

Jones, William V, EMNRD

From: Moellenberg, Dalva L. <DLM@gknet.com>
Sent: Thursday, August 10, 2017 8:55 AM
To: Wade, Gabriel, EMNRD; Jones, William V, EMNRD
Cc: Brooks, David K, EMNRD; Moss, Katherine (kmoss@slo.state.nm.us)
Subject: OWL, Case 15723

Dear Hearing Examiners:

During the hearing on case 15723, OWL was advised that OCD would require additional parties to receive notice of the pending hearing. We asked for, but have not received, written direction regarding the scope of that notice. Based on the discussion during the hearing, OWL has initiated the process of identifying additional persons who should receive notice so that the notices can be sent as soon as possible in order to avoid further delays in concluding the hearing. Before the notices are sent, however, we need to confirm the scope of the additional notice requirement.

The guidance we received during the hearing was that OCD would require notice to holders of mineral interests who would be "affected persons" within the four sections surrounding the proposed Bobcat SWD #1 well: sections 25 and 36 of T25S R 36E and sections 30 and 31 of T25S R37E. We understood that no additional notice to surface owners would be required. As discussed during the hearing, OWL complied with the requirement of 19.15.26.8.B(2) NMAC, which states that "[t]he applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator or other affected person within any tract wholly or partially contained within one-half mile of the well." Our interpretation of the additional notice requirement is that OWL now needs to send a copy of the application, by certified or registered mail, to "each leasehold operator or other affected person within any tract wholly or partially contained" within the four sections listed above, who did not previously receive such notice.

"Affected person" is defined by 19.15.26.7.A NMAC as follows: "Affected person means the division designated operator; in the absence of an operator, a lessee whose interest is evidenced [sic] by a written conveyance document either of record or known to the applicant as of the date the applicant files the application; or in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application for permit to inject."

OWL's consultant has identified either operators or lessees for the entirety of the four sections, except for two 40 acre tracts in the NE ¼ of Section 30, an area which appears to be mostly within the City of Jal and where mineral interests may be in private ownership with multiple owners. So that we can proceed with the notice process as soon as possible, OWL proposes that the additional notice requirement be as follows:

"OWL shall furnish, by certified or registered mail, a copy of the C-108 application to each leasehold operator or lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application, who has not previously received notice in accordance with 19.15.26.8.B(2) NMAC, within any tract wholly or partially contained within sections 25 and 36 of T25S R 36E and sections 30 and 31 of T25S R37E."

Normally, such a notice is made before a hearing is set, and if a written objection to an application and/or a request for hearing is made within 15 days of OCD's receipt of the application along with evidence of mailing and proof of publication (which also was done in this case), then a hearing may be set. In this instance, the hearing obviously is already in progress. Consequently, it would probably make sense that the persons receiving the additional notice be advised of the pending hearing and the means by which protests may be made, similar to the requirements of 19.15.4.12.B NMAC. OWL proposes to include along with the required copies of the application the following statement:

"Enclosed is a completed application on form C-108 for an injection well. A hearing currently is being conducted before Oil Conservation Division Hearing Examiners on this application, Oil Conservation Division Case 15723. If you wish to protest this application, you must file a written Notice of Appearance with the Clerk of the Oil Conservation Division on or before August 31, 2017. If you wish to intervene and present technical testimony, you must file a Notice of Intervention and a Prehearing Statement in accordance with 19.15.4.11 and .13 NMAC with the Clerk of the Oil Conservation Division on or before August 31, 2017. Notices of Appearance, Notices of Intervention and Prehearing Statements also must be served on counsel for the current parties to the hearing."

Finally, OWL's understanding is that no additional newspaper publication of the application or hearing notice is needed.

Please confirm these understandings or provide any other guidance regarding the extent of the expanded notice requirements as soon as possible so that OWL can arrange for the notices to be sent without further delay. Thank you very much for your attention to this matter.

Best,

Dal



1239 Paseo de Peralta
Santa Fe, New Mexico 87501-2758
505-982-9523 | www.gknet.com

Dalva L. Moellenberg

Attorney Profile
DLM@gknet.com
505-989-7278

This message and any of the attached documents contain information from the law firm of Gallagher & Kennedy, P.A. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you have received this transmission in error, please notify the sender by reply e-mail and then delete this message. Thank you.

Jones, William V, EMNRD

From: Wade, Gabriel, EMNRD
Sent: Friday, August 11, 2017 2:36 PM
To: Moellenberg, Dalva L.
Cc: Jones, William V, EMNRD; Dawson, Scott, EMNRD; Brooks, David K, EMNRD; Moss, Katherine (kmoss@slo.state.nm.us)
Subject: FW: Forward to applicant in Case 15723 and copy respondents (if you agree)
Attachments: NoticeExample_MapView_EddyNM_NASH_53_SWD.pdf

Hi Dal,

I am forwarding an email from Will Jones as he is out today. Let me know if you have any questions.

Gabe

Hello Dal,

Disposal into saline (non-oil bearing) reservoirs can be done with the ½-mile Area of Review and ½ mile notice – unless the Division requires additional notice.

This well is proposed for disposal at large rates for an extended period of time, and into a possible oil bearing reservoir (this is not yet been determined by the examiners one way or the other).

For Injection proposed into possible oil and gas bearing reservoirs, the applicant must process these types of applications at an Examiner hearing.

And in those types of cases, applicant determines a “project area” large enough that injection cannot affect any lands beyond that distance – and determines ownership of those lands.

The examiner is requesting that all affected parties in the four sections surrounding this well be provided with notice and the case be again considered on August 31st.

Notice should be provided as per Rule 19.15.26.8 NMAC.

Please ask your client to determine all identically owned tracts (within the Yates/Seven Rivers Formations) and identify these tracts and then identify the owners of each tract and then provide notice to those owners.

In addition, please provide notice to all "operators of record" within the 4 square miles as required on Form C-108, which form is a part of the injection rules.

An example of identifying these tracts and the owners is attached.

Many Regards,

Will

William V. Jones, P.E.

New Mexico Oil Conservation Division

Engineering and District IV – Santa Fe

505-419-1995 work cell

<http://www.emnrd.state.nm.us/OCD/about.html>

