

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

**APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION TO
AMEND CERTAIN PROVISIONS OF
TITLE 19, CHAPTER 15, PART 5, SECTION 9
OF THE NEW MEXICO ADMINISTRATIVE
CODE CONCERNING COMPLIANCE**

**CASE NO. 15536
ORDER NO. R-14222**

ORDER OF THE COMMISSION

This matter came before the Oil Conservation Commission ("Commission") on an application submitted by the Oil Conservation Division ("Division") to amend Title 19, Chapter 15, Part 5, Section 9 of the New Mexico Administrative Code. The Commission, having conducted a public hearing on October 6, 2016, and having considered the testimony and record in this case, enters this Order.

THE COMMISSION FINDS THAT:

1. Under the Oil and Gas Act ("Act"), NMSA Sections 70-2-6, 70-2-11 and 70-2-12, the Commission and the Division are granted the authority to adopt rules to carry out the purposes of the Act. The Act provides that no rule shall be adopted pursuant to the Act until after a hearing by the Commission. NMSA 1978, Section 70-2-12.2 (2015).

2. Section 70-2-12 provides the Commission and Division the authority:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

...

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

3. The Division submitted an application, on August 16, 2016, to the Commission to amend Title 19, Chapter 15, Part 5, Section 9 of the New Mexico Administrative Code addressing compliance. The proposed rule amendments were offered to create a more efficient process of notifying operators who are non-compliant with 19.15.5.9 NMAC, clarify the time frame that the Division shall make penalty assessments

available on its website, and remove the redundancy in Paragraph (2) of Subsection E of 19.15.5.9 NMAC.

4. The Commission scheduled a hearing for October 6, 2016, and notice for the hearing was published in a newspaper of general circulation in the state, was published in the New Mexico Register, was posted on the Division's website and was placed on the Commission's docket which was then sent to persons who have requested such notice. All notices were conducted within the deadlines under the rules. 19.15.3.9 NMAC.

5. In addition to the proponent of the rule amendments, the Division, appearances were entered by the New Mexico Oil and Gas Association ("NMOGA") and COG Operating, LLC ("COG"). At the hearing, the Division presented one witness, Allison Marks, Deputy Director of the Oil Conservation Division. NMOGA was permitted to ask questions on cross examination, COG did not offer any questions to the witness. Daniel Sanchez and Denise Gallegos were available for questions.

6. At hearing, Allison Marks testified on behalf of the Division. Ms. Marks drafted the proposed amendments to 19.15.5.9 NMAC. The changes to 19.15.5.9 NMAC are documented in Attachment 1.

a. Ms. Marks testified that the proposed rule changes would conserve time and expense associated with mailing operators who were not compliant with 19.15.5.9 NMAC.

b. During testimony, there was discussion of whether the mailing 60 days prior to commencing an enforcement action should be made via first class mail or certified mail. Ms. Marks testified that the division website will soon require operators to confirm their contact information with every submittal of monthly production reports. The common law mailbox rule gives rise to the presumption that a letter that has been properly addressed and deposited in the mail was received by the recipient in ordinary course.

c. Additionally, an operator that received notice of the Division's intent to commence an enforcement action for violations of 19.15.5.9 NMAC would still be entitled to additional notice. The Division would have to comply with the rules regarding compliance and adjudicatory proceedings as required by 19.15.5.10 NMAC and 19.15.4 NMAC. Those rules include timely certified mailing, and should the applicant be unable to locate persons entitled to notice, require publication at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located.

d. Ms. Marks presented testimony regarding the addition of the timeframe in Paragraph (1) of Subsection E of 19.15.5.9 of the last twelve months would provide the Division clarity as to how long that information would be publicly advertised. She stated that the information would still be available elsewhere within the division and its website.

e. During testimony, Ms. Marks proposed the addition of “under the Oil and Gas Act” after the added text “assessed” to prevent any ambiguity of the source of the information.

f. Lastly, Ms. Marks provided testimony that the sentence in Paragraph (2) of Subsection E of 19.15.5.9 NMAC is already addressed in 19.15.4.23 NMAC and the existing provision is duplicative and unnecessary.

7. At the close of the testimony at the October 6, 2016 hearing, the Commission began deliberations on the proposed rule changes. The Commission reviewed the proposed changes and based on the record, the Commission chose to adopt certain proposed changes. The Commission adopted the changes to Rules 19.15.5.9 NMAC as provided in Attachment 1, including the discussed proposed changes brought up during testimony.

8. The Commission finds that the changes to 19.15.5.9 NMAC provide more efficient use of Division time and resources and give violating operators additional notice to allow them to negotiate their return to compliance before formal compliance action is brought.

THE COMMISSION CONCLUDES THAT:

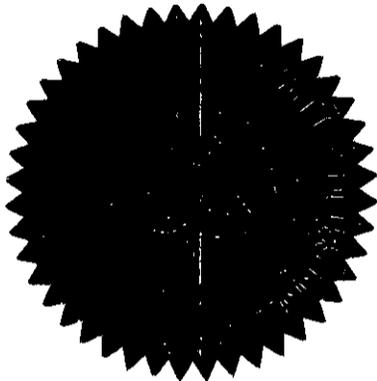
1. The Commission has the authority to enact the proposed rule change.
2. Proper notice and procedures were followed in this rulemaking.
3. The amendments to 19.15.5.9 NMAC, as provided in Attachment 1, are supported by substantial evidence in the record.

IT IS THEREFORE ORDERED THAT:

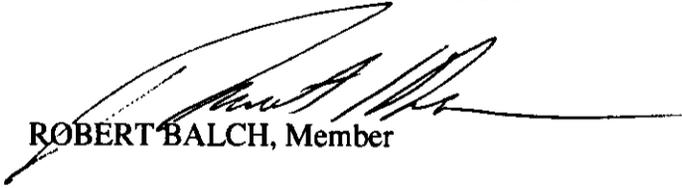
Rules 19.15.5.9 NMAC will be amended as provided in Attachment 1 and that all actions necessary to make the rule change effective be taken, including filing with the State Records and Archives Center and publication in the New Mexico Register. As provided in Section 70-2-12.2(B), the rule changes shall not be filed until the latter of twenty days after this Order is entered or the Commission has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978.

Done in Santa Fe, New Mexico, this 17th day of October, 2016.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



SEAL



ROBERT BALCH, Member



ED MARTIN, Member



DAVID R. CATANACH, Chair

ATTACHMENT 1

This is an amendment to 19.15.5 NMAC, amending Section 9, effective x/x/2016.

19.15.5.9 COMPLIANCE:

- 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 a letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.9.8 NMAC~~ making such information available on the division's website. Further, at least 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC, the division shall notify the operator by first class mail to the address provided to 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 assessed under the Oil and Gas Act over the last 12 months 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] Any~~ 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.
[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/08; A, x/x/16]

