NEW MEXICO 88210-2118
TELEPHONE (505) 748-1471

October 3, 2005

Oil Conservation Commission
Energy, Minerals, and Natural Resources Department
c/o Ms. Florene Davidson
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Members of the Commission;

Yates Petroleum Corporation (Yates) operates oil and gas wells in New Mexico. These wells are regulated under the New Mexico Oil Conservation Division's (Division or OCD) regulations. As a business that is substantially impacted by the Division's regulations, Yates appreciates the opportunity to present comments on the proposed amendments to Part 15 of the Division's regulations.

Yates has divided this letter into general comments, general concerning the new "good standing" requirement and specific comments on other sections of the proposed rules.

I. General Comments:

The New Mexico Oil Conservation Division has started down the wrong path of regulatory enforcement by considering this type of "penalize first" and ask questions later type of regulation. History has shown this penalize first methodology in enforcement has not worked in the past. The Bureau of Land Management implemented in the early 1990's a similar type of enforcement mentality. Regulators and the regulated community spent more time fighting than addressing the real issues at hand, including the environmental issues. Over the past several years, the Bureau of Land Management has changed to a work with the regulated community methodology and accomplished a great deal more. The best example may be the program to reclaim abandoned sites on federal land to promote habitat improvement. This program is voluntary in nature and has resulted in reclamation efforts that would not otherwise be undertaken.

The problems the proposed rules are trying to address, as we perceive them, are operators that have little at risk and therefore do not follow the existing rules. Operations by these operators are conducted with willful disregard for the rules. Operators that chose to operate in this manner will continue to disregard the rules regardless of the consequences. All the proposed rules appear to accomplish is an ability to generate press releases. The New Mexico Oil Conservation Division (OCD) should use its existing rules and resources take the noncompliant operators who fail to respond to

OCD to district court as provided in the rules.[1] Punishing all operators for the acts of a select few is simply wrong.

Genuine concern or anti industry bias is most likely the prime motivation for these proposed rules. We recognize that this pressure must be intense. However, as the agency charged with the expertise to manage the oil and gas industry, OCD should be pursuing rules that make their job easier to perform and not create an additional burdens on the OCD. We see nothing in these rules intended to make OCD's job easier or provide incentives to industry.

II. General Comments on Good Standing:

Proposed new provision 19.15.1.37 NMAC outlines the requirements for an operator to be considered in "good standing." An operator's "good standing" status affects many of the new and proposed revisions to the regulations. For example, under the proposed regulations an operator must be in good standing to receive a permit to inject fluids into reservoirs (19.15.3.107 NMAC). Also, whether an operator is in good standing affects whether the operator will be able to obtain an operator registration (19.15.3.100(B) NMAC), whether the OCD will permit a change of operator (19.15.3.100(E) NMAC), whether OCD will issue a permit to drill, deepen, or plug back a well (19.15.3.102(C) NMAC), and whether the operator will be able to obtain the assignment of an "allowable" for a newly completed or re-completed well (19.3.13.1104(A) NMAC). In a similar manner, an operator who falls out of good standing may have its permit to inject fluids into reservoirs revoked. *See proposed* 19.15.9.701(A) NMAC. Consequently, whether an operator is considered in good standing will greatly affect its ability to operate oil and gas wells within the state.

Yates objects to OCD's promulgation of the good standing requirement as outside the bounds of the New Mexico Oil and Gas Act. The New Mexico Oil and Gas Act outlines the division's and the board's powers. *See generally* N.M. Stat. Chapter 70, Article 2. When rules are promulgated that are not reasonably related to their legislative purpose, those rules are arbitrary and capricious. *See Old Abe Co., v. New Mexico Mining Comm'n*, 908 P.2d 776, 781 (N.M. Ct. App. 1995); *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 760 P.2d 161, 165 (N.M. Ct. App. 1987). The Oil and Gas Act does not confer power to the board or commission to grant certain operators "good standing." In fact, the statutes never consider classifying operators or granting preferred status to any operator. As such, the OCD has acted outside it legislative authority and has adopted regulations that are arbitrary and capricious. Consequently, the good standing regulations are beyond the scope of the OCD's powers.

In addition, the good standing regulations violate an operator's due process. The proposed regulation outlines four conditions that an operator must meet to be considered in "good standing." *See proposed* 19.15.1.37 NMAC. Because good standings status affects an operator's ability to operate under the OCD regulations (i.e., to obtain permits and fulfill other regulatory requirements), good standing status *must*

[1] See comments on 19.15.14.1227 Compliance Proceedings, herein.

meet the requirements of due process. "It is well settled that the fundamental requirements of due process in an administrative context are 'reasonable notice and opportunity to be heard and present any claim or defense.'" *Jones v. New Mexico State Racing Comm'n*, 671 P.2d 1145, 1147 (N.M. 1983); *Reid v. New Mexico Bd. Or Examiners in Optometry*, 589 P.2d 198, 199-200 (N.M. 1979). However, as the proposed regulations allow OCD to find that an operator is not in good standing without *any* notice, hearing, or an opportunity to be heard or object. Because an operator's good standing status is an individualized determination, due process requires that the rule provide for a hearing.

In addition, two of the individual good standing conditions are also violative of an operator's due process. There are no due process protections for an innocent operator allegedly in violation of either the condition for financial assurance (proposed 19.15.1.37(B) NMAC) or the number of wells out of compliance (proposed 19.15.1.37(E) NMAC). As with any regulation affecting an operator's ability operate its business, an operator who has allegedly violated either of these conditions must receive notice and an opportunity to be heard. *See Jones*, 671 P.2d at 1147; *Reid*, 589 P.2d at 199-200. The proposed regulations will allow the OCD to make one-sided determinations of whether an operator failed to meet these requirements. Under the proposed revisions, the OCD can strip an operator of its good standing status without ever informing the operator. These provisions must be amended to include due process protections.

Likewise, the conditions for good standing must have provisions protecting innocent operators during an appeal. Currently, two of the proposed good standing conditions allow an operator to appeal an OCD decision and retain its good standing status during the appeal. For example, an operator may appeal an OCD order, issued after notice and hearing, finding the operator in violation of an order requiring corrective action. *See proposed* 19.15.1.37(A)(2) NMAC. The operator may seek a stay of the order and not lose its good standing status during the appeal proceedings. *See id.* In a similar way, an operator appealing a penalty assessment may seek a stay and not lose its good standing status during the appeal. *See proposed* 19.15.1.37(D)(2) NMAC. These provisions protect innocent operators from the regulatory impediments that follow loss of good standing while an appeal is ongoing. The remaining two conditions (financial assurance and non-compliant wells) contain no protections for an innocent operator who wants to appeal an adverse finding. Consequently, an innocent operator may lose its good standing status while contesting an inaccurate finding related to either its financial assurance or its allegedly non-compliant wells. As a result, protective provisions must be included in all four of the good standing conditions.

In addition, the good standing requirements will have other consequences. For example, currently OCD encourages productive operators who are fully compliant with the regulations to take over wells or operators that are deficient in some way. In this way, OCD hopes to increase the total number of wells that comply with its regulations. However, because the ramifications for falling out of good standing status are so severe, those operators who have achieved good standing will be extremely reluctant to take over any well that may cause them to fall out of good standing status. As a result, failing operators will eventually abandon their wells or turn to the OCD for assistance.

Likewise, it is unclear how the regulations will treat new operators. These persons will not have *any* standing. Because they cannot achieve good standing status, it is unclear how they are expected to register wells or receive permits. In essence, the proposed regulations make it very difficult for a new operator to initiate an operation.

III. Specific Comments:

In addition to the above comments, Yates has the following specific comments related to good standing and other sections of the proposed regulations.

19.15.1.7 NMAC Definition: "Knowingly and willfully."

Yates objects to the definition of "knowingly and willfully" as overly broad. A person who knowingly and willfully violates a provision of the Oil and Gas Act or a rule or order issued pursuant to the act is subject to civil or criminal penalties. *See* N.M. Stat. § 70-2-31. Violations that are not knowingly or willfully do not result in civil penalties. *See* N.M. Stat. § 70-2-28. In other words, the Oil and Gas Act has established two levels of violations with those that result in civil or criminal penalties requiring a knowingly and willfully element. The definition as written applies to the "voluntary or conscious performance" of any act that is not an "honest mistake[] or merely inadvertent." *See proposed* 19.15.1.7(k) NMAC. As a result, any *act* an operator intends to perform becomes "knowingly and willfully" even if the operator does not know the act violates the Oil and Gas Act or regulations promulgated therefrom. This has the practical effect of making *all* violations subject to civil and criminal penalties and not just the more egregious ones in which an operator intended to violate the Oil and Gas Act. Consequently, under the proposed definition, there is no difference between a violator who intends to violate the terms of the Oil and Gas Act (and deserves civil and criminal penalties) and an operator who violated the terms of the act without conscious intent to do so. Yates proposes clarifying the definition of "knowingly or willfully" to include only those acts with the intent to violate the terms of the act or with reckless disregard for the terms of the act.

Yates proposes the following language:

> Knowingly and willfully means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It ~~includes, but does not~~ requires, performances or failures to perform that results from an ~~criminal or evil~~ intent ~~or from a specific intent~~ to violate the ~~law~~ Oil and Gas Act or a rule or order issued pursuant to the act. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of the law, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. ~~Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.~~

19.15.1.37 NMAC Good Standing.

Yates proposes that OCD amend proposed 19.15.1.37(A)(4) regarding the number of wells that must be found non-compliant before a facility loses its good standing status. Yates proposes that the number of non-compliant wells should be a percentage of the operator's totals wells. The sole exception should be for operators of a minimal number of wells. Under the current proposal, operators are divided into those with 100 or more wells and those with fewer than 100 wells. *See proposed* 19.15.1.37(A)(4) NMAC. Under this scheme, an operator with over 100 wells loses its good standing status if five wells are deemed out of compliance, no matter how many wells are operated. *Id.* In other words, operators with many wells are at a distinct disadvantage in retaining their good standing status because, if a lower percentage of their wells are deemed non-compliant, they fall out of good standing status. Yates proposes that an operator's good standing status should be lost when ten percent of their wells are deemed non-compliant. Only in this way is this regulation fair to all operators of a large number of wells. In addition, Yates proposes that those operators with fewer than 40 wells be deemed no longer in good standing when four wells are found out of compliance. Thus, all operators with 40 or more wells are on a level playing field. That is, they do not lose their good standing unless they have over ten percent of their wells deemed non-compliant. This proposal also protects small operators with fewer than 40 wells who would otherwise lose their good standing status if a few wells are deemed non-compliant. Consequently, Yates proposes amending section 19.15.1.37 to read:

> (4) has not more than the following number of wells out of compliance with 19.15.4.201 NMAC that are not subject to an agreed compliance order setting a schedule for brining the wells into compliance with 19.15.4.201 NMAC and imposing sanction if the schedule is not met:
>
> (a) four wells if the operator operates fewer than 40 ~~100~~ wells;
>
> (b) ten percent of the total number of wells subject to OCD regulations if the operator operates 40 ~~100~~ wells or more.

19.15.1.38 Enforceability of Permits and Administrative Orders.

Yates objects to the promulgation of this new rule as creating redundant enforceability provisions. The Oil and Gas Act contains adequate enforceability provisions for violations of the act and its related regulations. *See* N.M. Stat. §§ 70-2-28 (Actions for Violations) and 70-2-31 (Violations of the Oil and Gas Act; penalties). Promulgation of this rule does not provide new protections. Consequently, Yates proposes its removal.

19.15.3.100 Operator Registration; Change of Operator; Change of Name.

Yates proposes that OCD not limit change of operator and change of name to on-line forms. As the regulations are currently written, both forms C-145 (change of operator) and C-146 (change of name) must be filed online. While Yates supports the option of allowing operators to file forms online, an operator should also have the option of filing paper forms.

Yates also objects to subsection (B) as arbitrary capricious and not in accordance with the law. An action is arbitrary and capricious when it is "unreasoning" and "without consideration and in disregard of facts and circumstances." *Tenneco Oil*, 760 P.2d at 165. This provision of the proposed regulations purports to deny registration if the applicant is not in good standing; an officer, director, partner in the applicant or person with an interest exceeding 5% in the applicant is or was in the last five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing; or the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing. *See proposed* 19.15.3.100(B). Initially, the Oil and Gas Act does not limit the rights of a person to register as an operator upon "good standing" or other status. In addition, the 5% cutoff imposed by this provision has no statutory counterpart and is such an egregiously low value that it will have the effect of precluding a vast number of operators from oil and gas operations. For example, any individual who is an officer, director, partner of an operator or otherwise has an interest exceeding 5% in an operator that falls out of good standing will effectively be precluded from registering as an operator or officer, director, or partner of an operator for five years. No potential operator seeking registration could afford to associate with an individual not deemed in "good standing" no matter how experienced, resourceful or knowledgeable the individual may be. In other words, the label "not in good standing" will follow an individual for five years. Consequently, this requirement must be stricken from the regulations. At the very least, the cutoff should be changed to a controlling interest of over 50%.

19.15.3.101 Financial Assurance for Well Plugging.

A. Federal Preemption.

The proposed revisions to OCD's regulations expand the financial assurance requirements for well plugging to include wells on any land within the state. *See proposed* 19.15.3.101(A) NMAC. Currently, a "plugging bond" is only required for operations on "privately owned or state owned lands." *See* 19.15.3.101(A) NMAC. The expansion of the financial assurance regulation to any land means that plugging bonds are required for wells located on federal lands. However, the Bureau of Land Management already has promulgated comprehensive regulations governing oil and gas drilling on federal lands. *See* 43 CFR Part 3100, Oil and Gas Leasing; Part 3160, Onshore Oil and Gas Operations. The BLM's regulations were promulgated to control "all operations conducted on a Federal or Indian oil and gas lease." 43 CFR § 3161.1(a).

Oil and gas in a public domain land are subject to a federal lease under the Mineral Leasing Act of 1920.[2] 43 CFR § 3000.0-3(a). Federal regulations override conflicting state laws under the Supremacy Clause of the United States Constitution. *See Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1083 (9th Cir. 1979). The regulations governing a federal lease include provisions requiring operators to submit a surety or personal bond to ensure compliance with the federal regulations, including

[2] "Public domain lands" are lands that usually were never in state or private ownership. *Wallis v. Pan Am. Petroleum Corp.*, 384 U.S. 63, 86 S.Ct. 1301 (1966).

"complete and timely plugging of the wells." 43 CFR § 3104.1(a). In *Ventura County*, the county commission required Gulf Oil to obtain a use permit in addition to the federal leases already obtained. 601 F.2d at 1082. The Court found there was "extensive regulation of oil exploration and drilling under the Mineral Leasing Act" and that a local regulation requiring a use permit for drilling created an impermissible conflict. *See id.* at 1083. In a similar manner, OCD's proposed requirement for financial assurance conflicts with the federal requirement for a surety or personal bond and is preempted by federal law. In addition, the OCD requirement is unnecessary because the protection it seeks to afford (ensuring that wells are plugged), is already guaranteed by federal regulation. Thus, any state requirement for financial assurance on federal lands is redundant. Consequently, Yates proposes that OCD not delete the language "privately owned or state owned" from 19.15.3.101(A) NMAC.

B. Mandatory Release of Financial Assurance.

Yates proposes amending the language of this section to require the division to release the financial assurance when all the wells drilled or acquired under the financial assurance have been plugged and abandoned and the location is released. The proposed revision states that the division "may" release a financial assurance after the wells have been plugged and abandoned and the location released. *See proposed* 19.15.3.101(G)(1) NMAC. Thus, the division is granted discretion whether to release the financial assurance after production from the wells has ceased. If the wells have been plugged, abandoned and the location released, however, the division should not be allowed to keep the operator's funds. The purpose of the financial assurance is to ensure that funds are available to close the wells. Once the wells are plugged and abandoned and the location is released, there is no longer any reason for the OCD to retain the funds. Consequently, the division should be required to release the funds. For this reason, Yates proposes replacing "may" with "shall" in the first sentence of 19.15.3.101(G)(1) NMAC.

C. Release of Liability.

Yates objects to the proposed regulatory revision that does not require OCD to release an operator's financial assurance upon a transfer of property or change of operator. *See proposed* 19.15.3.101(G)(2) NMAC. In essence, under OCD's scheme, an operator remains liable after it has transferred operations if the succeeding operator fails to plug a well. Yates contends that operators should not be required to ensure successors plug wells. To do so makes transferring operators insurers for the OCD. In addition, OCD's proposed regulations regarding a change of operators clearly states that a "change of operator occurs when the entity responsible for a well or group of wells changes." *See proposed* 19.15.3.100(E). The financial assurance proposed regulation not releasing an operator's financial assurance upon a transfer of property or change of operator is inconsistent with shifting responsibility for a well or group of wells to a new operator.

19.15.9.701 Injection of Fluids into Reservoirs.

Under proposed subsection (A), OCD may not issue a permit for injection of fluids into reservoirs unless an operator is in "good standing." Yates objects to this

absolute prohibition. Instead, Yates proposes that the OCD retain discretion to issue permits to those facilities that currently are not in good standing but are working towards obtaining good standing status or remedying a loss of good standing status. For example, instead of an absolute prohibition, the regulations may establish a rebuttable presumption that an operator who is not in good standing may not be issued a permit. In this way, the OCD retains discretion regarding the issuance of injection permits and operators are allowed to operate while obtaining good standing status. In the alternative, any permit issued to an operator who is working towards obtaining good standing status, may be conditioned upon the operator obtaining good standing status with a specified time frame. Yates proposes amending the regulations to read:

> A. Permit for ~~Injection Required~~ injection required. - The injection of gas,liquefied petroleum gas, air, water, or any other medium into any reservoir for the purpose of maintaining reservoir pressure or for the purpose of secondary or other enhanced recovery or for storage or the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the division after notice and hearing, unless otherwise provided herein. Failure of an operator to be in good standing creates a rebuttable presumption that the division should not issue a permit for injection under 19.15.9.701. The division may revoke a permit for injection issued under 19.15.9.701 NMAC after notice and hearing if the operator is not in good standing pursuant to 19.15.1.37 NMAC.

Yates also objects to the proposed revisions to subsection (B)(2) because, at this time, operators have no method to determine what constitutes an "affected person." The proposed regulation requires applicants to provide a copy of their application for a permit to inject fluids into a reservoir to each "'affected person' as defined in Subparagraph (a) of Paragraph (2) of Subsection A of 19.15.14.1210 NMAC within on-half mile of the well." *See proposed* 19.15.9.701(B)(2) NMAC. However, the referenced section does not contain a definition of "affected person" because it is a proposed rule currently before the Commission for adoption. *See* 19.15.14.1210 NMAC; State of New Mexico, OCD, *Brief in Support of Application for Rule Adoption and Amendment* at 9. Operators thus do not know what constitutes an "affected person" and who must receive notification of an affected person. At the very least, if OCD wants to impose this requirement it must inform those affected by the regulations what constitutes an "affected person."

As a general proposition Yates opposes requiring an applicant for a permit to inject fluids into reservoirs to provide a copy of the application to any person in addition to those listed in the current version of 19.15.9.701(B)(2) NMAC. Currently, applicants must notify other leasehold operators within one-half mile of the well. *Id.* In its brief supporting the revisions, OCD provided no reason for an applicant to notify other "affected persons." *See* State of New Mexico, OCD, *Brief in Support of Application for Rule Adoption and Amendment* at 10. Leasehold operators are those potentially affected if a permit is issued and should be the only persons required to receive such notice. Notification of additional individuals can only result in unnecessary disputes unrelated to oil and gas operations. Consequently, Yates opposes any amendment to 19.15.9.701(B)(2).

19.15.14.1227 Compliance Proceedings.

Yates objects to this proposed section as outside the limits of the OCD's statutory authority. When regulations are promulgated that conflict with the terms of the act, those regulations are arbitrary and capricious. *See Old Abe Co.*, 908 P.2d at 781; *Tenneco Oil*, 760 P.2d at 165. Proposed section 19.15.14.1227 NMAC proposes to allow the OCD to institute compliance proceedings seeking an order for sanctions for violations of the Oil and Gas Act or rule or order issued pursuant to the act. The New Mexico Oil and Gas Act clearly states that when it appears there is a violation of the act or rules promulgated thereunder, the "division through the attorney general shall bring suit against such person in the country of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred." N.M. Stat. § 70-2-28. These suits may be for penalties and for prohibitory and mandatory injunctions. *Id.* Likewise, the statute proscribing penalties for violations of the Oil and Gas Act and rules or orders issued pursuant to the act states that the penalties "shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or division in the district court." N.M. Stat. § 70-2-31. The OCD's powers are enumerated by the Oil and Gas Act and reflect the Legislature's considered judgment that penalties should be inflicted only after review by an independent court. Thus, the Oil and Gas Act does not authorize the administrative imposition of sanctions and penalties except through the civil judicial process, with possibility of settlement and recourse to the courts in appropriate cases. *See* N.M. Stat. § 70-2-12. Consequently, any remedial actions for violations of the Oil and Gas Act and its related rules and orders must be brought by the attorney general in a civil suit in district court and not in an administrative proceeding. Because OCD's proposed regulation contravenes this legislative determination, the proposal to administratively impose monetary and equitable sanctions for violations of the Oil and Gas act is invalid and must be stricken from the proposal.

* * * *

Yates appreciates the opportunity to provide its comments on the proposed revisions to OCD's regulations. If you have any questions or comments, please contact Chuck Moran at (505) 748-4349.

Thank you,

YATES PETROLEUM CORPORATION

Chuck Moran
Landman

DRAFT LETTER FOR OCD -- October 3, 2005

Oil Conservation Commission
Energy, Minerals, and Natural Resources Department
c/o Ms. Florene Davidson
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Members of the Commission;

Yates Petroleum Corporation proposes these changes to the rules proposed on September 6, 2005. These comments are made from the perspective of practical application of the rules.

19.15.4.201 Wells to be Properly Abandoned
In 201.B(1) we recommend that the 60 day period be changed to be 90 days to be consistent with paragraph B of the same rule.

19.15.13.1103 Sundry Notices and Reports
In 1103 A. (2) we recommend that the words "and the time and date of the proposed plugging operations" be removed from the rule. A new requirement could be added that would require the operator to provide 24 hour notice. This is the practical way plugging operations are being done at this time. It is not possible for an operator to give an exact date and time when plugging will occur. Changing it to a twenty four hour notice period provides OCD the ability to observe the plugging.

In 1103 B. (2)(h), we recommend that this part be removed from the rule. OCD does not need this information and does not fit within the requirements of protecting correlative rights, waste or protection of ground water.

In 1103 C. we recommend that the time period for submittal be changed to 30 days. Currently, if required to follow the ten day period, an operator would have to file three separate reports, one for spudding, one for setting of surface casing and one report for setting of intermediate casing. However, if this date period was thirty days, one report could cover all three of theses procedures.

1103 G. Report for remedial work-
We recommend striking the language requiring submission of daily production of oil, gas and water from the C-103. This information is available on the Ongard system and is redundant. The rule would read as follows:

> 1103 G. The operator shall file a~~A~~ report of remedial work performed on a well ~~shall be filed by the operator of the well~~ within 30 days following completion of such work. Said report shall be filed ~~in quadruplicate~~ on form C-103 and shall present a detailed account of work done and the manner in which such work was

performed; ~~the daily production of oil, gas and water both prior to and after the remedial operation;~~ the size and depth of shots; the quantity of and, crude, chemical or other materials employed I the operation~~,~~ and any other pertinent information.

Also we request that G.(4) be removed as unnecessary reporting requirements.

1103 H. Report on deepening or plugging back within the same pool-
We recommend striking the language requiring submission of daily production of oil, gas and water from the C-103. This information is available on the Ongard system and is redundant. The rule would read as follows:

> 1103 H. Report on deepening or plugging back within the same pool- The operator shall file a~~A~~ report of deepening or plugging back ~~shall be filed by the operator of the well~~ within 30 days following completion of such operations on any well. The operator shall file said~~Said~~ report ~~shall be filed in quadruplicate~~ on form C-103 and ~~shall~~ present a detailed account of work done and the manner in which such work was done and the manner in which such work was performed. ~~If the well is recompleted in the same pool, the operator it shall also report the daily production of oil, gas, and water both prior to and after recompletion~~. If the well is recompleted in another pool, the operator shall file forms C-101, C-102, C-104, AND C-105 must be filed in accordance with ~~Sections~~ Sections 1101, 1102, 1104, and 1105 of 19.15.13 NMAC.

1103 I. We recommend that the ten day requirement of this section be replaced with thirty days. This will make submission of all sundry notice time frames consistent at 30 days from operations.

19.15.13.1104 Request for Allowable and Authorization to Transport Oil and Natural Gas

Currently with electronic filing, the information submitted on a C-104 becomes public and available almost instantaneously. This rule does not provide the ability to keep information on the C-104 confidential similar to the confidential treatment of other completion reports. We request that the C-104 be authorized for filing without being completed with the initial production information so that the information may be keep confidential. Additionally, this approach will clarify the different approaches the district offices take on this position.

19.15.13.1115 – Operators Monthly Report
In this section we request that the OCD reconsider its revisions to this rule based on the effects of an electronic filing. Two separate problems exist with the rule as now written. First with regards to production information and the electronic filing requirements, information now becomes immediately accessible to competitors through the Ongard system. Industry needs a way to keep the information filed on a C-115 confidential for a time period prior to the information being accessed by the public, while meeting the needs of the regulatory bodies that use this information. Second, with the requirements of electronic filing, an error with regards to one individual well on an electronic

submission will causes the rejection of all C-115 for the multitude of wells included in the electronic filling.

19.15.13.1115(3): We recommend that the language "that the division accepts" be removed from the rule as it pertains to the entire C-115 report.

Very truly yours,

Yates Petroleum Corporation

Michelle Taylor

Oil & Gas Accountability Project
a program of EARTHWORKS

October 4, 2005

Mark E. Fesmire, Esq.
Director
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, NM 87505

Re: OGAP Comments on proposed amendments to Rules 7, 37, 38, 100, 101, 102, 701, 1101, 1103, 1104 and 1227 of 19.15 NMAC

Dear Mr. Fesmire:

The Oil & Gas Accountability Project (OGAP) would like to submit the following written comments on the proposed amendments to Rules 7, 37, 38, 100, 101, 102, 701, 1101, 1103, 1104 and 1227 of 19.15 NMAC, Case No. 13564.

In general, OGAP views these proposed amendments as an important step forward by the OCD to ensure the appropriate balance between development of the oil and gas resource and weeding out the 'bad actors' in the industry, whose actions would burden taxpayers with the cost of plugging and cleaning up their abandoned wells. We believe that these amendments will bring New Mexico into line with the current industry standards found in other oil and gas producing states. We, therefore, urge that these amendments be adopted by the Commission at the public hearing later this month.

Specific comments

•Financial Assurance amounts: While we generally support the increase in individual one-well assurance amounts, proposed for 19.15.3.101, the information available from our partner groups indicates that the $5000/$10,000 base amounts are probably too low to actually cover the average remediation costs associated with wells improperly abandoned by operators. The average cost that we are aware of, based upon BLM data, is that clean-up costs average between $13,000 and $15,000. Therefore, we believe that the proposed amounts are a minimum for per well financial assurance.

We are disappointed to see that the OCD has not proposed to increase the blanket financial assurance amount beyond the current $50,000. OCD's application for the

proposed amendments does not explain the rationale for leaving the statewide amount at this low level. However, OGAP questions whether this amount is sufficient to cover the costs for an operator that enters bankruptcy, as some most assuredly will, once the current price-driven drilling frenzy is over. OGAP believes that a blanket assurance amount of between $75,000 and $100,000, at least for the major operators, would be more appropriate.

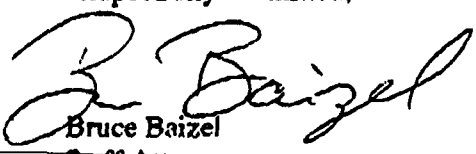
•Good Standing: OGAP strongly supports the proposed new language in 19.15.1.37 that requires a well operator to be in good standing with the division. In particular, we find the four criteria listed in section A.(1)-(4) of the new rule as being a reasonable set of factors that any responsible operator should have no problem meeting. We also are strongly supportive of sections B, C, D and E as being excellent examples of transparency and public accountability, with the requirement that lists of operators out of compliance with the good standing factors be posted to the OCD website.

•Operator Registration: We are also supportive of the proposed new language in 19.15.3.100, which allows the division to deny the required operator registration if the good standing requirement is not met. We are particularly supportive of sections B.(2) and (3), which will prevent bad operators from playing a 'shell' game by transferring wells between entities in order to avoid outstanding clean-up obligations. OGAP would note that the five year time frame included in this language has also been found to be appropriate in New Mexico in the mining context. Therefore, we support the use of a consistent approach in this proposed rule.

•Enforceability: We are strongly supportive of the new language proposed in 19.15.1.38, which would make the orders and permits of the division, themselves, enforceable. As the oil and gas fields get more crowded, the need for orderly administration of division orders and permits will increase, making this a necessary step towards that end.

On behalf of our New Mexico members, we appreciate the opportunity to comment on these proposed rules and look forward to their adoption by the Commission.

Respectfully submitted,



Bruce Baizel
Staff Attorney
Oil & Gas Accountability Project

Comments and Proposals for Alternative Rule Amendments of the New Mexico Oil Gas Association and the Independent Petroleum Association of New Mexico on the Oil Conservation Division's Proposed Enforcement Rules October 4, 2005

GENERAL COMMENTS:

In recent years the members of the New Mexico Oil and Gas Association and IPA New Mexico have devoted substantial time and effort, working with the Oil Conservation Division, to assure that its rules and regulations lawfully and effectively regulate the oil and gas industry. NMOGA has aggressively pursued practices and policies that are designed to ensure that in its dealing with other stakeholders, the oil and gas industry is a good neighbor and that its activities are conducted with utmost concern for the environment and public health and safety. NMOGA and IPANM do not disagree with the stated objective of the proposed enforcement rules - compliance with the Division's statutes, rules and regulations. However, while the Division has stated that it wants to make it easy for good companies to do business in New Mexico, we are concerned that these rules, as drafted, are directed at the good operators not at bad actors.

We believe that the Oil Conservation Division erred in departing from its traditional rule-making path by not involving all parties, including the oil and gas industry, in development of these rules. If the Division had involved the oil and gas industry, perhaps our threshold questions would have been answered: What is the problem that these rules are designed to fix? What problems are not addressed by current rules?

The difficulty we have faced in responding to the proposed enforcement rules has been further compounded by the limited time allowed for comment and the resulting absence of meaningful dialogue between the agency and those who are most directly affected by these rules. We are concerned that the rules that will result from this process will unnecessarily contain provisions that will force operators to challenge them in the courts instead of resolving our concerns through the reasonable dialogue that has been the hallmark of prior Division rulemaking efforts.

There are several problems with the proposed rules that must be corrected to protect operators from the serious economic consequences that can result from subjective decisions by the agency based on arbitrary standards, misinformation and incorrect data.

The NMOGA and IPANM comments will focus on these major issues. Individual member companies will also provide comments on these and other concerns about the rules as drafted.

SPECIFIC COMMENTS:

GOOD STANDING: (New Rule 19.15.1.37)

Our primary concern relates to the Division's proposed "good standing" rules and the criteria set out therein. As these rules are drafted, if the Division unilaterally determines that an operator is not in good standing, that operator's right to do business in this state can be significantly impaired.

NUMBER OF ALLOWED INACTIVE WELLS

One of the criteria in New Rule 19.15.1.37.A ties an operator's standing to the number of wells it operates that are not in compliance with the Division rules governing the abandonment of wells. It provides that for an operator of fewer than 100 wells to be in good standing, it may have no more that two wells out of compliance. Operators of more than 100 wells may have no more than five wells out of compliance (19.15.4.201 NMAC). This rule sets standards that discriminate against larger operators. The larger the operator, the smaller the percentage of its total wells may be out of compliance. For example, under the rule as proposed, if an operator operates 2000 wells in this state, it may have only 0.25% of its wells out of compliance where an operator with only 4 wells may have 50% of its wells out of compliance and still be in good standing. This rule should be amended to provide that the number of wells an operator is allowed to have on the Division's inactive well list and remain in good standing should be a percentage of the total wells operated in New Mexico by the operator and its related entities. To protect small operators, this rule should also set a floor under the number of wells an operator may have out of compliance.

RECOMMENDATION

NMOGA and IPANM recommend that New Rule 19.15.4.201.A be amended as follows:

A. A well operator is in good standing with the division if the operator

. . . .

(4) has no more than five wells or 5% of the wells it operates in New Mexico, which ever is larger, out of compliance with 19.15.4. 201 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.4. 201 NMAC and imposing sanctions if the schedule is not met.

ACCURACY OF THE DATA USED

The proposed rules provide serious sanctions against any operator that the Division determines is not in good standing. Direct sanctions include the Division refusal to approve a permit to drill or work-over a well (19.15.3.102 NMAC) and denial of authorization to transport oil or natural gas (19.15.13.1104 NMAC). Furthermore, the

proposed amendments to Rule 19.15.9.701 NMAC provide broad authority to the Division to revoke existing injection permits if an operator is determined to not be in good standing (19.15.9.701 NMAC).

Indirect, and perhaps more serious, consequences can result if the Division posts the name of the operators it determines are not in good standing on its website (19.15.1.37 NMAC). Identifying an operator as not being in good standing will impair an operator's ability to enter agreements with third parties that will directly impact its ability to work in the state. Before the Division determines that an operator is not in good standing, it must assure that its determinations are based on accurate information.

As discussed at the Division's stakeholders meeting held on September 21st, a preliminary review of the Division's Inactive Well List reveals a number of errors in the wells listed. If this list is used to determine whether or not an operator is in good standing, it must be accurate. However, the operators are concerned that the list will always contain inaccuracies that will result from reporting errors and/or delays in finalizing Oil Conservation Division approval of information filed by operators.

Operators fear that they will lose their good standing, not because of a failure to comply with the rules of the Division, but because of an error in the Division's data. To avoid this situation and to assure that the data is correct prior to the determination by the Division that an operator is not in good standing, NMOGA and IPANM recommend that any operator who has more than the allowed wells on the Division's Inactive Well List be advised by the Division, by Certified Mail, that it has 30 days within which to contact the Division and to bring these wells into compliance or it may be found to not be in good standing and subject to the other provisions of these enforcement rules.

When an operator files an Application for Permit to Drill, the Division will be able to determine if that operator is in good standing and, if not, require that it take such action as is required to come back into compliance with Division rules. If it can advise an operator that it is not in good standing in this circumstance, it should be able to notify non-compliant operators that their standing before the Division may be at risk and give them 30 days to bring wells into compliance with Division rules.

No other amendment to the proposed rules will provide this protection to operators or protect the Division from impairing property interests without due process of law. A delay in the effective date of the rules would enable operators to bring wells into compliance, but more is needed. Providing information on the Division's web page that will enable operators to track the status of any inactive well will also help.

Thirty days notice would put the burden on the operator to check the list and the data therein and will afford that operator an opportunity to avoid its being determined to not be in good standing based on inaccurate data. It would also assure that if an operator acquires wells from another operator that are not in compliance, it will not be subject to an immediate determination that it is not in good standing because of the status of wells

it has just acquired. It would have an opportunity to either bring the wells into compliance or enter into an Agreed Compliance Order with the Division.

Providing operators 30 days written notice will also help address the fundamental due process issue raised by the current proposal. Since an operator's "good standing" will determine whether or not it is able to conduct business in New Mexico, if an operator's "good standing" is revoked by the Division, its constitutionally protected property rights will be affected. Unless it is given notice of the pending Division action and is afforded an opportunity to take the matter to hearing, its rights will be impaired without due process of law. Therefore, at a minimum, before the Division revokes an operator's good standing, it must provide the operator with notice and an opportunity to be heard.

The proposed rule provides that if a well is placed on the non-compliant list, a "rebuttable presumption" is created that the well is out of compliance (19.15.1.37.E.(2) NMAC. NMOGA and IPANM ask that an operator be provided 30 days to correct errors, rebut this presumption, and defend itself.

RECOMMENDATION

NMOGA and IPANM recommends that Rule 19.15.1.37.E NMAC be amended by the addition of the following language:

> F. Prior to revoking the good standing of any operator the Division shall give notice to the operator that, according to division records, it fails to meet the good standing standards of Section 19.15.1.37 and that it has 30 days from the date of this notice to bring its wells into compliance, or negotiate an agreement to bring its wells into compliance, with Division Rule 19.15.4.201 NMAC.

If an operator fails to either bring its wells into compliance with rule 19.15.4.202 NMAC or enter an agreed compliance order with the division, its good standing may then be cancelled.

DEFINITION OF "INACTIVE WELL"

The Division's inactive well list should include all wells that have not been properly plugged and abandoned or temporarily abandoned pursuant to Rule 19.15.4.201 NMAC. However, it currently includes a number of wells that are not inactive. To clarify this term and facilitate operator review and challenges to the wells on the inactive well list, this term should be defined in the proposed enforcement rules.

RECOMMENDATION

NMOGA and IPANM recommend that the proposed rules contain the following definition:

I. Definitions beginning with the letter "I".

(1) "Inactive well" A well is "inactive" if according to division records it:
   a) Has not produced or been used for injection for a continuous period of more than one year plus 90 days;
   b) Does not have its wellbore plugged in accordance with 19.15.4.202 NMAC;
   c) Is not on temporary abandonment status in accordance with 19.15.4.203 NMAC;

(2) A well is not "inactive" if it is:
   a) A dewatering coal gas well;
   b) An approved injection well; or
   c) Not producing because of delays in obtaining surface access to the well.

UNIFORMITY OF ENFORCEMENT

Operators have expressed concern about inconsistencies in the implementation and enforcement of Division rules by the different district offices. These operators are concerned that these inconsistencies will result in wells being considered out of compliance and included on the inactive list in one portion of the state but not in others. The result can be that the good standing status of an operator may depend on the portion of the state in which it operates. The Division expects operators to be consistent. The Division should also be consistent in the interpretation and enforcement of its rules.

OPERATOR REGISTRATION

New Rule 19.15.3.100 provides for operator registration. If not registered, an entity cannot do business in New Mexico. Under this rule, registration may be denied if "an officer, director, partner in the applicant or person with an interest in the application exceeding 5%, is or was within the past five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing pursuant to 19.15.1.36 NMAC." This provision requires information generally not within or available to another operator. For example, how would an operator know if a person owning an interest in a property subject to a pooling application had been an officer, director, partner of person with an interest exceeding 5% in another entity that had not been in good standing before the Division? While the rule appears to be directed at known bad actors, the inclusion of this provision is of concern to other operators who will try to comply with these rules.

FINANCIAL ASSURANCES

The amendments to Rule 19.15.3.101 NMAC now require two bonds covering wells on federal lands. NMOGA and IPANM believe that the state should have access to a bond if the state is required to plug a well. However, NMOGA and IPANM request that the Division contact the BLM and explore a single joint bond for these wells. There is precedent for this approach in the mining industry and a joint bond would avoid the "double-dipping" of the current proposed amendment.

The Division is also proposing to extend the bonding requirements to cover location restoration and remediation. Bond suppliers have dwindled in number and increasing the potential liability as proposed will further exacerbate this situation. NMOGA and IPANM believe that plugging bonds should be just that and only used for plugging wells.

Compliance with the Division's financial assurance rules is also a condition of "good standing." Accordingly, the due process concerns previously raised in these comments concerning inactive wells are applicable to the financial assurances provisions in the proposed enforcement rules.

"KNOWINGLY AND WILLFULLY"

The definition of "knowingly and willfully" contained in the proposed rules has been drawn from a BLM definition used for certain matters involving surface issues. NMOGA and IPANM are concerned about this choice of definition. We believe that before it is determined that an operator has knowingly and willfully violated the Division's statutes, rules and regulations, the Division should be required to show that the violation was intentional. An operator should not be found to have "knowingly and willfully" violated the Oil and Gas Act or the rules and regulations promulgated there under where the operator does not know its actions are in violation of statute or rule. We also are concerned about the use of terms like "reckless disregard" and "evil intent."

RECOMMENDATION

NMOGA and IPANM recommend that the current definition of "Knowingly and Willfully" in the Division's proposed enforcement rules be replaced with the following definition adapted from OSHA'a Willful Violation Criteria:

K. Definitions beginning with the letter "K".

"Knowing and willful" means either that the violation was intentional of an applicable law, rule, order or permit or in plain indifference to their requirements. The following criteria further defines what will be considered a knowing and willful violation:

1) The operator committed an intentional and knowing violation if:

a. An authorized representative of the operator was aware of the applicable law, rule, order, or permit condition and was also aware of a condition or practice in violation of those requirements and did not abate the situation.
b. An authorized representative of the operator was not aware of the applicable law, rule, order, or permit condition but was aware of a comparable legal requirement (e.g., federal) and was also aware of a condition or practice in violation of that requirement and did not abate the situation.

2) The operator committed a violation with plain indifference if:
a. Higher management officials were aware of the applicable law, rule, order, or permit condition to the company's business but made little or no effort to communicate the requirement to lower level employees and supervisors.
b. Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.
c. An authorized representative of the company was not aware of any legal requirement, but was aware that a condition or practice was a hazard to public safety or the environment and made little or no effort to determine the extent of the problem or take corrective action.

APPROVED TEMPORARY ABANDONMENT

The Division is proposing amendments to Rule 19.15.4.203 that governs the temporary abandonment of wells. The intent of these amendments appears to be an attempt by the Division to extend its bonding capacity to inactive wells. The amendments are confusing and result in the inconsistent use terms. If operators are going to comply with Division rules, they should be understandable.

NMOGA and IPANM oppose these amendments. We believe the current temporary abandonment rules are sufficient and have been working. The real issue involves inactive wells and this has been adequately addressed elsewhere in the proposed rules.

We also believe that these amendment go beyond the authority of the Division as those powers have been defined and limited by the Oil And Gas Act. If additional authority is needed to extend the Division's bonding capacity, that is a matter to be addressed by the legislature.

CONCLUSION

The New Mexico Oil and Gas Association and IPA New Mexico appreciate this opportunity to comment on the Oil Conservation Division's proposed enforcement rules and propose amendments to the current draft. NMOGA and IPANM will participate in the October 13, 2005 hearing on these proposals.

Occidental Permian Ltd.
A subsidiary of Occidental Petroleum Corporation

5 Greenway Plaza, Suite 110, Houston, Texas 77046-0521
P.O. Box 4294, Houston, Texas 77210-4294
Phone 713.215.7000

October 4, 2005

Mr. Mark Fesmire, P.E.
Director, Oil Conservation Division
Energy Minerals and Natural Resources Department
State of New Mexico
1220 South St. Francis Drive
Santa Fe, NM 87505

2005 OCT 4 PM 2 04

RE: Case No. 13564
Proposed Enforcement Rules

Dear Mr. Fesmire,

OXY Permian appreciates the opportunity to comment on and recommend changes to the proposed rules regarding enforcement. OXY participated in the open meeting on September 21 and hopes that the Commission will consider our recommendations.

OXY also thanks the Commission for extending the time in which to file these comments. I am located in Houston and our office was closed due to the threat of the hurricane.

We look forward to working with the Commission in crafting reasonable, workable rules. I can be reached at 713-366-5303.

Sincerely,

Elizabeth S. Bush-Ivie, P.E.

Elizabeth S. Bush-Ivie, P.E.
Regulatory Team Leader

VIA HAND DELIVERY

State of New Mexico
Energy, Minerals and Natural Resources Department
Oil Conservation Commission
Santa Fe, New Mexico

2005 OCT 4 PM 2 04

Re: **Comments on Application of the New Mexico Oil Conservation Division, through the Enforcement and Compliance Manager, for the adoption of new rules, 19.15.1.37 NMAC, 19.15.1.38 NMAC, 19.15.3.100 NMAC, AND 19.15.14.1227 NMAC; and the amendment of 19.15.1.7 NMAC, 19.15.3.101 NMAC, 19.15.3.102 NMAC, 19.15.4.201 NMAC, 19.15.4.203 NMAC, 19.15.4.1101 NMAC, 19.15.9.701 NMAC, 19.15.13.1103 NMAC, 19.15.13.1104 NMAC, and 19.15.13.1115 NMACCase No. 13564**

Occidental Permian Ltd., OXY USA Inc., and OXY USA WTP LP (collectively "OXY") appreciate the opportunity to participate in the New Mexico Oil Conservation Division ("OCD") rulemaking referenced above regarding enforcement, good standing, definitions, bonding and other issues. OXY has operations in southeast New Mexico and is increasing its presence in New Mexico, having recently closed on two acquisitions. Our general and specific comments on the rulemaking are set forth below.

GENERAL COMMENTS

OXY's corporate philosophy is to be a good neighbor, a good corporate citizen and to know and follow the rules. However, as the rules are drafted it will be next to impossible to be considered by the agency as a good actor. Five wells out of compliance represents about 0.25% of our total number of wells. This means that OXY could be in compliance 99.75% of the time and still be labeled by OCD as a bad actor. This is an unreasonable result. OXY does not deliberately have wells out of compliance; however, corrections of reporting errors, equipment delays or lack of availability of equipment or crews may result in not meeting certain deadlines. We urge the Commission to consider a reasonable well count or a percentage--whichever is greater--such as 10 wells or 5%.

It stands to reason that if an operator's actions warrant losing good standing, its operations will reflect it on more than one lease. The OCD must evaluate more than a few wells in order to inflict the potential damage this action could cause.

We are concerned with the tone and apparent focus of the proposed rules. As drafted, OXY is concerned that the majority of oil and gas operators may lose their good standing and be labeled a bad actor without just cause. The focus of enforcement regulations should be to promote compliance and, when necessary, identify and influence operators who are truly negligent, unresponsive to the OCD and uncooperative in resolving non-compliance issues. Administrative errors and forms lost by the OCD should not trigger a compliance action nor be considered in determining good standing. Unfortunately, the

industry may be forced to send all communication to the OCD using confirmed delivery in order to show compliance.

The proposed rules require numerous administrative actions by the OCD staff and will probably generate many requests for hearings. We are concerned that the systems, report and permit processing, requests for hearings and stays and other actions will result in the inability of the OCD to keep the lists used as a basis for determining standing current. This could then lead to unwarranted adverse impact on operators.

OXY has considerable concern regarding the lists to be used in qualifying good standing. At the present time, the inactive well list does not correctly reflect the status of OXY's wells. Approximately half of the wells on the list at the end of September were, we believe, incorrectly listed. This included wells plugged and abandoned as much as 3 years ago, wells temporarily abandoned under the current rules, wells used for injection and wells returned to service.

According to the proposed rules, an operator could be judged to be out of compliance, have permits denied and have to go through a hearing process only to show it actually *is* in compliance. This could result in the loss of committed drilling rigs, shut-in production, loss of revenue to the state, and a multitude of other adverse consequences because the Commission had incorrectly claimed the operator no longer had good standing. These issues could escalate to legal challenges requiring extensive resources of both the OCD and industry.

OXY is particularly concerned that issues related to a few wells, less than 0.25% of our total wells, could impact all of our operations. A preferable compliance action would focus on the wells and associated leases that are out of compliance, not the entire operation in the state. The Railroad Commission of Texas (RRC) enforcement actions, referenced in the OCD's brief, are limited to specific wells or leases. The RRC Certificate of Compliance (P4) is specific to a lease, not all of the operations by one operator. It reflects the authority to transport oil or gas and has no impact on the approval or revocation of other permits.

OXY recommends that the OCD not publish the lists, as the potential for errors and significant damage to the operators is great. An incorrect label of "bad actor" does not go away just because the OCD made an error in its processing. One can look at many examples in business where incorrect data or information was published and irreparable damage was done to a company or an industry.

The OCD has stated that the rules will provide the OCD with discretion regarding denial or revocation of permits. The proposed rules do not establish guidelines for discretionary decisions. We have to assume the worst-case scenario in assessing the impact of the proposed rules to our operations. As noted above, this may include loss of production, loss of revenue to the state, disruption of operations and capital projects, and could result in irreparable damage to formations and the waste of natural resources.

OXY suggests that the rules specify more steps and checks and balances before the revocation of an operator's good standing. At this time, we have not formulated an alternative method for the OCD's consideration, but hope to offer suggestions as this rulemaking process progresses.

SPECIFIC COMMENTS

[New] 19.15.14.1227 Compliance Proceedings

C. Additional steps should be specified and required before the OCD files a compliance proceeding. While discussions with OCD staff and common sense indicate a compliance proceeding would be an action of last resort, the proposed rule does not provide for common sense actions.

D. Notice of a compliance proceeding should be sent by certified mail to the operator. It is not uncommon for first class mail to be lost or damaged to the extent it cannot be delivered. This type of proceeding is serious enough to require proof of delivery.

Compliance orders must be limited to the wells or leases out of compliance, not all of an operator's operations.

19.15.1.7 Definition: Knowing and willfully

The proposed definition is adapted from the definition found in 43 CFR 2920.0-5(m). We suggest the following changes to improve the definition. First, mistakes are generally honest, so the word "honest" is unnecessary. Second, delete the word "plain" from "plain indifference" as it does not add clarity. Third, conduct does not have a nature and we suggest you use the sentence structure from the CFR. Lastly, we suggest you delete the entire last sentence. The proposed amended language is as follows:

> "Knowingly and willfully means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are ~~honest~~ mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The ~~conduct's~~ knowing and willful nature of the conduct may be established by ~~plain~~ indifference to or reckless disregard of the requirements of the law, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the ~~conduct's~~ knowing and willful nature of the conduct, where such consistent pattern is neither the result of ~~honest~~ mistakes nor mere inadvertency. ~~Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal."~~

[New] 19.15.1.37 Good Standing

The concept of "good standing" is relevant. The problem with this and related sections is the far-reaching impact resulting from the loss of good standing and the declaration that an operator is then a bad actor. The impact of the loss of good standing as it is used in

the proposed regulations goes far beyond compliance with the regulations. An operator should have to be grossly uncooperative and unresponsive to the OCD to be declared a bad actor and subject to the proposed sanctions. The OCD brief states that removal of good standing will be limited to "well operators who are in serious violation of Division rules." However, as proposed we do not see how the rules will limit the sanctions to just those operators.

What constitutes a "serious violation"? OXY does not believe that well count should be the guiding factor.

OXY is concerned with the requirements that the OCD staff update certain lists as frequently as daily. Delays in processing corrections, plugging reports and other documents make the lists and the updates an unreliable source to be used in removing an operator's good standing.

The brief also references the RRC Certificate of Compliance ("P4"). The P4 is specific to a lease, not all of the operations by one operator. It reflects the authority to transport oil or gas and has no impact on the approval or revocation of other permits. There is no comparison to the proposed OCD actions.

(A)(4) We suggest the compliance standard be set at 5% of the total number of wells.

(C)(3) An operator who satisfactorily completes corrective actions should not have to file a motion for the order to be satisfied. Upon review and acceptance of the final report, the OCD should automatically file that the order has been satisfied. The additional work to file a motion is an unwarranted administrative burden for both the OCD and the operator.

(C) and (D) The proposed rules allow for a stay of an order pending an appeal, and they claim the order will not affect the operator's good standing. However, it appears that the "good standing" would have already been revoked and the operator labeled a bad actor before the hearing occurs because of the OCD lists. Should the appeal result in a favorable decision for the operator, the damage of the negative label will have already been done.

(E)(2) This statement should be deleted or restated as it declares an operator guilty of being non-compliant before the operator can present the facts. This incorrectly presumes the OCD lists are correct.

19.15.3.102 Notice of Intention to Drill
19.15.13.1101 Application for Permit to Drill, Deepen, or Plug Back (Form C-101)
C. According to the OCD brief, this section allows for Division discretion regarding the approval of an application. However, the combined words "may not" is more likely to be interpreted as "shall not". At a minimum, we suggest this section reflect the opportunity for permit approval:

"The Division may approve a permit to drill, deepen or plug back depending on the circumstances, even if the operator is not considered to be in good standing."

OXY is very concerned about the denial of an application based on the lists compiled by the Commission. As previously noted, an operator is assumed to be in non-compliance and its good standing revoked before it has been allowed to present its evidence. An operator should be considered to be in compliance until after the review of the record, the opportunity for hearing, and the final decision on the matter.

D. What conditions may be imposed? There must be some understanding of the possible conditions or they could become arbitrary and capricious.

19.15.9.701 Injection of Fluids into Reservoirs
As with other parts of this rule, the determination of good standing is paramount. Denial of an injection permit or other action, including revocation, should be based solely on the wells and lease associated with the application.

What is the process if the Commission revokes a permit, and following the hearing, it is determined the operator was in compliance? What is the process once an operator negotiates an agreed order and/or comes back into compliance? Who is going to pay for bringing a lease back into production if the operator was in fact in compliance? Permits must be restored to the status they were prior to the action.

Revocation and/or denial of injection permits could have long term, adverse impacts on a secondary or tertiary recovery operation. Loss of the use of these wells will also result in declining production and associated revenue to the state.

19.15.13.1104 Request for Allowable and Authorization to Transport Oil and Natural Gas (Form (C-104)
This section could be used to develop a process similar to the Certificate of Compliance ("P4") used in Texas and referenced in the OCD brief as a compliance tool.

[New] 19.15.3.100 Operator Registration; Change of Operator; Change of Name
D. What criteria will be used to determine if an operator will be required to disclose current and past officers, directors and partners and its current or past ownership interest in other operations?

19.15.13.1115 Operator's Monthly Report (Form C-115)
The Commission and industry rely heavily on computer systems to process data, but they are not infallible. When errors occur, resolution is not always a simple matter. Often corrections have to be manually entered, including a manual override of the system processes. We suggest the rule address situations where electronic corrections cannot be submitted or accepted.

All notices of intent to sever authority to transport or revoking a permit must be sent by certified mail.

19.15.3.101 Plugging Bonds
All wells are required to be covered by financial assurance. Wells on federal leases must have a federal bond. We believe that the imposition of an additional bond on inactive wells on federal land goes beyond the scope of the Commission's jurisdiction. Operators should not have to post an additional bond because the OCD and the BLM have not negotiated a memorandum of understanding regarding orphaned wells on federal mineral leases.

Bonds are not plugging funds, but are a performance bond. We are concerned about the intent to increase bonds to reflect the cost to plug a well.

B. If single well bonds are required, they must be automatically released if a well is put back into service. The OCD should not have the discretion to require a bond for an inactive well or temporarily abandoned well to remain in place once it is put back into service.

D.(3) The OCD is extending the bonding requirements to cover location restoration and remediation. OXY opposes this step. The plugging bond should be limited to just that – ensuring the well is plugged. The bond suppliers have dwindled in number and we are very concerned that expanding the coverage of the bond, thus increasing the potential liability, will further exacerbate the situation.

G. The Commission should not be allowed to deny release of financial assurance if the wells covered under the financial assurance are properly plugged and abandoned or transferred to a new operator with good standing.

19.15.1.7 Definitions: "Approved Temporary Abandonment" and "Temporary Abandonment"
Realistically there should be no difference between approved temporary abandonment and temporary abandonment. The use of two terms adds confusion to compliance when the goal is to ensure compliance. The rules currently require operators to place wells to be temporarily abandoned in a certain condition. The intent is to protect the fresh water as well as to preserve the well for future use. A shut-in well or an inactive well is not temporarily abandoned unless it has been approved by the OCD. Consideration of definitions for inactive well or shut-in well might address some of the concerns. We suggest you delete the term "approved temporary abandonment" and continue to use the current definition of "temporary abandonment".

19.15.13.1103 Sundry Notices and Reports on Wells (Form C-103)
A.(2) Complete logs of wells to be plugged and abandoned may not be available. Many older wells were not logged and most development wells were only logged in the zone of interest. Operators should not have to log a well before it is plugged. Often a well that is permanently plugged and abandoned has been plugged back. Access to deeper horizons may require drilling out a well to the original total depth in order to comply with this requirement. That is an unwarranted, arbitrary expectation.

A.(2) The OCD must not hold hostage the financial assurance on a plugged well because a log is not available.

(E): If an operator has received an approval of intent to temporarily plug and abandon a well, and records indicate the plugging was executed according to the plan, automatic approval of the temporary abandonment should occur. A second request for approval should not be necessary.

F.(2): Waiting to approve a plugging report until the pits and location have been cleaned up creates problems with the OCD lists and their determination of good standing.

I. In order to be consistent and minimize confusion, operators should have 30 days in which to submit reports of other operations.

Finally, OXY recommends that there be a phase in period of 6 months. This time period will allow operators to review the OCD lists, their own records, and develop a plan to come into compliance.

Again, OXY appreciates the opportunity to comment on the proposed rules and looks forward to working with the OCD in developing reasonable and practical enforcement rules.

Respectfully submitted by:

Elizabeth S. Bush-Ivie, P.E.
Regulatory Team Leader
Occidental Permian Ltd.

Chevron

Robert J. Sandilos
Senior Governmental Relations Advisor

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October 4, 2005

New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

2005 OCT 4 PM 2 40

Re: New Mexico Oil Conservation Division Proposed Enforcement Rules
Case No. 13564
Order No. R-1230

Dear Mr. Fesmire:

Chevron North America Exploration and Production Company, a division of Chevron U.S.A. Inc. (Chevron) appreciates the opportunity to comment on the New Mexico Oil Conservation Division's (NMOCD's) Proposed Enforcement Rules as set forth in Case No. 13564, Order No. R-12430, issued September 27, 2005. Chevron is an owner and/or operator of significant oil and gas properties in the State of New Mexico, and fully supports the NMOCD's mission of protecting the environment, preventing waste, and protecting correlative rights. In addition, Chevron supports strong and consistent enforcement of the NMOCD's rules regarding environmental and operational issues. Chevron is and will remain committed to the goals of protecting people and the environment while responsibly producing the oil and gas which significantly contributes to the economic welfare and quality of life in New Mexico.

Chevron supports the NMOCD's continued use of a stakeholder process aimed at engaging all interested parties in identifying problems and proposing solutions prior to the institution of formal rule-making procedures. In particular, Chevron points to the NMOCD's process of holding stakeholder meetings with industry and other interested groups in the development of a report in response to House Memorial 39. Chevron encourages the NMOCD to take a similar approach in developing any increased or modified enforcement rules or regulations.

Chevron only submits a specific comment on a specific rule as follows:

Proposed Rules 19.15.1.37 and 19.15.3.102, 19.15.13.1101, 19.15.9.701, 19.15.13.1104, and 19.15.3.100.

Chevron is concerned about the NMOCD's proposed creation of the category of "good standing," and the classification of companies with regard to that category. Chevron notes that the classification of a company as being in "good standing," or not, under Proposed Rule 19.15.14.37, will affect the company's ability to obtain regulatory approval to enjoy that company's property rights, as reflected in Proposed Rules 19.15.3.102, 19.15.13.1101, 19.15.9.701, 19.15.13.1104, 19.15.3.100.

Chevron does not specifically endorse the language proposed by the NMOCD, or propose alternate language. However, Chevron raises the issue that the classification of a company as not in "good standing" will significantly impact that company's property rights, and the company's ability to enjoy all rights associated with that property.

To the extent that such a classification will result in any impeding of any individual's or company's ability to produce its mineral interests, Chevron encourages the NMOCD to give the company at issue notice of the proposed classification and the basis thereof, and a reasonable opportunity to respond to such classification and/or to correct any regulatory deficiencies determined after notice and hearing. In particular, if an "inactive well list" is used as the basis for such a classification, Chevron notes that such a list may or may not be accurate, and the company at issue should be given notice and a reasonable opportunity to correct any particular inaccuracies.

In short, in order to comport with *due process* requirements, we respectfully submit that the NMOCD should and must provide operators a reasonable period of time in which to bring any of its wells into compliance with NMOCD rules before any determination or classification of "good standing" is made.

As to the remaining Proposed Rules, Chevron supports the written comments of the New Mexico Oil and Gas Association ("NMOGA"), dated October 4, 2005. Chevron believes that NMOGA's comments accurately and thoroughly address the issues raised within the limited time period to comment.

If you have any questions, please let us know.

Respectfully submitted,

CHEVRON NORTH AMERICA EXPORATION AND PRODUCTION COMPANY
A DIVISION OF CHEVRON U.S.A. INC.

By: _____
Robert J. Sandilos

HOLLAND&HART LLP

William F. Carr
wcarr@hollandhart.com

2005 OCT 4 PM 4 33

October 4, 2005

VIA HAND DELIVERY

Ms. Florene Davidson
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 13564: Application of the New Mexico Oil Conservation Division through the Enforcement and Compliance manager, for the Adoption of New Rules, 19.15.1.37 NMAC, 19.15.1.38 NMAC,19.15.3.100 NMAC, 19.15.4.1101 NMAC, 19.15.9.701 NMAC, 19.15.13.1103 NMAC, 19.15.13.1104 NMAC, and 19.15.13.1115 NMAC.

PROPOSALS FOR ALTERNATIVE RULE AMENDMENTS

Dear Ms. Davidson:

Pursuant to the provisions of Oil Conservation Division Order No. R-12430, enclosed are six copies of the Comments and Proposals for Alternative Rule Amendments of the New Mexico Oil and Gas Association and the Independent Petroleum Association of New Mexico.

Very truly yours,

William F. Carr

Enclosure

Comments and Proposals for Alternative Rule Amendments of the New Mexico Oil Gas Association and the Independent Petroleum Association of New Mexico on the Oil Conservation Division's Proposed Enforcement Rules October 4, 2005

GENERAL COMMENTS:

In recent years the members of the New Mexico Oil and Gas Association and IPA New Mexico have devoted substantial time and effort, working with the Oil Conservation Division, to assure that its rules and regulations lawfully and effectively regulate the oil and gas industry. NMOGA has aggressively pursued practices and policies that are designed to ensure that in its dealing with other stakeholders, the oil and gas industry is a good neighbor and that its activities are conducted with utmost concern for the environment and public health and safety. NMOGA and IPANM do not disagree with the stated objective of the proposed enforcement rules - compliance with the Division's statutes, rules and regulations. However, while the Division has stated that it wants to make it easy for good companies to do business in New Mexico, we are concerned that these rules, as drafted, are directed at the good operators not at bad actors.

We believe that the Oil Conservation Division erred in departing from its traditional rule-making path by not involving all parties, including the oil and gas industry, in development of these rules. If the Division had involved the oil and gas industry, perhaps our threshold questions would have been answered: What is the problem that these rules are designed to fix? What problems are not addressed by current rules?

The difficulty we have faced in responding to the proposed enforcement rules has been further compounded by the limited time allowed for comment and the resulting absence of meaningful dialogue between the agency and those who are most directly affected by these rules. We are concerned that the rules that will result from this process will unnecessarily contain provisions that will force operators to challenge them in the courts instead of resolving our concerns through the reasonable dialogue that has been the hallmark of prior Division rulemaking efforts.

There are several problems with the proposed rules that must be corrected to protect operators from the serious economic consequences that can result from subjective decisions by the agency based on arbitrary standards, misinformation and incorrect data.

The NMOGA and IPANM comments will focus on these major issues. Individual member companies will also provide comments on these and other concerns about the rules as drafted.

SPECIFIC COMMENTS:

GOOD STANDING: (New Rule 19.15.1.37)

Our primary concern relates to the Division's proposed "good standing" rules and the criteria set out therein. As these rules are drafted, if the Division unilaterally determines that an operator is not in good standing, that operator's right to do business in this state can be significantly impaired.

NUMBER OF ALLOWED INACTIVE WELLS

One of the criteria in New Rule 19.15.1.37.A ties an operator's standing to the number of wells it operates that are not in compliance with the Division rules governing the abandonment of wells. It provides that for an operator of fewer than 100 wells to be in good standing, it may have no more that two wells out of compliance. Operators of more than 100 wells may have no more than five wells out of compliance (19.15.4.201 NMAC). This rule sets standards that discriminate against larger operators. The larger the operator, the smaller the percentage of its total wells may be out of compliance. For example, under the rule as proposed, if an operator operates 2000 wells in this state, it may have only 0.25% of its wells out of compliance where an operator with only 4 wells may have 50% of its wells out of compliance and still be in good standing. This rule should be amended to provide that the number of wells an operator is allowed to have on the Division's inactive well list and remain in good standing should be a percentage of the total wells operated in New Mexico by the operator and its related entities. To protect small operators, this rule should also set a floor under the number of wells an operator may have out of compliance.

RECOMMENDATION

NMOGA and IPANM recommend that New Rule 19.15.4.201.A be amended as follows:

A. A well operator is in good standing with the division if the operator

. . . .

(4) has no more than five wells or 5% of the wells it operates in New Mexico, which ever is larger, out of compliance with 19.15.4. 201 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.4. 201 NMAC and imposing sanctions if the schedule is not met.

ACCURACY OF THE DATA USED

The proposed rules provide serious sanctions against any operator that the Division determines is not in good standing. Direct sanctions include the Division refusal to approve a permit to drill or work-over a well (19.15.3.102 NMAC) and denial of authorization to transport oil or natural gas (19.15.13.1104 NMAC). Furthermore, the

proposed amendments to Rule 19.15.9.701 NMAC provide broad authority to the Division to revoke existing injection permits if an operator is determined to not be in good standing (19.15.9.701 NMAC).

Indirect, and perhaps more serious, consequences can result if the Division posts the name of the operators it determines are not in good standing on its website (19.15.1.37 NMAC). Identifying an operator as not being in good standing will impair an operator's ability to enter agreements with third parties that will directly impact its ability to work in the state. Before the Division determines that an operator is not in good standing, it must assure that its determinations are based on accurate information.

As discussed at the Division's stakeholders meeting held on September 21st, a preliminary review of the Division's Inactive Well List reveals a number of errors in the wells listed. If this list is used to determine whether or not an operator is in good standing, it must be accurate. However, the operators are concerned that the list will always contain inaccuracies that will result from reporting errors and/or delays in finalizing Oil Conservation Division approval of information filed by operators.

Operators fear that they will lose their good standing, not because of a failure to comply with the rules of the Division, but because of an error in the Division's data. To avoid this situation and to assure that the data is correct prior to the determination by the Division that an operator is not in good standing, NMOGA and IPANM recommend that any operator who has more than the allowed wells on the Division's Inactive Well List be advised by the Division, by Certified Mail, that it has 30 days within which to contact the Division and to bring these wells into compliance or it may be found to not be in good standing and subject to the other provisions of these enforcement rules.

When an operator files an Application for Permit to Drill, the Division will be able to determine if that operator is in good standing and, if not, require that it take such action as is required to come back into compliance with Division rules. If it can advise an operator that it is not in good standing in this circumstance, it should be able to notify non-compliant operators that their standing before the Division may be at risk and give them 30 days to bring wells into compliance with Division rules.

No other amendment to the proposed rules will provide this protection to operators or protect the Division from impairing property interests without due process of law. A delay in the effective date of the rules would enable operators to bring wells into compliance, but more is needed. Providing information on the Division's web page that will enable operators to track the status of any inactive well will also help.

Thirty days notice would put the burden on the operator to check the list and the data therein and will afford that operator an opportunity to avoid its being determined to not be in good standing based on inaccurate data. It would also assure that if an operator acquires wells from another operator that are not in compliance, it will not be subject to an immediate determination that it is not in good standing because of the status of wells

it has just acquired. It would have an opportunity to either bring the wells into compliance or enter into an Agreed Compliance Order with the Division.

Providing operators 30 days written notice will also help address the fundamental due process issue raised by the current proposal. Since an operator's "good standing" will determine whether or not it is able to conduct business in New Mexico, if an operator's "good standing" is revoked by the Division, its constitutionally protected property rights will be affected. Unless it is given notice of the pending Division action and is afforded an opportunity to take the matter to hearing, its rights will be impaired without due process of law. Therefore, at a minimum, before the Division revokes an operator's good standing, it must provide the operator with notice and an opportunity to be heard.

The proposed rule provides that if a well is placed on the non-compliant list, a "rebuttable presumption" is created that the well is out of compliance (19.15.1.37.E.(2) NMAC. NMOGA and IPANM ask that an operator be provided 30 days to correct errors, rebut this presumption, and defend itself.

RECOMMENDATION

NMOGA and IPANM recommends that Rule 19.15.1.37.E NMAC be amended by the addition of the following language:

> F. Prior to revoking the good standing of any operator the Division shall give notice to the operator that, according to division records, it fails to meet the good standing standards of Section 19.15.1.37 and that it has 30 days from the date of this notice to bring its wells into compliance, or negotiate an agreement to bring its wells into compliance, with Division Rule 19.15.4.201 NMAC.

If an operator fails to either bring its wells into compliance with rule 19.15.4.202 NMAC or enter an agreed compliance order with the division, its good standing may then be cancelled.

DEFINITION OF "INACTIVE WELL"

The Division's inactive well list should include all wells that have not been properly plugged and abandoned or temporarily abandoned pursuant to Rule 19.15.4.201 NMAC. However, it currently includes a number of wells that are not inactive. To clarify this term and facilitate operator review and challenges to the wells on the inactive well list, this term should be defined in the proposed enforcement rules.

RECOMMENDATION

NMOGA and IPANM recommend that the proposed rules contain the following definition:

I. Definitions beginning with the letter "I".

(1) "Inactive well" A well is "inactive" if according to division records it:
   a) Has not produced or been used for injection for a continuous period of more than one year plus 90 days;
   b) Does not have its wellbore plugged in accordance with 19.15.4.202 NMAC;
   c) Is not on temporary abandonment status in accordance with 19.15.4.203 NMAC;

(2) A well is not "inactive" if it is:
   a) A dewatering coal gas well;
   b) An approved injection well; or
   c) Not producing because of delays in obtaining surface access to the well.

UNIFORMITY OF ENFORCEMENT

Operators have expressed concern about inconsistencies in the implementation and enforcement of Division rules by the different district offices. These operators are concerned that these inconsistencies will result in wells being considered out of compliance and included on the inactive list in one portion of the state but not in others. The result can be that the good standing status of an operator may depend on the portion of the state in which it operates. The Division expects operators to be consistent. The Division should also be consistent in the interpretation and enforcement of its rules.

OPERATOR REGISTRATION

New Rule 19.15.3.100 provides for operator registration. If not registered, an entity cannot do business in New Mexico. Under this rule, registration may be denied if "an officer, director, partner in the applicant or person with an interest in the application exceeding 5%, is or was within the past five years an officer, director, partner or person with an interest exceeding 5% in another entity that is not in good standing pursuant to 19.15.1.36 NMAC." This provision requires information generally not within or available to another operator. For example, how would an operator know if a person owning an interest in a property subject to a pooling application had been an officer, director, partner of person with an interest exceeding 5% in another entity that had not been in good standing before the Division? While the rule appears to be directed at known bad actors, the inclusion of this provision is of concern to other operators who will try to comply with these rules.

FINANCIAL ASSURANCES

The amendments to Rule 19.15.3.101 NMAC now require two bonds covering wells on federal lands. NMOGA and IPANM believe that the state should have access to a bond if the state is required to plug a well. However, NMOGA and IPANM request that the Division contact the BLM and explore a single joint bond for these wells. There is precedent for this approach in the mining industry and a joint bond would avoid the "double-dipping" of the current proposed amendment.

The Division is also proposing to extend the bonding requirements to cover location restoration and remediation. Bond suppliers have dwindled in number and increasing the potential liability as proposed will further exacerbate this situation. NMOGA and IPANM believe that plugging bonds should be just that and only used for plugging wells.

Compliance with the Division's financial assurance rules is also a condition of "good standing." Accordingly, the due process concerns previously raised in these comments concerning inactive wells are applicable to the financial assurances provisions in the proposed enforcement rules.

"KNOWINGLY AND WILLFULLY"

The definition of "knowingly and willfully" contained in the proposed rules has been drawn from a BLM definition used for certain matters involving surface issues. NMOGA and IPANM are concerned about this choice of definition. We believe that before it is determined that an operator has knowingly and willfully violated the Division's statutes, rules and regulations, the Division should be required to show that the violation was intentional. An operator should not be found to have "knowingly and willfully" violated the Oil and Gas Act or the rules and regulations promulgated there under where the operator does not know its actions are in violation of statute or rule. We also are concerned about the use of terms like "reckless disregard" and "evil intent."

RECOMMENDATION

NMOGA and IPANM recommend that the current definition of "Knowingly and Willfully" in the Division's proposed enforcement rules be replaced with the following definition adapted from OSHA'a Willful Violation Criteria:

K. Definitions beginning with the letter "K".

> "Knowing and willful" means either that the violation was intentional of an applicable law, rule, order or permit or in plain indifference to their requirements. The following criteria further defines what will be considered a knowing and willful violation:
>
> 1) The operator committed an intentional and knowing violation if:

a. An authorized representative of the operator was aware of the applicable law, rule, order, or permit condition and was also aware of a condition or practice in violation of those requirements and did not abate the situation.
b. An authorized representative of the operator was not aware of the applicable law, rule, order, or permit condition but was aware of a comparable legal requirement (e.g., federal) and was also aware of a condition or practice in violation of that requirement and did not abate the situation.

2) The operator committed a violation with plain indifference if:
a. Higher management officials were aware of the applicable law, rule, order, or permit condition to the company's business but made little or no effort to communicate the requirement to lower level employees and supervisors.
b. Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.
c. An authorized representative of the company was not aware of any legal requirement, but was aware that a condition or practice was a hazard to public safety or the environment and made little or no effort to determine the extent of the problem or take corrective action.

APPROVED TEMPORARY ABANDONMENT

The Division is proposing amendments to Rule 19.15.4.203 that governs the temporary abandonment of wells. The intent of these amendments appears to be an attempt by the Division to extend its bonding capacity to inactive wells. The amendments are confusing and result in the inconsistent use terms. If operators are going to comply with Division rules, they should be understandable.

NMOGA and IPANM oppose these amendments. We believe the current temporary abandonment rules are sufficient and have been working. The real issue involves inactive wells and this has been adequately addressed elsewhere in the proposed rules.

We also believe that these amendment go beyond the authority of the Division as those powers have been defined and limited by the Oil And Gas Act. If additional authority is needed to extend the Division's bonding capacity, that is a matter to be addressed by the legislature.

CONCLUSION

The New Mexico Oil and Gas Association and IPA New Mexico appreciate this opportunity to comment on the Oil Conservation Division's proposed enforcement rules and propose amendments to the current draft. NMOGA and IPANM will participate in the October 13, 2005 hearing on these proposals.

BURLINGTON
RESOURCES

2005 OCT 5 AM 10 43

Hand Delivered: October 5, 2005

October 4, 2005

Mr. Mark Fesmire, P.E.
Director
Oil Conservation Division
1220 St. Francis Drive
Santa Fe, New Mexico 87505

RE: NMOCD Proposed Enforcement Rules

Dear Mr. Fesmire:

Burlington Resources Oil and Gas Company LP, (BR) is one of the largest oil and gas producers in New Mexico and we operate over six thousand wells in the state. In the future, BR would recommend the collaborative joint workgroup process used historically by the NMOCD, to engage interested parties in identifying problems and proposing solutions prior to formal rule-making hearings. We believe that industry and NMOCD have worked effectively in the past and should continue to work together in the future.

We have reviewed the proposed enforcement rules and do not disagree with the intention to insure industry compliance with the NMOCD rules and regulations. We support strong and consistent enforcement of the rules and regulations by the state. However, BR shares many of the concerns expressed by other operators in the state and we support the New Mexico Oil and Gas Association (NMOGA) in their comments and the alternative language for the proposed rules.

One of the issues we are most concerned with is the number of inactive wells being proposed as a limit on operators to remain in "good standing". We believe the limit of two inactive wells for

operators of less than 100 wells and the limit of five inactive wells for operators of more than 100 wells is too restrictive and certainly not reasonable for operators of more than 1000 wells. We believe that a more reasonable approach would be to limit the inactive wells by an operator to not more than 5 wells or a reasonable percentage (2 to 5%) of the total wells operated in New Mexico, whichever is larger, to remain in "good standing".

Another issue with which we have concern is the lack of due process afforded an operator who might lose their "good standing" status with regard to the number of inactive wells itemized on OCD's list. From our experience, the current NMOCD list of inactive wells maintained on "OCD Online" contains errors or is out of date with regard to the current status of some wells. For instance, wells returned to production may not be removed from the inactive well list for as much as 45 to 75 days due to the timeframe for reporting production. We believe the operator has the right to due process by being notified at least 30 days in advance of losing its " good standing" status in order to correct errors, bring the list of wells up to date, or enter into a compliance agreement.

In closing, we thank you for the opportunity for to comment on the proposed enforcement rules.

Sincerely,

Bruce Gantner
Manager, Environmental, Health, and Safety

Alan Alexander
Senior Land Advisor

Yolanda Perez
Regulatory Specialist
P.O. Box 2197, WL3 6106
Houston, Texas 77252-2197
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Fax: 918-662-3306

2005 OCT 3 AM 10 43

ConocoPhillips

Hand Delivered: October 5, 2005

October 4, 2005

Mr. Mark Fesmire, P.E.
Director
Oil Conservation Division
1220 St. Francis Drive
Santa Fe, New Mexico 87505

RE: NMOCD Proposed Enforcement Rules

Dear Mr. Fesmire:

ConocoPhillips Company (COP) is the second largest oil and gas producer in New Mexico and we operate over forty-five hundred wells in the state. In the future, COP would recommend the collaborative joint workgroup process used historically by the NMOCD, to engage interested parties in identifying problems and proposing solutions prior to formal rule-making hearings. We believe that industry and NMOCD have worked effectively in the past and should continue to work together in the future.

We have reviewed the proposed enforcement rules and do not disagree with the intention to insure industry compliance with the NMOCD rules and regulations. We support strong and consistent enforcement of the rules and regulations by the NMOCD. However, COP shares many of the concerns expressed by other operators in the state and we support the New Mexico Oil and Gas Association (NMOGA) in their comments and the alternative language for the proposed rules.

One of the issues we are most concerned with is the number of inactive wells being proposed as a limit on operators to remain in "good standing". We believe the limit of two inactive wells for operators of less than 100 wells and the limit of five inactive wells for operators of more than 100 wells is too restrictive and certainly not reasonable for operators of more than 1000 wells. We believe that a more reasonable approach would be to limit the inactive wells by an operator to not more than 5 wells or a reasonable percentage (2 to 5%) of the total wells operated in New Mexico, whichever is larger, to remain in "good standing".

Another issue with which we have concern is the lack of due process afforded an operator who might lose their "good standing" status with regard to the number of inactive wells posted on OCD's website. From our experience, the current NMOCD list of inactive wells maintained on "OCD Online" contains errors or is out of date with regard to the current status of some wells. For instance, wells returned to production may not be removed from the inactive well list for as much as 45 to 75 days due to the timeframe for reporting production. We believe the operator has the right to due process by being notified at least 30 days in advance of losing its " good standing" status in order to correct errors, bring the list of wells up-to-date, or enter into an agreed compliance order.

In closing, we thank you for the opportunity to comment on the proposed enforcement rules.

Sincerely,

Yolanda Perez

Yolanda Perez
Sr. Regulatory Specialist
Mid America Business Unit

BP America Production Company
1660 Lincoln Street, Suite 3000
Denver CO 80264

2005 OCT 5 PM 2 34

October 4, 2005

Mr. Mark Fesmire, P.E.
Director
Oil Conservation Division
1220 St. Francis Drive
Santa Fe, New Mexico 87505

RE: NMOCD Proposed Enforcement Rules

Dear Mr. Fesmire:

BP America Production Company is one of the largest oil and gas producers in New Mexico and we operate over three thousand wells in the state. Thank you for providing us the opportunity to comment on the proposed enforcement rules.

We have reviewed the proposed enforcement rules and agree with the intention to ensure our industry's compliance with the NMOCD rules and regulations. We support strong and consistent enforcement of the rules and regulations for our industry by the state. However, BP does share many of the concerns expressed by the New Mexico Oil and Gas Association in their comments and the alternative language for the proposed rules.

One of the issues we are most concerned with is the number of inactive wells being proposed as a limit on operators to remain in "good standing". We believe the limit of two inactive wells for operators of less than 100 wells and the limit of five inactive wells for operators of more than 100 wells is too restrictive and certainly not reasonable for operators of more than 1000 wells. We believe that a more reasonable approach would be to limit the inactive wells by an operator to not more than 5 wells or a reasonable percentage (2 to 5%) of the total wells operated in New Mexico, whichever is larger, to remain in "good standing".

Another issue with which we have concerns is the lack of due process for an operator to lose their "good standing" status especially as it regards the number of inactive wells for the operator. The current NMOCD list of inactive wells maintained on OCD online appears to contain errors or be potentially out of date reflecting the current status of some wells. For instance, wells returned to production may not be removed from the inactive well list for as much as 45 to 75 days due to the timeframe for reporting of production. We believe the operator has the right of due process to be notified at least 30 days in

advance to correct errors, bring the list of wells up to date, or enter into a compliance agreement before losing their "good standing" status.

In the future, BP would recommend the collaborative joint workgroup process, used historically by the NMOCD, be utilized to engage interested parties in identifying problems and proposing solutions prior to formal rule-making hearings. We believe that industry and the NMOCD should work together.

Sincerely,

James W. Hawkins
BP San Juan Regulatory Consultant

HOLLAND&HART LLP

Michael H. Feldewert
Recognized Specialist in the Area of Natural Resources -oil and gas law - New Mexico Board of Legal Specialization

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44440-0008

2005 OCT 5 PM 2 55

October 5, 2005

VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87504

Re: Case No. 13564 (Application for adoption of New Rule 19.15.3.100)

Dear Ms. Davidson:

Controlled Recovery Inc. ("CRI") operates a commercial surface waste management facility in Lea County, New Mexico, under the authority of Division Order R-9166. Accordingly, CRI wishes to raise a concern about proposed New Rule 19.15.3.100, specifically the following language in subsections (B)(2) and (3):

"person with an interest exceeding 5% in another entity"

CRI notes this same 5% provision is contained in the recently proposed surface waste management rules. *See* Proposed Rule 19.15.2.53(C)(1)(a) and (C)(7). This particular language places an undue burden on applicants, and could unnecessarily penalize "good actors."

The Division's "Brief In Support Of Application For Rule Adoption And Amendment" states that subsections (B)(2) and (B)(3) of proposed New Rule 19.15.3.100 are designed to "prevent entities from avoiding the good standing requirement by changing their name or forming a new entity." This laudable goal is met without reaching down to persons owning as little as 5% of a new or old entity. Interest owners at this level do not control the operations of the enterprise, and accordingly are not determinative as whether the enterprise is a "good" or "bad" actor. Rather, the officers, directors, and principal partners of an enterprise determine whether the enterprise remains in good standing with the Division.

Moreover in today's corporate world, the officers, directors and partners of an ongoing operation generally do not have knowledge of interest owners as small as 5%. This provision therefore places an undue burden on applicants to essentially conduct a "title opinion-type search" of every family partnership, estate, corporation, or other

HOLLAND&HART LLP

entity that may hold an interest in the ongoing concern to determine whether the 5% threshold is met. CRI suggests that no real purpose is served by penalizing the principals of a corporation in good standing because a small non-operating interest owner held a 5% interest in a "bad actor."

CRI therefore suggests that the goal expressed by the Division is met by the language "officer, director, [and] partner" in proposed New Rule 19.15.3.100(B) and that the additional language "person with an interest exceeding 5% in another entity" places an unnecessarily burden on applicants.

Sincerely,

Michael H. Feldewert

MHF

cc: Ken Marsh, President of CRI