

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:

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR AMENDMENT OF SECTION 19.15.7.24 NMAC CHANGING THE TIME FOR DIVISION NOTIFICATION AND ENFORCEMENT AFTER AN OPERATOR'S FAILURE TO FILE AN ACCEPTABLE MONTHLY PRODUCTION REPORT (FORM C-115). CASE NO. 15802

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

September 21, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON  
EDWARD MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, September 21, 2017, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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## 1 APPEARANCES

2 FOR APPLICANT NEW MEXICO OIL CONSERVATION DIVISION:

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1 (11:00 a.m.)

2 CHAIRMAN CATANACH: At this time I will  
3 call the meeting back to order and call Case Number  
4 15802, which is the application New Mexico Oil  
5 Conservation Division for amendment on the Section  
6 19.15.7.24 NMAC changing the time for Division  
7 notification and enforcement after an operator's failure  
8 to file an acceptable monthly production report, Form  
9 C-115.

10 Call for appearances.

11 MR. BROOKS: Mr. Chairman, Honorable  
12 Commissioners, I'm David Brooks, assistant general  
13 counsel of the Energy, Minerals and Natural Resources  
14 Department, appearing for the Oil Conservation Division.

15 CHAIRMAN CATANACH: Any additional  
16 appearances?

17 Okay.

18 MR. BROOKS: I have one witness. I have  
19 two witnesses present, but I only intend to call one.  
20 You can swear both of them, though, in case the other  
21 does get called in the course of the proceeding.

22 CHAIRMAN CATANACH: Okay. Will the two  
23 ladies please stand and be sworn?

24 (Ms. Marks and Ms. Archuleta sworn.)

25 MR. BROOKS: Mr. Chairman, Honorable

1 Commissioners, since this -- the rule is very simple and  
2 involves changing two numbers and adding one sentence to  
3 the existing rule. I would assume the Commissioners are  
4 all familiar with it, and it will not be necessary for  
5 me to make an opening statement.

6 CHAIRMAN CATANACH: Commissioners, does  
7 anybody want an opening statement?

8 COMMISSIONER MARTIN: I do not.

9 COMMISSIONER BALCH: I think that would  
10 be --

11 CHAIRMAN CATANACH: Very good. You may  
12 proceed.

13 MR. BROOKS: Very good. I call Allison  
14 Marks.

15 ALLISON MARKS,  
16 after having been previously sworn under oath, was  
17 questioned and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BROOKS:

20 Q. Good morning, Ms. Marks.

21 A. Good morning, Mr. Brooks.

22 Q. State your name for the record.

23 A. Allison Marks.

24 Q. By whom are you employed?

25 A. By the Oil Conservation Division.

1 Q. And what is your capacity?

2 A. I am the deputy director for the Division.

3 Q. Okay. And, Ms. Marks, you are familiar with  
4 the subject of production reporting which the Oil  
5 Conservation Commission requires of operators, correct?

6 A. I am, yes.

7 Q. And has the Oil Conservation Division  
8 experienced problems with late filing of production  
9 reports by operators?

10 A. It has.

11 Q. Is this rule intended to address that problem?

12 A. It is.

13 Q. Okay. Please describe for the Commissioners  
14 what this rule proposes to do and your opinion as to  
15 whether -- as to how it will help the Division to do its  
16 performance mission?

17 A. This rule is intended to amend 19.15.7.24,  
18 Subsection C of the New Mexico Administrative Code. In  
19 particular, it would strike the notification period from  
20 60 days and shorten it to 30 days, the time period  
21 during this which the Oil Conservation Division would  
22 notify operators that they are late in submitting their  
23 C-115s. And it would also strike the 120-day period,  
24 shorten that period to 60 days, and that would be the  
25 period by which the Oil Conservation Division can revoke

1 an operator's ability to transport and revoke --  
2 sorry -- transport or inject from wells.

3 The Division has also decided to make it  
4 compulsory to inform an operator of the right to request  
5 a hearing pursuant to 19.15.4.8 of the New Mexico  
6 Administrative Code. That notice would be compulsory in  
7 any notification sent pursuant to Subsection C of  
8 19.15.7.24 of the New Mexico Administrative Code

9 And if I could just entertain you for a  
10 moment, I can explain how -- the problems that the  
11 Division has had with late filing.

12 The rule is really straightforward. The  
13 operators, more or less, have 45 days by the end of  
14 their production to submit their production data, and we  
15 have had -- I believe you-all have the charts in front  
16 of you. And we've had -- for January of 2017, we had 29  
17 percent of operators file -- production reports or  
18 C-115s were filed late. January was -- as far as total  
19 reported production, that was not -- not significant,  
20 only about 1.376 percent. But in February, 35 percent  
21 of operators filed late. That was 14.298 percent of  
22 total reported production. In March, 35 percent of  
23 operators, which was 24.61 of total reported production.  
24 And in April, 36 percent of operators filed late, which  
25 is 19.976 percent of total reported production. And in

1 May, 27 percent of operators filed late, which  
2 represented 6.269 percent of total reported production.  
3 And in June, 22 percent of operators filed late, which  
4 represented 28.767 percent of total reported production.

5 And there is just really no reason that  
6 operators should be filing their C-115s so late when  
7 they have 45 days to file, according to our rules.

8 **Q. Ms. Marks, do you have some exhibits that have**  
9 **been prepared to show the percentage of operators and**  
10 **the percentage of production that is reported late**  
11 **within the period of January 1st, 2017 to the present?**

12 A. Some exhibits have been prepared that show the  
13 number of operators that have been -- that have filed  
14 late and the amount of total cumulative oil that has  
15 been reported late.

16 **Q. I ask you to look at Exhibits -- what's been**  
17 **marked as Exhibit -- OCD Exhibits 1A, 1B, 1C, 1D, 1E and**  
18 **tell them that those are the graphs -- and tell the**  
19 **Commissioners if those are the graphs that were prepared**  
20 **and also say anything else you want to say about the**  
21 **exhibits.**

22 A. Those -- I don't have a copy of the exact  
23 replica copies, but they are --

24 MR. BROOKS: May I approach the witness?

25 CHAIRMAN CATANACH: Certainly.

1           Q.    **(BY MR. BROOKS) (Indicating.)**

2           A.    Yes.  Those are the exhibits as so prepared.

3           Q.    **Thank you.**

4                   **Is there anything else you believe you**  
5   **should be -- the Commissioners should be advised of**  
6   **about this rule?**

7           A.    I think the rule would be extremely beneficial  
8   to the State Land Office, the Department of Taxation and  
9   Revenue and the people of the State of New Mexico if  
10  these time periods were shortened, and also beneficial  
11  to the public at large.

12          Q.    **Very good.**

13                   **Do you think that the adoption of these**  
14   **amendments would assist the Division to prevent waste**  
15   **and protect correlative rights?**

16          A.    I do.

17          Q.    **Were Exhibits 1A through 1F prepared by you or**  
18   **under your direction based on records of the Oil**  
19   **Conservation Division?**

20          A.    They were.

21          Q.    **Very good.**

22                   MR. BROOKS:  I tender into evidence OCD  
23  Exhibits 1A through 1F, included.

24                   CHAIRMAN CATANACH:  Exhibits 1A through 1F  
25  will be admitted as evidence.



1 (NMOCD Exhibit Numbers 1A through 1F are  
2 offered and admitted into evidence.)

3 MR. BROOKS: Okay. I pass the witness.

4 CHAIRMAN CATANACH: Commissioners, do you  
5 have any questions of this witness?

6 COMMISSIONER BALCH: I do.

7 CROSS-EXAMINATION

8 BY COMMISSIONER BALCH:

9 Q. Good morning, Ms. Marks.

10 A. Good morning.

11 Q. Who is not turning these in on time? It's not  
12 Chevron, right, or is it? That's my question. Who are  
13 the people that are -- of this one-third that are not  
14 turning their paperwork in on time?

15 A. In June, for example, we did have an outlier.  
16 It was BOPCO. But in -- and I did not bring the list of  
17 operators with me. And it does run the gamut. It  
18 can -- a lot of times it is smaller operators, but it  
19 can be small to mid-operators. But these are not  
20 necessarily operators who just prepare their own C-115s.  
21 They can have other parties preparing the C-115  
22 reporting for them.

23 Q. How long -- I mean, does that gap ever close?  
24 Do you ever get all your C-115s? Presumably, after 60  
25 days or 120 days, under the current rule, you can revoke

1    **their license to produce, and they'll probably comply**  
2    **very quickly once you threaten them with that.**

3       A.   After the -- so typically we send the 60-day  
4   letter, and then we get some response. And I believe we  
5   get the action after the 60-day letter. And it's not  
6   common that we have to send the 120-day revocations.  
7   Recently we've been stepping up our efforts, and we've  
8   seen a lot more response. I think if -- we've also  
9   implemented a new electronic notification system to able  
10  to communicate electronically with operators. I think  
11  with the shorter period, we will have that response  
12  faster, so we will get the C-115s. We will get the --  
13  just like we did when we were talking about the  
14  financial assurance and we had that communication with  
15  operators quickly. With this 30-day period, we will  
16  reach out to operators, and then within 30 days, we will  
17  send this communication electronically, or via mail if  
18  necessary, and then we'll make this threat to them, and  
19  then they will submit their C-115 production data.

20       **Q.   It says the Division may cancel it -- a**  
21   **hearing, or is it administrative?**

22       A.   Right now, if an operator requests a hearing,  
23  then a hearing will be had. But right now,  
24  administratively, we can revoke their authority to  
25  inject or transport from a well, and that is done

1 administratively. And it's attached to every single  
2 well. Because when you submit your production data,  
3 it's attached to every single well. It's accepted or  
4 rejected to each well.

5 **Q. All right. So how often do -- how often do you**  
6 **actually have to revoke somebody's authority to produce?**

7 A. It varies by month. Ms. Archuleta will know  
8 exactly how many we did probably last month, but  
9 maybe -- maybe 12 last month. The month before, maybe  
10 we did eight, six, for a period. We hadn't done a  
11 number -- a number of revocations.

12 **Q. This is kind of well by well or field by field**  
13 **or unit by unit?**

14 A. It's operator by operator.

15 **Q. Operator by operator?**

16 A. Operators submit their C-115s for all wells.

17 **Q. When they've had that revoked, how do they get**  
18 **it back?**

19 A. They would have to call Ms. Archuleta or Daniel  
20 Sanchez. And if they are -- it's evaluated on a  
21 case-by-case basis to see, kind of, the operator's  
22 overall compliance history with the OCD. But we could  
23 ask them to resubmit C-104s, or we could, if they missed  
24 by a day, just reinstate them if they've submitted all  
25 their back C-115 production filings.

1                   COMMISSIONER BALCH: It looks like we're  
2 going to get about 20 percent of the total production as  
3 being -- being sent in late at this time. Maybe not  
4 quite that bad, only a few percent late.

5                   CHAIRMAN CATANACH: I think it varies by  
6 month. And I think some of the months where you see a  
7 larger percentage not being reported, it may have been  
8 an operator change or some other --

9                   COMMISSIONER BALCH: Like BOPCO.

10                  THE WITNESS: Yes. So BOPCO was -- BOPCO  
11 really skewed [sic] June. In May, it was 6.26 percent,  
12 and January, it was 1.37 percent; February, 14.29.  
13 March was high. April was high.

14                  But if you're talking about the number of  
15 operators, even though it was 1.37 percent in January,  
16 29 percent of the operators -- there is just really  
17 no -- there is no reason why so many operators can't  
18 comply with our rules and to -- I mean, rules are  
19 there -- the lawyer in me speaking, the rules are there  
20 for a purpose, and you need to have them comply with our  
21 rules.

22                  **Q. (BY COMMISSIONER BALCH) So it seems like 30**  
23 **percent are not reporting, but it's only a couple**  
24 **percent in general of the total oil that's being**  
25 **produced. This may be -- seems like it's mostly small**

1 operators and steeper wells, more intermittently  
2 operated wells with small volumes.

3 A. In January, that would be in an appropriate  
4 hypothesis, but this June --

5 Q. I didn't see any objection from IPM or NMOGA on  
6 this.

7 A. Not that I'm aware of.

8 MR. BROOKS: With that understanding,  
9 Ms. Davidson can respond to that because she handles the  
10 filings, but my understanding is nothing has been filed  
11 other than by the Division in this case.

12 COMMISSIONER BALCH: So apparently no  
13 objection from NMOGA.

14 MR. BROOKS: None that we've had any notice  
15 of or knowledge of.

16 COMMISSIONER BALCH: Mr. Padilla left the  
17 room when we started talking.

18 Thank you very much.

19 THE WITNESS: You're welcome.

20 CROSS-EXAMINATION

21 BY COMMISSIONER MARTIN:

22 Q. Do you have a sense of the Division's success  
23 rate at the 60th day? In other words, if you have 100  
24 operators out of compliance on the 60th day, you send  
25 them a letter threatening to revoke their authority to

1    **produce -- or transport, how many of those 100 comply**  
2    **within a timely period after that? Do you get a fairly**  
3    **good success rate with that method?**

4        A.    I think we have a very -- I think we have a  
5    great response rate. It's the same -- I know -- and,  
6    again, I'll -- I think Ashley would be better equipped  
7    to answer the question, but she sends out a lot of  
8    60-day letters. The number of revocation letters  
9    diminishes significantly from the number of 60-day  
10   letters, which is very fortunate from a budgetary  
11   standpoint because the 120-day letters are sent  
12   certified mail and the 60-day letters are not sent  
13   certified mail. But the stack of 60-day letters are  
14   like that (indicating), and we're sending the 120-day  
15   letters. It's the same -- it's the same, conceptually,  
16   with any enforcement action. The Division takes a lot  
17   of internal enforcement measures. We notify people that  
18   they need financial assurance. We notify people that  
19   they're on the inactive well list. We send the letters,  
20   and we get a lot of responses from operators that want  
21   to get back into compliance. We work with operators a  
22   lot when they have an issue figuring out how to balance  
23   their production reports, and our staff does a great job  
24   working with them.

25        **Q.    And is the Division still willing to make**

1 allowances for operators who -- the anomalies we were  
2 just talking about, like BOPCO, or operators with  
3 technical difficulties with the software and filing  
4 requirements with the C-115?

5 A. Of course. We have a small handful of  
6 operators that we assist who provide handwritten or in  
7 some other method their production data, and we enter it  
8 for them and do the C-115 reporting for them. Perhaps  
9 it's an age issue or computer difficulty issues. We do  
10 the C-115 reporting for them. And the rule as well says  
11 an operator may apply to the Division for an exemption  
12 from the electronic filing requirement based upon the  
13 demonstration that such requirement would operate as an  
14 economic or other hardship. And we also -- if an  
15 operator needs some other extension, we always work with  
16 an operator.

17 Q. Thank you. I have nothing further.

18 CHAIRMAN CATANACH: Mr. Brancard?

19 CROSS-EXAMINATION

20 BY MR. BRANCARD:

21 Q. Just for the record, what -- what -- to the  
22 extent you know, what are the ramifications to the State  
23 of, say, somebody not reporting this information for 120  
24 days, taxes, royalties, et cetera? I mean, are there  
25 ramifications?

1       A.    Sure.  Of course.  I think you just mentioned  
2   them, the election of -- the ability to collect taxes,  
3   to collect royalties and, from the State Land Office's  
4   perspective, to track leases.

5       Q.    So in other words, it isn't just not getting  
6   paid on time.  It's also not -- it triggers delays in  
7   royalty payments, tax payments?

8       A.    Correct.

9               CHAIRMAN CATANACH:  I don't have any  
10   questions.

11              COMMISSIONER BALCH:  Probably the reason  
12   why they're late.

13              CHAIRMAN CATANACH:  It's just a commentary.  
14   It's kind of a frustrating situation for the Division to  
15   have to wait on these folks to file their C-115s, and I  
16   know it's a burden on Tax and Rev and probably the State  
17   Land Office as well.  And there is really no reason for  
18   people -- in this age of electronic filing, there is no  
19   reason for people to have to wait that long to file the  
20   reports.

21              COMMISSIONER BALCH:  No.  I think that's  
22   kind a reasonable change considering everything that's  
23   happened with data transfer technology since -- however  
24   many years since this was written.

25              CHAIRMAN CATANACH:  Right.



1 I don't have anything further.

2 MR. BROOKS: I have a couple of cleanup  
3 items here. First of all, Ms. Archuleta is the person  
4 who personally manages this function for the OCD, so she  
5 is here. If any of the Commissioners want to ask her  
6 any questions, I will put her on the stand, but,  
7 otherwise, we don't deem it necessary.

8 CHAIRMAN CATANACH: Commissioners?

9 COMMISSIONER MARTIN: I don't have  
10 anything.

11 CHAIRMAN CATANACH: I think we're fine.

12 COMMISSIONER BALCH: Unless you really want  
13 to be on the stand.

14 MS. ARCHULETA: No. Thank you.

15 MR. BROOKS: My impression is she does not.

16 I would also like to offer Exhibit Number  
17 2, which is a Certificate of Compliance with Notice  
18 Requirements executed by Florene Davidson, here present.  
19 I did not have her execute an affidavit because I used  
20 the same form of certification that was used in the  
21 prior case. And the rule requiring proof by testimony  
22 or affidavit of the giving of proper notice actually is  
23 only in the adjudicatory portions of the rule and not in  
24 the rulemaking portion of the rules. So I am tendering  
25 Exhibit Number 2 as proof of notice.

1                   CHAIRMAN CATANACH: Is that adequate,  
2 Mr. Brancard?

3                   MR. BRANCARD: Yes.

4                   CHAIRMAN CATANACH: Exhibit 2 will be  
5 admitted.

6                   (NMOCD Exhibit Number 2 is offered and  
7 admitted into evidence.)

8                   MR. BROOKS: Okay. I have marked a copy of  
9 the proposed rule Exhibit Number 3, but I do not believe  
10 that it is necessary to offer it into evidence because  
11 it is a part of the record anyway having been previously  
12 filed among the papers in the case. If it is necessary  
13 or proper to file the proposed draft as an exhibit, I  
14 have it here to file.

15                  CHAIRMAN CATANACH: Do we need that as an  
16 exhibit?

17                  COMMISSIONER BALCH: It's already in the  
18 record.

19                  MR. BRANCARD: No, Mr. Chairman. It's  
20 already in the record.

21                  MR. BROOKS: Very good.

22                  With that, the Division closes.

23                  CHAIRMAN CATANACH: Do I have a motion to  
24 go into open deliberations on this rule change?

25                  COMMISSIONER MARTIN: So move.

1 COMMISSIONER BALCH: So move.

2 COMMISSIONER MARTIN: I second.

3 CHAIRMAN CATANACH: All in favor?

4 (Ayes are unanimous.)

5 (Open-session deliberations, 11:23 a.m.)

6 CHAIRMAN CATANACH: Commissioners, any  
7 comments or discussion on the proposed rule change?

8 COMMISSIONER BALCH: No. As I said, I  
9 think it's a pretty reasonable change considering  
10 advances in electronic data transfer.

11 CHAIRMAN CATANACH: Any other concerns or  
12 discussion?

13 COMMISSIONER MARTIN: I have no concerns.  
14 I think it's a good addition to the rule.

15 CHAIRMAN CATANACH: I agree.

16 Do I have a motion to adopt the rule change  
17 as proposed?

18 COMMISSIONER BALCH: I would make that  
19 motion.

20 COMMISSIONER MARTIN: I second.

21 CHAIRMAN CATANACH: All in favor?

22 (Ayes are unanimous.)

23 CHAIRMAN CATANACH: Mr. Brooks, you have  
24 your rule change. I would expect a draft order, and  
25 a -- I guess --

1 Do we need this rule change -- I mean, we  
2 already have it.

3 COMMISSIONER BALCH: How would you notice  
4 the impacted people on this? I mean, it's supposed to  
5 be on the Web page. It might not be quite enough.

6 CHAIRMAN CATANACH: I think that we do  
7 notice to operators.

8 MR. BROOKS: Well, I believe we have to  
9 file -- I would assume we have to comply with the  
10 requirements of the new statute, although we don't have  
11 to comply with the requirements of Bill's rule yet  
12 because it hasn't been adopted. But whatever we have  
13 to -- I have not focused on what we have to do after the  
14 rule is adopted to comply with the statute, but we have  
15 to do whatever that requires.

16 MR. BRANCARD: I think the plan is you want  
17 to get the -- you want to get the word out to all the  
18 operators.

19 COMMISSIONER BALCH: Yeah. We can have an  
20 information campaign or send a letter to all your  
21 producers or something like that.

22 MR. BRANCARD: Yeah.

23 CHAIRMAN CATANACH: Generally we've been  
24 providing notice to operators --

25 COMMISSIONER BALCH: The late people aren't

1 tracking or on the Web page.

2 CHAIRMAN CATANACH: Well, probably not. I  
3 don't know how you solve that problem.

4 THE WITNESS: We have a new -- like, when  
5 the data box that comes where they file the C-115s, for  
6 the address change, we can put some message there.

7 COMMISSIONER BALCH: Yeah. Make it  
8 flashing.

9 THE WITNESS: Yeah. It's a flashing thing  
10 where you can update your address, and that's how we  
11 make sure we get current addresses. We can probably do  
12 something here.

13 MR. BRANCARD: Well, and to the people who  
14 are late, who you're sending the current 60-day letters  
15 to, you may want to include with the next 60-day letter:  
16 By the way, effective whatever date, this notice will  
17 come in 30 days rather than 60 days.

18 COMMISSIONER BALCH: Something like that,  
19 an insert in the letter.

20 MR. BRANCARD: Because it's probably a lot  
21 of the same people.

22 CHAIRMAN CATANACH: I don't know if it is  
23 or not. I mean --

24 MR. BRANCARD: Month to month.

25 CHAIRMAN CATANACH: We're rescinding their

1 ability to produce, so -- I don't know. Maybe there are  
2 some of the same.

3 THE WITNESS: The 60-day letters are repeat  
4 customers sometimes.

5 MR. BRANCARD: Repeat customers. So --

6 CHAIRMAN CATANACH: So you'll have a draft  
7 order for the next Commission hearing?

8 MR. BROOKS: I will do so, Mr. Chairman.

9 CHAIRMAN CATANACH: Thank you, Mr. Brooks.  
10 Is there anything further in this case?  
11 We'll finish up with this case.

12 (Case Number 15802 concludes, 11:26 a.m.)  
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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither  
17 employed by nor related to any of the parties or  
18 attorneys in this case and that I have no interest in  
19 the final disposition of this case.

20

21

22 MARY C. HANKINS, CCR, RPR  
23 Certified Court Reporter  
24 New Mexico CCR No. 20  
25 Date of CCR Expiration: 12/31/2017  
Paul Baca Professional Court Reporters

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