

STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE 12177
ORDER NO. R-11205

APPLICATION OF OIL CONSERVATION DIVISION TO AMEND THE
NOTICE REQUIREMENTS THROUGHOUT THE DIVISION RULES AND TO
AMEND ITS PROCEDURAL RULES FOUND IN PART N (19 NMAC 15.N),
RULE 11 (19 NMAC 15.A.11) and RULE 12 (19 NMAC 15.A.12).

ORDER OF THE COMMISSION

BY THE COMMISSION:

This case came on for hearing at 9 o'clock a.m. on June 17, 1999, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of June, 1999, the Commission, a quorum being present, having considered the record,

FINDS THAT:

(1) Due public notice has been given and the Commission has jurisdiction of this case and its subject matter.

(2) New Mexico Oil Conservation Division (the "Division") Rules 11 and 12 concern the scope and enforcement of Division statutes and rules and Rules 1201 through 1223 set forth the procedural rules for proceedings before the Division.

(3) Testimony indicated that Division Rules 11, 12 and 1201 through 1223 (with the exception of Rule 1217, which is repealed) should be amended to correct problems or ambiguities.

(4) It is necessary to adopt the amended rules set forth in the attached Exhibit "A" and repeal Rule 1217.

IT IS THEREFORE ORDERED

(1) The amended rules set forth in the attached Exhibit "A" are hereby adopted. Rule 1217 is hereby repealed.

(2) These rules shall be effective as of the date of their publication in the New Mexico Register.

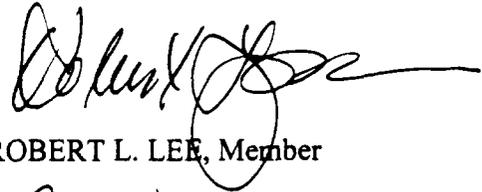
(3) Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

(4) Done at Santa Fe, New Mexico, on the day and year hereinabove designated.

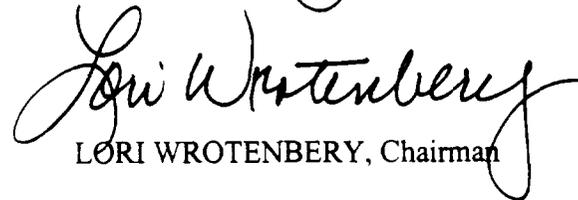
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



JAMI BAILEY, Member



ROBERT L. LEE, Member



LORI WROTENBERY, Chairman

S E A L

EXHIBIT "A"
CASE NO. 12177
ORDER NO. R-11205

11 SCOPE OF RULES [1-1-50...2-1-96; A, 7-15-99]

11.A. The following rules of statewide application have been adopted by the Commission to conserve the natural resources of the State of New Mexico, to prevent waste, to protect correlative rights, to protect public health and the environment and to otherwise implement the Oil and Gas Act, NMSA 1978, §§ 70-2-1 through 70-2-38. [1-1-50...2-1-96; A, 7-15-99]

11.B. Orders, including special pool orders (formerly referred to as "Special Pool Rules and Regulations"), of the Division or the Commission may be issued when required and shall prevail against rules if in conflict with them. [1-1-50...2-1-96; A, 7-15-99]

12 ENFORCEMENT OF STATUTES AND RULES

The Division is charged with the duty and obligation of enforcing all rules and statutes of the State of New Mexico relating to the conservation of oil and gas including the protection of public health and the environment. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations begin. [1-1-50...2-1-96; A, 7-15-99]

1201 RULEMAKING PROCEEDINGS [1-1-50...2-1-96; A, 7-15-99]

1201.A. Before any rule, including revocation or amendment thereof, shall be made by the Division or Commission, a public hearing before the Commission or a duly appointed Division Examiner shall be held at such time and place as may be prescribed by the Commission in accordance with NMSA 1978, §10-15-1. [Rn, 19 NMAC 15.N.1201, A, 7-15-99]

1201.B. When the Commission, the Division, an operator or any interested person applies to adopt, amend or rescind any rule, such application shall constitute a request for rulemaking for which the following notice requirements apply:

(1) the Division shall publish notice of the proposed rule in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule with the publication date not less than 20 days prior to the date set for the public hearing; and

(2) the Division shall publish notice of the proposed rule on the Commission docket and shall send the docket to all who have requested such notice not less than 20 days prior to the public hearing.

[7-15-99]

1202 EMERGENCY ORDERS AND RULES

Notwithstanding any other provision of these rules, in the event an emergency is found to exist by the Division or Commission, which requires adoption of a rule or the issuance of an order without a hearing, such emergency rule or order shall have the same validity as if a hearing had been held before the Division or Commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date. [1-1-50... 2-1-96; A, 7-15-99]

1203 INITIATING A HEARING [1-1-50...2-1-96; A, 7-15-99]

1203.A. The Division, the Attorney General, any operator or producer, or any other person may apply for a hearing. The application shall be signed by the person seeking the hearing or by an attorney representing that person. Two copies of the application must be filed and shall state:

- (1) the name of the applicant;
- (2) the name or general description of the common source or sources of supply or the area affected by the order sought;
- (3) briefly, the general nature of the order or rule sought;
- (4) a list of the names and addresses of persons to whom notice has been sent;
- (5) a proposed notice advertisement for publication; and
- (6) any other matter required by these rules or order of the Division.

[1-1-50...2-1-96; A, 7-15-99]

1203.B. Applications for hearing before the Division or Commission must be in writing and received by the Division at least 23 days in advance of the hearing on that application. [4-30-74...2-1-96; A, 7-15-99]

1204 PUBLICATION OF NOTICE OF HEARING

The Division shall give notice of each hearing before the Commission or a Division Examiner by publication once in accordance with the requirements of NMSA 1978, Chapter 14, Article 11 in a newspaper of general circulation in the counties that are affected by the application. [1-1-50...2-1-96; A, 7-15-99]

1205 CONTENTS OF NOTICE OF HEARING

1205.A. Published notices shall be issued in the name of "The State of New Mexico" and signed by the Director of the Division, and the seal of the Commission shall be impressed thereon. [1-1-50...2-1-96; A, 7-15-99]

1205.B. The notice shall specify: whether the case is set for hearing before the Commission or a Division Examiner; the number and style of the case; the time and place of hearing; and the general nature of the application. The notice shall also state the name of the applicant, and unless the contemplated order or rule is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply that may be affected if the application is granted. [1-1-50...2-1-96; A, 7-15-99]

1206 RESERVED [Formerly "PREPARATION OF NOTICES".

1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS [1-1-86...2-1-96; A, 7-15-99]

1207.A. Applicants for the following adjudicatory hearings before the Division or Commission shall give notice in addition to that required by Rule 1204 as set forth below:

(1) **Compulsory Pooling and Statutory Unitization:**

(a) Notice shall be given to any owner of an interest in the mineral estate whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause). [Rn, 19 NMAC 15.N.1207.A.(1); A, 7-15-99; A, 7-15-99]

(b) When an applicant is unable to locate all the owners of interests to be pooled and the application is unopposed by those located, the applicant may file under the following alternate procedure if notice is given as required in (a) above. The application shall include the following:

(i) a statement that no opposition for hearing is expected and why;

ii) a map outlining the spacing unit(s) to be pooled showing the nature and percentage of the ownership interests and location of the proposed well;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that a diligent search has been conducted of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled (Note: The Division cannot pool a spacing unit larger in size than provided in these rules or applicable special pool orders);

(v) a statement as to whether the pooled unit is for gas and/or oil production (see note under iv. above);

(vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;

(vii) geological map(s) of the formation(s) to be tested and a geological and engineering assessment of the risk involved in the drilling of the well and a proposed risk penalty to be assessed against any working interest owner who does not pay its share of estimated well costs;

(viii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(ix) the location and proposed depth of the well to be drilled on the pooled units; and

(x) a copy of the Authorization for Expenditure (AFE) to be submitted to the interest owners in the well.

[Rn, 19 NMAC 15.N.1207.A.(2), 7-15-99, A, 7-15-

99]

(c) All submittals required shall be accompanied by sworn and notarized statements by those persons who prepared the submittals attesting that the information is correct and complete to the best of their knowledge and belief. [Rn, 19 NMAC 15.N.1207.A.(3), 7-15-99, A, 7-15-99]

(d) All unopposed pooling applications will be set for hearing. If the Division finds the application complete, the information submitted with the application will constitute the record in the case and an order will be issued based on the record. [Rn, 19 NMAC 15.N.1207.A.(4), 7-15-99, A, 7-15-99]

(e) At the request of any interested person or upon the Division's own initiative, any pooling application submitted shall be set for full hearing with oral testimony by the applicant. [Rn, 19 NMAC 15.N.1207.A.(4), 7-15-99; A, 7-15-99]

(2) Unorthodox Well Locations: [1-1-87...2-1-96; Rn, 19 NMAC 15.N.1207.A.(5), 7-15-99; A, 7-15-99]

(a) Definition: "Affected persons" are the following persons owning interests in the adjoining spacing units:

1. the Division-designated operator;
2. in the absence of an operator, any lessee whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application is filed; and
3. in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application was filed.

In the event the operator of the proposed unorthodox well is also the operator of an existing adjoining spacing unit and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit. [1-1-87...2-1-96; N, 7-15-99]

(b) If the proposed location is unorthodox by being located closer to the outer boundary of the spacing unit than permitted by rule, notice shall be given to the affected persons in the adjoining spacing units towards which the unorthodox location encroaches. [Rn, 19 NMAC 15.N.1207.A.(5).(a), 7-15-99, A, 7-15-99]

(c) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than provided in special pool orders, notice shall be given to all affected persons. [Rn, 19 NMAC 15.N.1207.A.(5).(a), A, 7-15-99]

(3) Non-standard Proration Unit:

Notice shall be given to all owners of interests in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations), or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as required by the Division. [Rn, 19 NMAC 15.N.1207.A.(6), 7-15-99, A, 7-15-99]

(4) Special Pool Orders Regulating or Affecting a Specific Pool:

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, notice shall be given to:

(i) all Division-designated operators in the pool; and

(ii) all owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, notice shall be given to:

(i) all Division-designated operators in the pool; and

(ii) all Division-designated operators of wells within the same formation as the pool and within one (1) mile of the outer boundary of the pool which have not been assigned to another pool. [1-1-87...2-1-96; Rn, 19 NMAC 15.N.1207.A.(7), 7-15-99, A, 7-15-99]

(5) Special Orders Regarding any Division-Designated Potash Area:

Notice shall be given to all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area. [1-1-86...2-1-96; Rn, 19 NMAC 15.N.1207.A.(a) through (d). The material on unorthodox locations was moved to 19 NMAC N.1207.A.(2).] [1-186...2-1-96; A, 7-15-99]

(6) Downhole Commingling:

Notice shall be given to all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit. [1-1-86...2-1-96; Rn, 19 NMAC 15.N.1207.A.(9), 7-15-99, A, 7-15-99]

(7) Surface disposal of Produced Water or Other Fluids:

Notice shall be given to any surface owner within one-half mile of the site. [1-1-86...2-1-96; Rn, 19 NMAC 15.N.1207.A.(10), 7-15-99, A, 7-15-99]

(8) Adjudications not listed above:

Notice shall be given as required by the Division. [1-1-86...2-1-96; Rn, 19 NMAC 15.N.1207.A.(11), 7-15-99, A, 7-15-99]

(9) This paragraph has been moved and renumbered to 19 NMAC 15.N.1207.A.(6). [1-1-86...2-1-96; A, 7-15-99]

(10) This paragraph has been moved and renumbered to 19 NMAC 15.N.1207.A.(7). [1-1-86...2-1-96; A, 7-15-99]

(11) This paragraph has been moved and renumbered to 19 NMAC 15.N.1207.A.(8). [1-1-86...2-1-96; A, 7-15-99]

1207.B. Type and Content of Notice. Any notice required by this rule shall be sent by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall include: a copy of the application; the date, time and place of the hearing; and the means by which protests may be made. [1-1-86...2-1-96; A, 7-15-99]

1207.C. At the hearing, the applicant shall make a record, either by testimony or affidavit signed by the applicant or its authorized representative, that: (a) the notice provisions of this rule have been complied with; (b) the applicant has conducted a good-faith diligent effort to find the correct address of all persons entitled to notice; and (c) pursuant to this rule, notice has been given at that correct address as required by this rule. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof. [1-1-86...2-1-96; A, 7-15-99]

1207.D. Evidence of failure to provide notice as required in this rule may, upon proper showing, be considered cause for reopening the case. [1-1-86...2-1-96; A, 7-15-99]

1207.E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the Division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the date of the hearing. No further notice is required. [7-15-99]

1208 PLEADINGS: COPIES [9-15-55...2-1-96; A, 7-15-99]

1208.A. For pleadings and correspondence filed in cases pending before a Division Examiner, two copies must be filed with the Division. For pleadings and correspondence filed in cases pending before the Commission, five copies must be filed with the Division. The Division will disseminate copies to the members of the Commission. The party filing the pleading or correspondence shall at the same time either hand deliver or transmit by facsimile or electronic mail to any party who has entered an appearance therein or the attorneys of record, a copy of the pleading or correspondence. An appearance of any interested party shall be made either by letter addressed to the Division or in person at any proceeding before the Commission or before a Division Examiner, with notice of such appearance to the parties of record. [9-15-55...2-1-96; A, 7-15-99]

1208.B. Parties to an adjudicatory proceeding must file a prehearing statement three days in advance of a scheduled hearing before the Division or the Commission. The statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing. [7-15-99]

1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE

Any hearing before the Commission or a Division Examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. In the event of any continuance, a statement thereof shall be made in the record of the hearing that is continued. [1-1-50...2-1-96; A, 7-15-99]

1210 CONDUCT OF HEARINGS

1210.A. Hearings before the Commission or a Division Examiner shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent records of the Division. Any person testifying shall do so under oath. However, relevant unsworn comments and observations by any interested party will be designated as such and included in the record. [1-1-50...2-1-96; Rn, 19 NMAC 15.N.1210, 7-15-99, A, 7-15-99]

1210.B. The Division Director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the Commission. The witness must be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the presence of the witness at hearing is waived upon notice to and without objection of the parties. Pages of the prepared written testimony shall be numbered and contain line numbers on the left-hand side. [7-15-99]

1211 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE [1-1-50...2-1-96; A, 7-15-99]

1211. A. The Commission or any member thereof and the Division Director or the Division Director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the Commission or Division. A subpoena will be issued for attendance at a hearing upon the written request of any party. In case of the failure of a person to comply with the subpoena issued, an attachment of the person may be issued by the district court of any district in the state. Any person found guilty of testifying falsely at any hearing may be punished for contempt. [1-1-50...2-1-96; A, 7-15-99]

1211.B. A prehearing conference may be held prior to the hearing on the merits in cases pending before the Division or the Commission either upon request of a party or upon notice by the Division Director or a Division Examiner. The prehearing conference will be to narrow issues, eliminate or resolve other preliminary matters and to encourage settlement. The Division Director or the Division Examiner may issue a prehearing order following the prehearing conference [7-15-99]

1212 RULES OF EVIDENCE AND EXHIBITS [1-1-50...2-1-96; A, 7-15-99]

1212.A. Full opportunity shall be afforded all interested parties at a hearing before the Commission or a Division Examiner to present evidence and to cross-examine witnesses. In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, provided that such rules may be relaxed, where, by so doing, the ends of justice will be better served. No order shall be made that is not supported by competent legal evidence. [1-1-50...2-1-96; A, 7-15-99]

1212.B. Parties introducing exhibits at hearings before the Commission or a Division Examiner must provide a complete set of exhibits for the court reporter, each Commissioner or Division Examiner and other parties of record. [7-15-99]

1213 DIVISION EXAMINERS' QUALIFICATIONS AND APPOINTMENT

The Division Director shall appoint Division Examiners. Each Division Examiner so appointed shall be a member of the staff of the Division. Each individual appointed as a Division Examiner must have at least six years of experience as a geologist, petroleum engineer or licensed lawyer, or at least two years of such experience and a college degree in geology, engineering, or law; provided however, that nothing herein shall prevent any member of the Commission from serving as a Division Examiner. [9-15-55...2-1-96; A, 7-15-99]

1214 REFERRAL OF CASES TO DIVISION EXAMINERS

The Division Director may refer any matter or proceeding to a Division Examiner for hearing in accordance with these rules. The Division Examiner appointed to hear any specific case shall be designated by name. [9-15-55...2-1-96; A, 7-15-99]

1215 DIVISION EXAMINER'S POWER AND AUTHORITY

The Division Director may limit the powers and duties of the Division Examiner in any particular case to such issues or to the performance of such acts as the Director deems expedient; however, subject only to such limitations as may be ordered by the Director, the Division Examiner to whom any matter is referred under these rules shall have full authority to hold hearings on such matter in accordance with these rules. The Division Examiner shall have the power to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including administering oaths to witnesses and receiving testimony and exhibits offered in evidence subject to such objections as may be imposed. The Division Examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the Director as hereinafter provided. [9-15-55...2-1-96; A, 7-15-99]

1216 HEARINGS THAT MUST BE HELD BEFORE COMMISSION

Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the Commission if:

- (1) it is a hearing pursuant to NMSA 1978, §70-2-13; or
- (2) the Division Director desires the Commission to hear the matter. [9-15-55...2-1-96; A, 7-15-99]

1217 Repealed. [9-15-55...2-1-96; R 7-15-99]

1218 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING

Upon the conclusion of any hearing before a Division Examiner, the Division Examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing the Division Examiner shall prepare a written report with recommendations for the disposition of the matter or proceeding by the Division. Such report shall either be accompanied by a proposed order or shall be in the form of a proposed order and shall be submitted to the Division Director with the certified record of the hearing. [9-15-55...2-1-96; A, 7-15-99]

1219 DISPOSITION OF CASES HEARD BY DIVISION EXAMINERS

After receipt of the report of the Division Examiner, the Division Director shall enter the Division's order disposing of the matter. [9-15-55...2-1-96; A, 7-15-99]

1220 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS [9-15-55...2-1-96; A, 7-15-99]

1220.A. When an order has been entered by the Division pursuant to a hearing held by a Division Examiner, a party of record adversely affected by the order has the right to have the matter heard *de novo* before the Commission, provided that within 30 days from the date the order is issued the party files with the Division a written application for such hearing. If an application is filed, the matter or proceeding shall be set for hearing before the Commission. [Rn, 19 NMAC 15.N.1220, 7-15-99, A, 7-15-99]

1220.B. Any party requesting a stay of a Division order must file the request with the Division and provide copies of the request to the parties of record or their attorneys in the case at the time the request is filed. The request must have attached a proposed stay order. The Director may grant stays under other circumstances if such a stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party. [7-15-99]

1220.C. Any party of record adversely affected by the order issued by the Commission after hearing may apply for rehearing pursuant to Rule 1222. [Rn, 19 NMAC 15.N.1220, 7-15-99, A, 7-15-99]

1221 COPIES OF COMMISSION AND DIVISION ORDERS

Within 10 days after an order, including any order granting or refusing rehearing or order following rehearing, has been issued, a copy of such order shall be mailed by the Division to each party or its attorney of record. [9-15-55...2-1-96; A, 7-15-99]

1222 REHEARINGS

Within 20 days after entry of any order of the Commission any party of record adversely affected thereby may file with the Division an application for rehearing on any matter determined by such order, setting forth the respect in which the order is believed to be erroneous. The Commission shall grant or refuse any such application in whole or in part within 10 days after it is filed and failure to act within such period shall be deemed a refusal and a final disposition of such application. In the event the rehearing is granted, the Commission may enter a new order after rehearing as may be required under the circumstances. [1-1-50...2-1-96; A, 7-15-99]

1223 EX PARTE COMMUNICATIONS

A. In an adjudicatory proceeding, except for filed pleadings, at no time after the filing of an application for hearing shall any party, interested participant or their representatives communicate regarding the issues involved in the application with any Commissioner or the Division Examiner appointed to hear the case when all other parties of record to the proceedings have not had the opportunity to be present. [7-15-99]

B. The prohibition in A, above, does not apply to those applications that are believed by the applicant to be unopposed. However, in the event that an objection is filed in a case previously believed to be unopposed, the prohibition in A, above, is immediately applicable. [7-15-99]