

## Davidson, Florene, EMNRD

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**From:** Kevin Smaka <Kevin.Smaka@duganproduction.com>  
**Sent:** Monday, December 23, 2019 3:06 PM  
**To:** Davidson, Florene, EMNRD  
**Subject:** [EXT] Fine Rule Comments  
**Attachments:** NMOCD Fines NMAC 19.15.5.docx

Ms. Davidson,

Please find attached Dugan's comments about the "fine" rule.

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## Comments concerning NMAC 19.15.5

These comments have been prepared on behalf of Dugan Production Corp.

In 19.15.5.10.B the proposed amendment lists the various sanctions that will be made available to NMOCD agents in the event an operator is found to be non-compliant with the oil and gas act. With this new amendment the OCD is being given the authority to issue civil penalties to operators. If this was their only tool they could use to punish and encourage/intimidate operators into compliance it would be very hard to argue against the need to grant them the authority to fine operators. However they have many tools at their disposal that are far more effective than forcing someone to write a check. For example, in 19.15.5.10.B.2, it gives the division the ability to cancel permits and approvals if an operator is not in compliance. If the purpose here is to ensure compliance a sure fire way to get compliance is by terminating permits and cancelling approvals. Simply cancel the c-104 for any well that is not in compliance, order the well be shut in and it will all but be guaranteed the operator will move heaven and earth to correct the problems on site. The point being made is the division has very powerful tools, that doesn't include the issuance of fines, at their disposal to regulate effectively.

Furthermore regarding penalties, we also feel that penalties should not be viewed as mandatory. At Dugan it is our operational philosophy to do everything legally, morally and ethically correct as possible. We do not wish to harm the environment, waste resources or do a bad job. In the event an operator is able to reach an informal solution and then corrects the issue in an informal setting we feel there is no need for a penalty. In the event an operator blows off the NMOCD and doesn't fix the issues the OCD identifies we feel in these cases issuing a fine is appropriate if the operator can't demonstrate a valid reason why they weren't able to correct the issue in a timely manner.

In addition to what has already been said concerning civil penalties we at Dugan wish to stress again the NMOCD doesn't need this authority. They already have plenty of tools to scare/intimidate operators into compliance. With that said we take issue with the penalty amounts. If the commission chooses to proceed with granting the NMOCD the power to fine operators for non-compliance we cannot stress enough how damaging this is to small independent operators. We simply cannot afford, literally, the additional costs of writing checks that potentially can add up to \$70,000 per week. I am not sure exactly what the best course of action is on this issue but the overall effect of making fines too burdensome will not result in more compliance. Our request here is that when penalty calculation is determined please bear in mind that small operators will not survive if you use the same size hammer to hit them as you do a larger company.

In conclusion we at Dugan recognize the need to be able to enforce the rules and regulations that govern the oil industry. We feel that having power to punish an operator is not a bad thing. If these rules are mismanaged all that will be accomplished is the slow elimination of small independent companies, driving businesses from the state and damaging the oil and gas industry.