

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION ON ITS OWN MOTION TO AMEND RULE 1204 AND RULE 1205, TO DELETE PRESENT RULE 1206, TO RENUMBER AND AMEND RULE 1207, AND TO PROMULGATE A NEW RULE 1207.

CASE NO. 8649
Order No. R-8054

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 10 and September 18, 1985, 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 October, 1985, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) The Oil Conservation Division, hereinafter referred to as the "Division", proposes the amendment of its general rules on procedure as shown on Exhibit "A" attached to this order in the manner and for the purposes described as follows:

- (A) RULE 1204 is proposed to be amended to clarify that the burden of personal service lies with the applicant and not the Division.
- (B) RULE 1205 is proposed to be amended to clarify that it covers only notices published by the Division.
- (C) Existing RULE 1206, entitled Personal Service of Notice, is proposed to be rescinded to allow for the additional notice requirements of proposed new Rule 1207.
- (D) Existing RULE 1207 is proposed to be re-numbered Rule 1206 and it is proposed to be amended to be consistent with the changes in proposed amended Rules 1204 and 1205.

(E) A new RULE 1207 is proposed to be adopted to provide for notice by the applicant to interested parties in a case as set out in the proposed rule, to establish how such notice should be given, to require a demonstration of to whom and how such notice was given, and to permit reopening of cases upon a proper showing that notice was not given.

(3) The proposed amendments are necessary to provide improved notice to parties who may be affected by actions of the Division or Commission as a result of a hearing.

(4) Certain participants in the hearing were concerned that individual paragraphs of proposed Rule 1207 would require the location of "unfindable" parties.

(5) While the proposals call for specific notice to certain parties in certain cases, when read as a whole, they do not require the location of "unfindable" persons or parties but do require the demonstration of a good faith effort to find such persons or parties, as required by constitutional standards.

(6) Many of the proposed amendments are consistent with notice requirements of the correlative administrative approval procedure.

(7) The proposed amendments should serve to improve the notice to interested parties of hearings before the Division or Commission and should be approved.

(8) To provide a proper opportunity for all parties affected by these proposed changes to become familiar with such changes and to develop procedures for giving the notice required by the proposed rule amendments, the effective date of said amendments should be January 1, 1986.

(9) Any application filed on or after January 1, 1986, should be subject to these proposed amendments.

IT IS THEREFORE ORDERED THAT:

(1) Effective January 1, 1986, the Division's general rules on procedure are hereby amended as follows:

-3-

Case No. 8649

Order No. R-8054

- (A) RULE 1204 is amended to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.
 - (B) RULE 1205 is amended to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.
 - (C) Existing RULE 1206, entitled Personal Service of Notice, is rescinded.
 - (D) Existing RULE 1207 is renumbered RULE 1206 and is further amended to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.
 - (E) A new RULE 1207 is adopted to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.
- (2) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



R. L. STAMETS, Chairman and
Secretary

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RULE 1204. METHOD OF GIVING LEGAL NOTICE FOR HEARING

Notice of each hearing before the Commission and notice of each hearing before a Division Examiner shall be by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county or each of the counties, if there be more than one, in which any land, oil, or gas, or other property which may be affected is situated.

RULE 1205. CONTENTS OF NOTICE OF HEARING

Published notices shall be issued in the name of "The State of New Mexico" and shall be signed by the Director of the Division, and the Seal of the Commission shall be impressed thereon.

The notice shall specify whether the case is set for hearing before the Commission or before a Division Examiner and shall state the number and style of the case and the time and place of hearing and shall briefly state the general nature of the order or orders, rule or rules, regulation or regulations to be promulgated or effected. The notice shall also state the name of the petitioner or applicant, if any, and unless the contemplated order, rule, or regulation is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply which may be affected by such order, rule, or regulation.

RULE 1206. PREPARATION OF NOTICES

After a motion or application is filed with the Division, the notice required under Rule 1205 shall be prepared by the Division and publication thereof shall be taken care of by the Division without the cost to the applicant.

RULE 1207. ADDITIONAL NOTICE REQUIREMENTS

(a) Each applicant for hearing before the Division or Commission shall give additional notice as set forth below:

1. In cases of applications filed for compulsory pooling under Section 70-2-17 NMSA 1978, as amended, or statutory unitization under Section 70-7-1, et. seq. NMSA 1978, as amended: Actual notice shall be given to each known individual owning an uncommitted leasehold interest, an unleased and uncommitted mineral interest, or royalty interest not subject to a pooling or unitization clause in the lands affected by such application which interest must be committed and has not been voluntarily committed to the area proposed to be pooled or unitized. Such individual notice in compulsory pooling or statutory unitization cases shall be by certified mail (return receipt requested).

2. In cases of applications for approval of unorthodox well locations:

If the proposed location is unorthodox by virtue of being located closer to the outer boundary of the spacing unit, than permitted by rule, actual notice shall be given to any operator of a spacing unit or owner of an undrilled lease which adjoins the applicant's spacing unit on one or more of the two sides or the single corner closest to the proposed well.

If the proposed location is unorthodox by virtue of its proximity to another well or wells within the same spacing unit, actual notice shall be given to offsetting operators or owners of undrilled leases bordering applicant's spacing unit on a common boundary or unit corner.

If the proposed location is unorthodox by virtue of being located in a different quarter-quarter section or quarter section than provided in special pool rules, actual notice shall be given to offsetting operators or owners of undrilled leases bordering applicant's spacing unit on a common boundary or unit corner.

All such notices shall be given by certified mail (return receipt requested).

3. In the case of applications for the approval of any non-standard proration unit:

Actual notice shall be given to all operators owning a leasehold interest to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the quarter section (for 160-acre pools or formations) the half section (for 320-acre pools or formations), or in the section (for 640-acre pools or formations) in which the non-standard unit is located and to each operator on any proration unit, or owner of an undrilled tract, which unit or tract adjoins or corners such quarter-quarter, quarter, half, or whole section. Such notice shall be by certified mail (return receipt requested).

4. In the case of applications for adoption of, or amendment of, special pool rules:

Actual notice shall be given to all operators of wells and each unleased mineral owner within the existing or proposed pool boundaries and all operators of wells within one (1) mile of such boundaries. Such notice may be provided by regular mail.

5. In the case of applications to amend special rules of any Division designated potash area, actual notice shall be given to each potash owner, each oil or gas operator, and each unleased mineral owner within the designated area. Such notice shall be provided by certified mail (return receipt requested).
6. In the case of applications for approval of downhole commingling of the product of multiple formations: Actual notice shall be given to all offset operators. Such notice shall be provided by regular mail.
7. In the case of any other application which will, if granted, alter any working interest owner's or any royalty interest owner's percentage interest in an existing well: Actual notice shall be given to the operators and applicant's royalty interest owners in such existing well. Such notice shall be provided by certified mail (return receipt requested).
8. In cases of applications for exceptions to rules or orders controlling surface disposition of produced water or other fluids: Actual notice shall be given to any surface owner within one-half mile of the site for which the exception is sought. Such notice shall be provided by certified mail (return receipt requested).
9. In cases of applications not listed above, the outcome of which may affect a property interest of other individuals or entities: Actual notice shall be given to such individuals or entities by certified mail (return receipt requested).

(b) Any notice required by this rule shall be to the last known address of the party to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall apprise such party of the nature and pendency of such action and the means by which protests may be made.

(c) At each hearing, the applicant shall cause to be made a record, either by testimony at the hearing or by an affidavit signed by the applicant or its authorized representative, that the notice provisions of this Rule 1207 have been complied with, that applicant has

conducted a good-faith diligent effort to find the correct address of all interested persons entitled to receive notice, and that pursuant to Rule 1207, notice has been given at that correct address as provided by rule. In addition, such certificate shall contain the name and address of each interested person to whom such notice was sent and, where proof of receipt is available, a copy of same.

Evidence of failure to provide notice as provided in this rule may, upon a proper showing, be considered cause for reopening the case.

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EXHIBIT "A"