

(RULES ON PROCEDURES - Cont'd.)

B. The prohibition in Subsection A of 19.15.4.26 NMAC, above, does not apply to those applications that the applicant believes are unopposed. However, in the event that a party files an objection in a case previously believed to be unopposed, the prohibition in Subsection A of 19.15.4.26 NMAC, above, is immediately applicable.

C. This provision does not prohibit communications between the division's attorney or other division staff and the director that are essential to a case's management. [19.15.14.1224 NMAC - Rp, 19.15.14.1223 NMAC, 09/30/05; 19.15.4.26 NMAC - Rp, 19.15.14.1224 NMAC, 12/1/08]

ENFORCEMENT AND COMPLIANCE**19.15.5.8**

ENFORCEMENT OF STATUTES AND RULES (As Amended by Order No. R-8001, September 23, 1985, Order No. R-10534, February 1, 1996, Order No. R-11205, June 17, 1999, Order Dated May 15, 2001, and Order Dated December 1, 2008.)

The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas including the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations. [1-1-50...2-1-96; A, 7-15-99; 19.15.1.12 NMAC - Rn, 19 NMAC 15.A.12, 5-15-01; 19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/08]

19.15.5.9

COMPLIANCE (As Added by Order No. R-12452, Effective February 13, 2006, and Amended by Order Dated December 1, 2008.)

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator;

(1) currently meets the financial assurance requirements of 19.15.8 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;

(3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty; and

(4) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:

(a) two wells or 50 percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;

(b) five wells if the operator operates between 101 and 500 wells;

(c) seven wells if the operator operates between 501 and 1000 wells; and

(d) 10 wells if the operator operates more than 1000 wells.

B. The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months by sending it letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.9.8 NMAC.

C. The division shall make available on its website and update weekly the status of operators' financial assurance 19.15.8 NMAC requires, according to division records.

D. Orders requiring corrective action.

(1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an 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. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

(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.

E. Penalty assessments.

(1) The division shall make available, on its website penalty assessments and the date the operator paid them, according to division records.

(2) An operator who contests an order assessing penalties may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

F. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

(b) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.14 NMAC; and

(c) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC and imposing sanctions if the operator does not meet the schedule.

(2) For purposes of 19.15.5.9 NMAC, the listing of a well on the division's inactive well list as a well inactive for more than one year plus 90 days creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC. [19.15.1.41 NMAC-N, 2-13-06; 19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/08]

Oil Conservation Division

Case No. 14326

NOG Exhibit No. 9

(ENFORCEMENT AND COMPLIANCE - Cont'd.)

19.15.5.10

COMPLIANCE PROCEEDINGS (As Added by Order No. R-12452, November 1, 2005, and Amended by Order Dated December 1, 2008.)

A. The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.

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

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

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

(3) connective action including but not limited to abatement or remediation of contamination and removal of surface equipment;

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

(5) denial, cancellation or suspension of a permit;

(6) denial, cancellation or suspension of authorization to transport; or

(7) shutting in a well or wells.

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

(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 the 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 19.15.4.9 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 19.15.4.12 NMAC.

E. The 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 the act. The 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 19.15.5.10 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 under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A). [19.15.14.1227 NMAC - N, 12-15-05; 19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/08]