

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

**APPLICATION OF THE  
NEW MEXICO OIL CONSERVATION DIVISION  
TO AMEND 19.15.5 NMAC; STATEWIDE**

**CASE No. 20895**

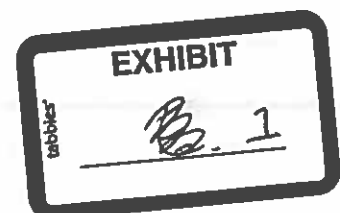
**NEW MEXICO OIL CONSERVATION COMMISSION'S  
AMENDED CERTIFICATE OF COMPLIANCE WITH NOTICE REQUIREMENTS**

As Clerk to the New Mexico Oil Conservation Commission ("OCC"), I hereby certify that notice of this matter has been provided as follows:

1. The Notice of Proposed Rulemaking for this Case ("Notice") was published in the New Mexico Register on November 26, 2019. Exhibit A.
2. The Notice was sent to the Albuquerque Journal and was published on November 15, 2019. Exhibit B.
3. On November 22, 2019, the Notice was posted on the Oil Conservation Division ("OCD") website and remained posted through the date of the public hearing. Exhibit C.
4. On November 22, 2019, the Notice was sent to the OCD field offices in Hobbs, Artesia and Aztec to be available to the public.
5. On November 22, 2019, the Notice had been mailed or e-mailed to all persons on the OCC's mailing list for rulemakings.
6. On November 22, 2019, the Notice was mailed to the New Mexico Legislative Council for distribution to committees.
7. On November 22, 2019, the Notice was posted on the Sunshine Portal. Exhibit D.

**NEW MEXICO OIL CONSERVATION COMMISSION**

*Florene Davidson*  
**FLORENE DAVIDSON  
COMMISSION CLERK**



NEW MEXICO  
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS  
Your Access to Public Information

**Affidavit of Publication in New Mexico Register**

I, Matthew Ortiz, certify that the agency noted on Invoice # 4534 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXX, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 4534, and that Invoice # 4534 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

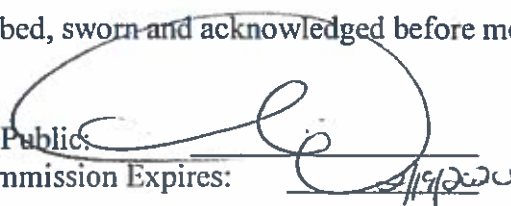
Affiant:

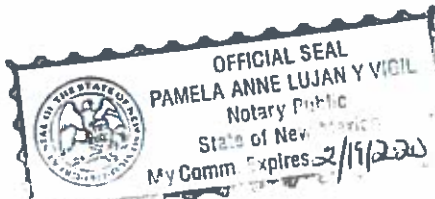
  
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 26<sup>th</sup> day of November, 2019.

Notary Public:

My Commission Expires:

  
2/19/2020



1205 Camino Carlos Rey | Santa Fe, NM 87507 | [nmcpr.state.nm.us](http://nmcpr.state.nm.us)

Hon. Hector Balderas  
*Attorney General*

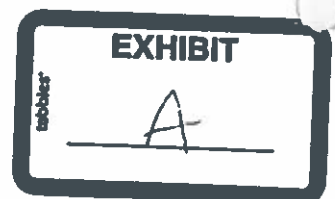
Hon. Brian S. Colón  
*State Auditor*

Hon. Maggie Toulouse Oliver  
*Secretary of State*

Debra Garcia y Griego  
*Department of Cultural Affairs*

Kenneth Ortiz  
*General Services Department*

Daniel Cordova  
*Interim Director, NM State Law Library*



## NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The State of New Mexico through the Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

**Case No. 20895: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULE FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 8, 9, AND 10 OF 19.15.5 NMAC; STATEWIDE.**

The New Mexico Oil Conservation Division (OCD) proposes to amend (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD; (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 19.15.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

**Purpose of Proposed Rule.** The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

**Availability of Proposed Rule.** The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us), (505) 476-1088, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oed>, or in the OCD's offices in Santa Fe, Hobbs, Artesia or Aztec.

**Public Hearing.** The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed.

\* **Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file six copies of a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on December 17, 2019. Filing may be accomplished by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). A person filing a Pre-Hearing Statement who intends to use projection equipment shall contact the Commission Clerk no later than seven business days prior to the hearing. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

\* **Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

\* **Written or Electronic Comments.** Any person may submit written or electronic comments on the proposed rule no later than 9:00 a.m. on January 2, 2020, unless extended by the Commission or the Chair of the Commission, by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us).

\* **Wireless Access.** Wireless access will be available at the location of the hearing, but a person intending to provide the electronic device.

EXHIBIT

A

# AFFIDAVIT OF PUBLICATION

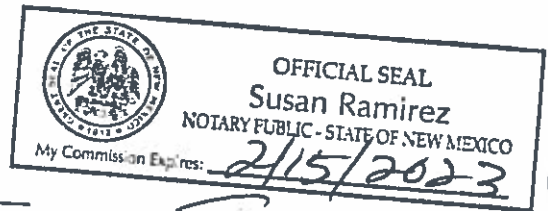
## STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost, that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

11/15/2019

NOTICE OF PUBLIC MEETING AND PUBLIC HEARING THE STATE OF NEW MEXICO THROUGH THE OIL CONSERVATION COMMISSION HEREBY GIVE NOTICE THAT THE COMMISSION



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 15 day of November of 2019

PRICE \$491.39

Statement to come at the end of month.

ACCOUNT NUMBER 1009556





NO. 1 PUBLIC MEETING AND PUBLIC HEARING

# DAVIT OF PUBLICATION

OF NEW MEXICO

of Bernalillo SS

the undersigned, on oath states that she is an authorized Representative of the Mercury Journal, and that this newspaper is duly qualified to publish legal notices and advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that the notice, copy of which hereto has been made of assessed as court cost, that the notice, copy of which hereto was published in said paper in the regular daily edition, for 1 time(s) on the following

The State of New Mexico through the Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The Commission shall make available to the public a preliminary agenda for the meeting, no later than 10 weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

Case No. 20695: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 19, 19.5, AND 10 OF 1915.5 NMAC, STATEWIDE.

The New Mexico Oil Conservation Division (OCD) proposes to amend: (1) 1915.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 1915.5.8 NMAC to state the duties and obligations of the OCD; (3) 1915.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 1915.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

Purpose of Proposed Rule. The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement orders, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 1915.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us, (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.enr.state.nm.us/oilcd>, or in the OCD's offices in Santa Fe, Hobbs, Artesia, or Aztec.

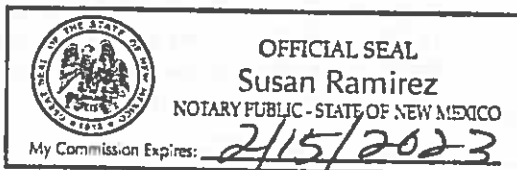
Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed.

Proposed Modifications, Technical Testimony, and Cross Examination. Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 1915.3.11 NMAC, no later than 5:00 p.m. on December 17, 2019. Filing may be accomplished by hand delivery or first class air electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, on [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). A person filing a Pre-Hearing Statement who intends to use protection equipment shall contact the Commission Clerk no later than seven business days prior to the hearing. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Oral Comments. Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person must provide copies conforming to the requirements of Subsection C of 1915.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Wireless Access. Wireless access will be available at the location of the hearing, but a person intending to use the access must provide the electronic device.

*[Signature]*



and subscribed before me, a Notary Public, in and County of Bernalillo and State of New Mexico this 19 day of November of 2019 \$491.39

not to come at the end of month.

NT NUMBER 1009556

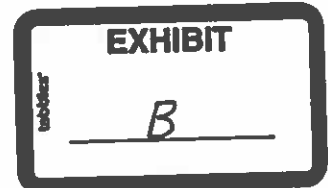
Wireless Access. Wireless access will be available at the location of the hearing, but a person intending to use the access must provide the electronic device.

Persons with Disabilities. If you are an individual with a disability who needs a reader, another qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us), or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than December 17, 2019.

Technical Information. There is no technical information for the proposed rule.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 19th day of November, 2019.  
STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

Adrienne Sandoval  
Chair, Oil Conservation Commission



## NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

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**Case No. 20895: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULE FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 8, 9, AND 10 OF 19.15.5 NMAC; STATEWIDE.**

The New Mexico Oil Conservation Division (OCD) proposes to amend (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD; (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 19.15.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

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**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

**Availability of Proposed Rule.** The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, [florence.davidson@state.nm.us](mailto:florence.davidson@state.nm.us), (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oed>, or in the OCD's offices in Santa Fe, Hobbs, Artesia or Aztec.

**Public Hearing.** The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed.

**Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file six copies of a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on December 17, 2019. Filing may be accomplished by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florence.davidson@state.nm.us](mailto:florence.davidson@state.nm.us). A person filing a Pre-Hearing Statement who intends to use projection equipment shall contact the Commission Clerk no later than seven business days prior to the hearing. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-





The newspapers of **New Mexico** make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web ([www.PublicNoticeAds.com](http://www.PublicNoticeAds.com)), not scattered among thousands of government web pages.

**County:** Bernalillo

**Printed In:** Albuquerque Journal

**Printed On:** 2019/11/15

**NOTICE OF PUBLIC MEETING AND PUBLIC HEARING** The State of New Mexico through the Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting. Case No. 20895: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULE FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 8, 9, AND 10 OF 19.15.5 NMAC; STATEWIDE. The New Mexico Oil Conservation Division (OCD) proposes to amend (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD; (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 19.5.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders. Purpose of Proposed Rule. The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978. Legal Authority. The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC. Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us), (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>, or in the OCD's offices in Santa Fe, Hobbs, Artesia or Aztec. Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed. Proposed Modifications, Technical Testimony, and Cross Examination. 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Any person who presents technical testimony will be subject to cross- examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre- Hearing Statement on the subject matter of the person's direct testimony. Oral Comments. Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non- technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony. Wireless Access. Wireless access will be available at the location of the hearing, but a person intending to use the access must provide the electronic device. Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than December 17, 2019. Technical Information. There is no technical information for the proposed rule. The State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on the State of New Mexico Oil Conservation Commission Journal: November 15,

**EXHIBIT**

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

APPLICATION OF NEW MEXICO OIL  
CONSERVATION DIVISION TO AMEND  
19.15.5 NMAC; STATEWIDE

CASE NO. 20895

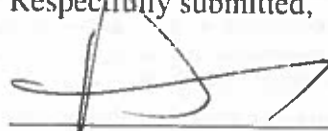
NEW MEXICO OIL CONSERVATION DIVISION'S  
APPLICATION TO AMEND 19.15.5 NMAC

The New Mexico Oil Conservation Division ("OCD") hereby applies to the Oil Conservation Commission to amend 19.15.5 NMAC – *Compliance and Enforcement*. The OCD proposes to amend the following provisions:

- (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978;
- (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD;
- (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and
- (4) 19.5.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

A draft of the proposed amendments and a legal notice of publication are attached as Exhibits A and B, respectively.

Respectfully submitted,



Eric Ames  
Assistant General Counsel  
New Mexico Energy Minerals and Natural  
Resources Department  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 476-3463  
eric.ames@state.nm.us

EXHIBIT

tabbies

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This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9 and 10 effective x/xx/xxxx.

Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12 and Section 70-2-31 NMSA 1978.  
[19.15.5.3 NMAC – N, 12/1/2008, A, X/XX/XXXX]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, X/XX/XXXX]

**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]~~ 30 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 or final 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 fifty 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 I of 19.15.5.9 NMAC shows no production or injection for the past 12 months by 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) Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~F] B. 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) shows no production or injection for past 15 months;~~

**EXHIBIT**

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Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).

[19.15.5.10 NMAC Repealed, 19.15.14.1227 NMAC, 12/1/2008]

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

**C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division;

(e) the availability of a process for informal review and resolution of the alleged violation;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

**D. Civil penalties.** The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

**E. Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) **General provisions.**

shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) **Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) **Decision.** The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(3) **Hearing procedures.**

(a) **General.** The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) **Witness examination.** Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) **Exhibits.** A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) **Burden of persuasion.** The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) **Post-hearing procedures.**

(a) **Transcript.** The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) **Recommended decision.** The director may request that the hearing examiner prepare a recommended decision.

(c) **Final order.** The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

**F. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission may appoint a hearing examiner, who may be a member of the commission. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

**G. Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided however that if respondent files a notice of appeal to the commission, no later than 30 days after the commission files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order.

**H. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**I. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.



## NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The State of New Mexico through the Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

**Case No. ~~20895~~: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULE FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 8, 9, AND 10 OF 19.15.5 NMAC; STATEWIDE.**

The New Mexico Oil Conservation Division (OCD) proposes to amend (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD; (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 19.15.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

**Purpose of Proposed Rule.** The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

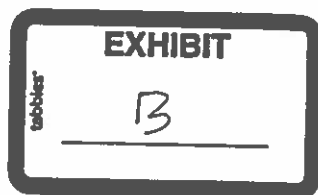
**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

**Availability of Proposed Rule.** The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us), (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oed>, or in the OCD's offices in Santa Fe, Hobbs, Artesia or Aztec.

**Public Hearing.** The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed.

**Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file six copies of a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on December 17, 2019. Filing may be accomplished by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). A person filing a Pre-Hearing Statement who intends to use projection equipment shall contact the Commission Clerk no later than seven business days prior to the hearing. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-



STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

APPLICATION OF NEW MEXICO OIL  
CONSERVATION DIVISION TO AMEND  
19.15.5 NMAC; STATEWIDE

CASE NO. 20895

**NEW MEXICO OIL CONSERVATION DIVISION'S**  
**NOTICE OF FINDING OF NO ADVERSE EFFECTS UNDER**  
**SMALL BUSINESS REGULATORY RELIEF ACT**

The New Mexico Oil Conservation Division ("OCD") gives notice that it received a finding of no adverse effects from the Small Business Regulatory Advisory Commission, a copy of which is attached as Exhibit A, as provided by the Small Business Regulatory Relief Act, NMSA 1978, Section 14-4A-5(C).

Respectfully submitted,



Eric Ames

Assistant General Counsel  
New Mexico Energy Minerals and Natural  
Resources Department  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 476-3463  
eric.ames@state.nm.us

EXHIBIT

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## Ames, Eric, EMNRD

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**From:** Nelson, Johanna, EDD  
**Sent:** Wednesday, November 27, 2019 1:13 PM  
**To:** Ames, Eric, EMNRD  
**Subject:** Letter to Small Business Regulatory Advisory Commission re Proposed Amendments to 19.15.5 NMAC  
**Attachments:** SBRAC Letter and Attachments - November 7 2019.pdf

Eric Ames  
Office of General Counsel  
New Mexico Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 476-3463

Hi Eric,

The SBRAC found no adverse effects on small businesses in regard to Proposed Amendments to 19.15.5 NMAC.

Thank you for alerting the SBRAC of the proposed amendments.

Please reach out if you have any questions.

Johanna Nelson, MBA, CEcD  
Finance Development Specialist  
New Mexico Economic Development Department  
1100 S. St. Francis, Santa Fe, NM 87505  
O: 505-827-0264  
C: 505-469-6204  
[Johanna.nelson@state.nm.us](mailto:Johanna.nelson@state.nm.us)  
*\*Hablo Ingles y Español*

NMEDD Website  
NM Rural Efficient Business Program  
NM Collateral Assistance Program  
NM FUNDIT





## NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

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**Purpose of Proposed Rule.** The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

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**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-

## 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.

EXHIBIT

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**Davidson, Florene, EMNRD**

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**From:** cfm oil <cfmoilcomp@outlook.com>  
**Sent:** Tuesday, December 24, 2019 8:42 AM  
**To:** Davidson, Florene, EMNRD  
**Subject:** [EXT] Opposition to proposed rule January 2 hearing

Greetings,

I am writing you to day to express my overwhelming concern for the proposed rule being discussed. This proposed rule change in effect strips ones most basic rights under the the 5th amendment of the US Bill of Rights. Removing ones right to due process violates what it is to be an American.

In effect the proposed rule is designed to target small businesses engaged in the production of oil. Disallowing persons to represent themselves, requiring legal representation and holding hearings far removed from the local being governed, are all designed to limit the small business owner from being fully capable of having recourse.

Our company is a 4th generation oil company, having strong ties to the origins of the oilfields in Southeastern New Mexico, the actions of the OCD over the past 5 years have been geared towards the destruction of the independent oil producer. Rules and regulations have all but shuttered our small company.

I urge those charged with protecting our nation's resources to utilize common sense lawmaking, that takes into account small businesses, and their limited resources.

Respectfully,

Louis F. Fulton





DEC 30 2019 AM10:34

December 30, 2019

NMOCD Rule Making Body

**Re: Comments on Administrative Penalties**

Dear Sir or Madam,

I am concerned about the potential abuse of administrative penalties by over-zealous regulators. *The purpose of administrative penalties should be to discourage operators who might be trying to circumvent the rules and to punish those who do.* Any assessment of penalties should serve that purpose. The purpose should NOT be to punish operators who make a simple mistake with no intent to do so. Therefore, such penalties should ONLY be levied when an operator purposefully disregards a rule or one who repeatedly keeps making the same "mistakes". There should be a requirement in the rule that the Administrative Officer make such a finding prior to assessing a penalty.

I am also concerned about the fact that the fines can pile up on a daily basis. Again, that is open to abuse, without serving the real purpose of the rule itself. For example, if a pumper leaves the hatch open on a tank, it may not be discovered for several weeks, opening the door for the assessment of a huge fine for a relatively minor unintended offense.

In summary, the NMOCD should be working with operators to promote compliance, not playing "gotcha", trying to catch and punish operators at every opportunity. The oil and gas industry already provides a third of all revenues to the State. In that regard, the industry should be encouraged; not treated like the enemy. The rules should be written to that end.

Sincerely,

A handwritten signature in blue ink, appearing to read "George Sharpe", is written over the printed name.

George Sharpe  
Manager, Oil & Gas Investments  
505-402-5798 cell  
gsharpe@merrion.bz

EXHIBIT

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**January 2, 2020 Administrative Penalties Hearing**

JAN 02 2020 AM 07:58

**Public Comments**

Ms. Florene Davidson,

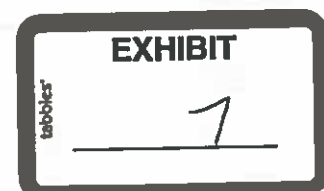
florene.davidson@state.nm.us

Epic Energy, LLC is a small Northwest New Mexico producer and would like to add the comments below for the record during the Administrative Penalties Hearing to be held at 9 AM on January 2, 2020.

Epic Energy joined with IPANM and many other producers in New Mexico in opposition to the legislation that was recently passed that gave the OCD the authority to administer monetary penalties for violations of OCD rules. We all believed that this legislation was unnecessary as the rules allowed the Oil Conservation Division to withhold approvals of drilling permits, C-104's, Change of Operator forms, ect., until any violations were addressed. Withholding these approvals would have been very effective and ensuring compliance. In cases where operators knowingly and willfully violated NMOCD rules the Oil and Gas Act had a process where the Attorney General's office could file suit to force the offender to comply.

With that said, Epic Energy would like the OCD to consider the following items when they finalize the Administrative Penalties Rule:

1. The OCD should create a table showing the amount of the fine for a specific violation with specific factors that could cause the amount of the penalty to go up or down. Without such transparency OCD could put themselves in a position of appearing to be biased if not all similar violations resulted in similar fines. Court costs and OCD staff time could severely hamper the OCD's ability to do their mandated job.



2. The rule should not be written to make fines mandatory. No penalties are appropriate where the operator and the OCD agree to a resolution and the operator complies with that agreement.
3. Operators should not be penalized for violations that they were not aware of. Daily penalties should only be imposed after the operator has received proper notice of a violation, given adequate time to rectify to violation, and failed to resolve the issue.
4. The proposed rule does not allow an aggrieved operator the opportunity to have a District Court review any matters that the operator and OCD cannot agree on.

As a long time San Juan Basin operator and resident I am disappointed that the OCD has proposed these monetary penalty rules. There used to be a time where the OCD and operators collaborated on ways to produce oil and gas in the safest, most efficient, and most environmentally friendly manner. With these rules the era of cooperation is over and we are now in an adversarial relationship. These rules will make it more difficult to operate in New Mexico which will have a negative effect on oil and gas revenues to the State to the detriment of the state's school children.

Paul C. Thompson, P.E.

President

Epic Energy, LLC





7415 East Main Street  
Farmington, New Mexico 87402  
(505) 327-4892 | Fax (505) 327-9834

## **Curriculum Vitae of Gabriel Wade**

### **Employment**

**Deputy Director of the New Mexico Oil Conservation Division (OCD).  
New Mexico Energy, Minerals and Natural Resources Department (EMNRD)  
November 2018 to Present**

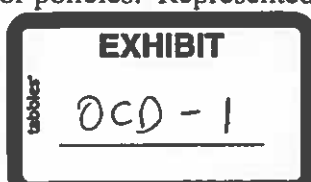
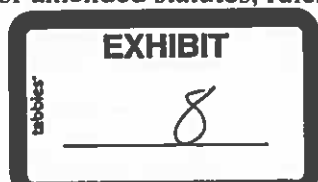
- Make policy decisions on issues affecting the OCD and the oil and gas industry, ranging from routine to complex and controversial.
- Supervise the development and implementation of OCD's compliance and enforcement program, including the hearing process.
- Supervise the development and implementation of OCD policies and procedures, including the consistent application of rules by the district offices.
- Coordinate legal matters with the Office of General Counsel.
- Serve as Vice-Chair of the New Mexico Water Quality Control Commission, the state's water pollution control agency for purposes of the federal Clean Water Act and Safe Drinking Water Act.

**Acting Director of the New Mexico Oil Conservation Division, EMNRD  
January 2019 to April 2019**

- Duties of Deputy Director listed above.
- Made policy decisions on issues affecting the OCD and the oil and gas industry, ranging from routine to complex and controversial.
- Led the OCD through the 2019 60-day legislative session, including drafting and testifying regarding proposed legislation, and assisting the Cabinet Secretary and General Counsel to prepare their testimony.
- Served as Chair of the New Mexico Oil Conservation Commission (OCC). Led the OCC in hearings and decided a range of complex and controversial issues affecting the oil and gas industry.

**Assistant General Counsel, Mining and Minerals Division (MMD) and OCD, EMNRD  
May 2013 to October 2019**

- Legal support for MMD on a wide variety of complex and controversial legal issues including conducting rulemaking hearings before the NM Mining Commission.
- For the OCD, identified and investigated administrative and environmental compliance issues; prepared notices of violation to ensure administrative and environmental compliance.
- Represented the OCD in administrative hearings; provided legal counsel to OCD hearing examiners at OCD administrative hearings; and provided legal counsel to the NM Oil Conservation Commission.
- Reviewed existing and proposed statutes, rules, and policies for improvement. Drafted new or amended statutes, rules, or policies. Represented OCD in rulemaking hearings.



**Special Assistant Attorney General**  
New Mexico Office of the State Engineer  
November 2008 to May 2013

- Represented the Water Rights Division in administrative hearings before the State Engineer (SE). Lead counsel for the SE in appeals to state courts and ensured regulatory compliance for the SE against illegal uses of water through compliance orders and injunctions.
- Litigated water rights adjudications on behalf of the state of New Mexico in state and federal courts.

**Assistant Public Defender**  
New Mexico Public Defenders Office, Santa Fe Trial Division  
January 2008 to November 2008

- Represented criminal defendants in a variety of different felony cases, including homicide.

**Assistant District Attorney**  
1<sup>st</sup> Judicial District Attorney's Office, State of New Mexico  
August 2005 to January 2008

- Prosecuted misdemeanor and felony criminal offenses, including homicide.

**Education**

**University of New Mexico Law School**  
Juris Doctorate 2005

**Southern Oregon University**  
Bachelor of Science, History 1999

thousand dollars (\$200,000); provided that such limitation does not apply to penalties assessed by a court.

E. The commission shall make rules, pursuant to Section 70-2-12.2 NMSA 1978, providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

F. It is unlawful, subject to a criminal penalty of a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding three years or both such fine and imprisonment, for any person to knowingly and willfully:

(1) violate any provision of the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

(2) do any of the following for the purpose of evading or violating the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act:

(a) make any false entry or statement in a report required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(b) make or cause to be made any false entry in any record, account or memorandum required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(c) omit or cause to be omitted from any such record, account or memorandum full, true and correct entries; or

(d) remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum.

G. For the purposes of Subsection F of this section, each day of violation shall constitute a separate offense.

H. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or F of this section shall be subject to the same penalties as are prescribed in Subsection D or F of this section.

## **70-2-31. Violations of the Oil and Gas Act; penalties. (Effective January 1, 2020.)**

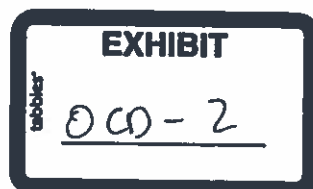
A. Whenever the division determines that a person violated or is violating the Oil and Gas Act or any provision of any rule, order, permit or authorization issued pursuant to that act, the division may seek compliance and civil penalties by:

- (1) issuing a notice of violation;
- (2) commencing a civil action in district court for appropriate relief, including injunctive relief; or
- (3) issuing a temporary cessation order if the division determines that the violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The cessation order will remain in effect until the earlier of when the violation is abated or thirty days unless a hearing is held before the division and a new order is issued.

B. A notice of violation issued pursuant to Paragraph (1) of Subsection A of this section shall state with reasonable specificity the nature of the violation, shall require compliance immediately or within a specified time period, shall provide notice of the availability of an informal review and the date of a hearing before the division and shall provide notice of potential sanctions, including assessing a penalty, suspending, canceling or terminating a permit or authorization, shutting in a well and plugging and abandonment of a well and forfeiting financial assurance pursuant to Section 70-2-14 NMSA 1978.

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the violation should be upheld and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to Section 70-2-13 NMSA 1978.

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed two thousand five hundred dollars (\$2,500) per day of noncompliance for each violation unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond a time specified in the notice of violation or order issued by the division, commission or court, whereupon the civil penalty may not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. No penalty assessed by the division or commission after a hearing may exceed two hundred



**History:** 1978 Comp., § 70-2-31, enacted by Laws 1981, ch. 362, § 1; 2019, ch. 197, § 7.

### ANNOTATIONS

**The 2019 amendment**, effective January 1, 2020, revised certain penalty provisions for violations of the Oil and Gas Act; deleted former Subsection A, added new Subsections A through E and redesignated former Subsections B through D as Subsections F through H, respectively; in Subsection G, after "Subsection", deleted "B" and added "F"; and in Subsection H, after "Subsection A or", deleted "B" and added "F", and after "prescribed", deleted "therein" and added "in Subsection D or F of this section".

**Applicability.** — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

Source: <https://laws.nmonesource.com>



This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9 and 10 effective x/xx/xxxx.

Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12 and Section 70-2-31 NMSA 1978.  
[19.15.5.3 NMAC – N, 12/1/2008, A, X/XX/XXXX]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, X/XX/XXXX]

**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] 30 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 or final 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 fifty 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 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) Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~F] B. 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) shows no production or injection for past 15 months;~~

EXHIBIT

000 - 3

~~[(a)]~~ (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

~~[(b)]~~ (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

~~[(c)]~~ (d) is not subject to an agreed compliance or final 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]~~ A well inactive for more than ~~[one year plus 90 days]~~ 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records, [19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, xx/xx/xxxx]

#### 19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:

~~[A. The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.~~

~~B. A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:~~

~~(1) requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;~~

~~(2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A); Subsection A of Section 70-2-31 NMSA 1978;~~

~~(3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;~~

~~(4) plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;~~

~~(5) denial, cancellation or suspension of a permit;~~

~~(6) denial, cancellation or suspension of authorization to transport; or~~

~~(7) shutting in a well or wells.~~

~~C. The division initiates an administrative compliance proceeding by filing a written application with the division clerk:~~

~~(1) identifying the operator and any other responsible parties against whom the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;~~

~~(2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;~~

~~(3) providing a general description of the facts supporting the allegations;~~

~~(4) stating the sanction or sanctions sought; and~~

~~(5) providing proposed legal notice.~~

~~D. The division shall provide notice of compliance proceedings as follows:~~

~~(1) the division shall publish notice in accordance with 19.15.4.9 NMAC.~~

~~(2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.~~

~~E. The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.~~

~~F. Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978,~~

Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).

[19.15.5.10 NMAC - Re 19.15.14.1227 NMAC, 12/1/2008]

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division;

(e) the availability of a process for informal review and resolution of the alleged violation;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico Rules of Civil Procedure and Evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order, and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and sanction, including each element of the assessed civil penalty, in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the initiation and before the conclusion of a proceeding under this section, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than 15 days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) the direct testimony in narrative form of each witness;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing,

shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The director may request that the hearing examiner prepare a recommended decision.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission may appoint a hearing examiner, who may be a member of the commission. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Payment of civil penalty. No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided however that if respondent files a notice of appeal to the commission, no later than 30 days after the commission files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order.

H. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

I. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.



J. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.  
[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008, A, xx/xx/xxxx]



## EXHIBIT 4

### OCD REVISED AMENDMENTS

JANUARY 2, 2020

This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9 and 10 effective x/xx/xxxx.

Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12 and Section 70-2-31 NMSA 1978.

[19.15.5.3 NMAC – N, 12/1/2008, A, X/XX/XXXX]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, X/XX/XXXX]

**19.15.5.9 COMPLIANCE:**

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

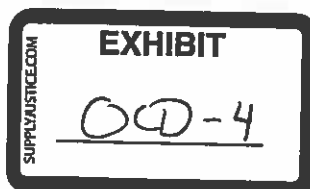
- (1) currently meets the financial assurance requirements of 19.15.8 NMAC;
- (2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;
- (3) does not have a penalty assessment that is unpaid more than [70] 30 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 or final 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 fifty 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 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) Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~F] B. 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) shows no production or injection for past 15 months;~~

~~[(a)] (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;~~

~~[(b)] (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and~~

~~[(c)] (d) is not subject to an agreed compliance or final 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] A well inactive for more than [one year plus 90 days] 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.~~

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, xx/xx/xxxx]

#### **19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:**

~~A. The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.~~

~~B. A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA~~

1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:

- ~~\_\_\_\_\_ (1) requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;~~
- ~~\_\_\_\_\_ (2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A); Subsection A of Section 70-2-31 NMSA 1978;~~
- ~~\_\_\_\_\_ (3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;~~
- ~~\_\_\_\_\_ (4) plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;~~
- ~~\_\_\_\_\_ (5) denial, cancellation or suspension of a permit;~~
- ~~\_\_\_\_\_ (6) denial, cancellation or suspension of authorization to transport; or~~
- ~~\_\_\_\_\_ (7) shutting in a well or wells.~~

~~\_\_\_\_\_ C. The division initiates an administrative compliance proceeding by filing a written application with the division clerk:~~

- ~~\_\_\_\_\_ (1) identifying the operator and any other responsible parties against whom the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;~~
- ~~\_\_\_\_\_ (2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;~~
- ~~\_\_\_\_\_ (3) providing a general description of the facts supporting the allegations;~~
- ~~\_\_\_\_\_ (4) stating the sanction or sanctions sought; and~~
- ~~\_\_\_\_\_ (5) providing proposed legal notice.~~

~~\_\_\_\_\_ D. The division shall provide notice of compliance proceedings as follows:~~

- ~~\_\_\_\_\_ (1) the division shall publish notice in accordance with 19.15.4.9 NMAC;~~
- ~~\_\_\_\_\_ (2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.~~

~~\_\_\_\_\_ E. The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.~~

~~\_\_\_\_\_ F. Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).~~

~~[19.15.5.10 NMAC—Rp, 19.15.14.1227 NMAC, 12/1/2008]]~~

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the

removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

**C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division;

(e) the availability of a process for informal review and resolution of the alleged violation;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

Good

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico Rules of Civil Procedure and Evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.



**(2) Pre-hearing procedures.**

**(a) Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent. Good

**(b) Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction, including each element of the assessed civil penalty, in the notice of violation or order. Good

**(c) Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the initiation and before the conclusion of a proceeding under this section division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent. Good

**(d) Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing. Good

**(e) Pre-hearing statements.** No later than 15 seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information: Good

**(i)** the name, address, employment and qualifications, including education and work history, of each witness;

**(ii)** the direct testimony in narrative form of each witness a statement identifying the opinions and factual assertions supporting each witness' testimony; Good

**(iii)** the exhibits and other evidence to be presented by each witness; and

**(iv)** procedural matters that are to be resolved prior to the hearing.

**(f) Enforcement.** The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

**(g) Motions.**

**(i) General.** All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

**(ii) Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) **Decision.** The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(3) **Hearing procedures.**

(a) **General.** The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) **Witness examination.** Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) **Exhibits.** A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) **Burden of persuasion.** The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) **Post-hearing procedures.**

(a) **Transcript.** The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) **Recommended decision.** The director may request that the hearing examiner prepare a recommended decision.

(c) **Final order.** The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. **Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. ~~The commission may appoint a hearing examiner, who may be a member of the commission.~~ The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.



**G. Rehearings.** A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

**GH. Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order; provided however that if respondent files a notice of appeal to the commission, or to a district court pursuant to Section 70-2-25, NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order.

Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn. Goal

**HI. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**IJ. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

**JK. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008, A, xx/xx/xxxx]

# NM OCD's Proposed Amendments to 19.15.5 NMAC

January 2, 2020

Gabriel Wade, OCD Deputy Director

EXHIBIT

OCD-5

# Why are we here?

In 2019 legislative session, the NM legislature recognized:

- The unprecedented growth in O&G production and disposal in NM
  - With growth came influx of new operators who may not know rules
  - With record growth in APD's/facilities/disposal wells, potential for more spills/remediation
- The lack of OCD enforcement of O&G Act
  - Lack of enforcement not fair to diligent operators, unequal playing field
  - NM pays to plug wells/remediate spills for non-compliant operators (often go bankrupt)
  - NM pay in both \$ and damage to environment/fresh water
- For example: In November 2019 OCD issued over 100 NOV's for over 1,000 inactive wells and around \$8 million in missing FA

# OCD Enforcement/Compliance Power Limited

- Prior to Amended 70-2-31, OCD had limited authority to effectively and efficiently ensure compliance in oil patch:
- Old 70-2-31 had “Knowingly and willfully” standard, difficult to prove
- “Marbob” case, 2009 NM Supreme Court (only NMAG could levy civil penalties)
  - NMAG did not file any enforcement actions seeking civil penalties
  - OCD filed only 3 enforcement actions (AG Commissioned, OCD could prove “knowingly and willfully” standard via ACO)
- Amended 70-2-31 removes barriers/provides tools for OCD efficiently and effectively deter non-compliance through enforcement

# Terms Used

- “Knowingly and Willfully” - Old standard found for proving civil violations of O&G Act under old 70-2-31. Black’s legal dictionary defines “Knowingly” as having or showing awareness, deliberate or conscious. Blacks defines “Willfully” as voluntary and intentional.
- “NOV” - A Notice of Violation, a written notice to operators of alleged violation(s) and possible sanctions
- “TCO” – A Temporary Cessation Order, like an injunction, cease activity

# Amended 70-2-31

## OCD Exhibit 2

- Removes “knowingly and willfully” as civil standard to prove violations
  - Allows OCD to levy civil penalties (also limits amounts of civil penalty)
  - Provides basic NOV and TCO processes (also clarified by proposed rule)
  - Provides due process
  - Promotes settlement
  - Provides criminal penalties (unchanged from previous statute)
- 
- Amended 70-2-31 also requires OCC to adopt procedures for the OCD to issue NOVs and TCO’s, assess penalties, and conduct hearings

# What do Proposed Amendments to 19.15.5 do?

## OCD Exhibit 3 and Exhibit 4

### 19.15.5 Amendments:

- Replace existing rules that aren't compliant with Amended 70-2-31
- Implement Amended 70-2-31:
  - No “knowingly and willfully” civil standard
  - Civil penalties and limits
  - Promotes due process and settlement
- Provides adjudicatory procedure for NOV's and TCO's



## OCD Consultation with Stakeholders

- OCD met with representatives of NMOGA, IPANM, and environmental NGOs to discuss concerns and recommended changes
- OCD proposed rule amendments to OCC (Exhibit 3)
- After proposal, further discussed with NMOGA and IPANM and incorporated discussed language into Exhibit 4
- OCD is committed to further consultation with stakeholders regarding future penalty calculations

## Presentation Roadmap

- Discuss proposed amendments to 19.15.5 in order:
  - Section 3 - Statutory Authority
  - Section 9 - Compliance
  - Section 10 – Enforcement
- Discuss OCD proposed Exhibit 4 language at each relevant section
- Discuss NMOGA/IPANM proposals, OCD objections
- Discuss how rule becomes effective
- Conclusion

## 19.15.5.3- Statutory Authority

### 19.15.5.3 STATUTORY

**AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, ~~[and]~~ Section 70-2-12 and Section 70-2-31 NMSA 1978.

- Adds citation to 70-2-31 to reflect OCC's authority to adopt these rules
- Need to include reference 70-2-31.1 to reflect requirement under 5.10(I) (Publication)

### 19.15.5.3 STATUTORY

**AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, ~~[and]~~ Section 70-2-12 Section 70-2-31, and Section 70-2-31.1 NMSA 1978.

## 19.15.5.8- Enforcement of Statutes and Rules

### 19.15.5.8    **ENFORCEMENT OF**        • Adds OGA statutory duties

#### **STATUTES AND RULES:** The division is

charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and ~~including~~ the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

## 19.15.5.9(A)(3)- Compliance

### 19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(3) does not have a penalty assessment that is unpaid more than ~~70~~ 30 days after issuance of the order assessing the penalty;

- Changes 70 days to 30 days for compliance period:
- 30 days standard compliance period in administrative practice
- 70 days has no clear origin and is arbitrary

## 19.15.5.9(A)(4)- Compliance

### 19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(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** or final 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:

- Adds “final order” for orders issued after effective date
- New rule refers to “stipulated final orders” when the parties agree to resolution and “final orders” when OCD or OCC holds a hearing and issues an order
- Retains hold over language “agreed compliance order” for cases filed before effective date of proposed rules

## 19.15.5.9(B-E)- Sections Deleted/Why

- Current Section 9(B)
  - First sentence replaced by proposed Section 9(B)(1)
  - Second sentence superseded by proposed Section 10
- Current Section 9(C)
  - Language has been moved to end of proposed Section 9
- Current Section 9(D)
  - Superseded by proposed Section 10
- Current Section 9(E)
  - (E)(1) replaced by proposed Section 10(I)
  - (E)(2) superseded by proposed Section 10



## 19.15.5.9(B)- Inactive Wells

### F] B. 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] shows no production or injection for past 15 months;

[~~(a)~~] (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

[~~(b)~~] (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

[~~(c)~~] (d) is not subject to an agreed compliance or final 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] A well inactive for more than [one year plus 90 days] 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

- (1)(a) defines inactive well (same as current rule)
- (1)(b) & (c) re-lettered
- (1)(d) re-lettered, “final order” consistent with Section 5.9(A)(4) already discussed
- (2) reworded for consistency with (1)(a) (15 months)

## 19.15.5.9(C)- Financial Assurance

**C. Financial assurance.** The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

- No change from existing rule just moved to new section

## 19.15.5.10- Enforcement

- Repeals and replaces Section 10 because existing rule not consistent with Amended 70-2-31
- Closely tracks language of Amended 70-2-31

### **Section 10 Roadmap**

- A – How OCD seeks: TCOs, NOVs, and civil actions
- B – Sanctions OCD may seek, including civil penalties
- C – NOV procedures for service and hearings
- D – How civil penalties calculated, including criteria to apply and limits to penalties
- E – Hearing procedures
- F – Appeal procedures
- G – When civil penalties paid
- H – Informal resolution process after hearing commenced
- I – Publication of enforcement information by OCD
- J – Savings clause

## 19.15.5.10(A)(1)- Temporary Cessation Orders

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

- TCOs allowed when OCD determines:
  - Violation poses imminent danger to public health or safety or
  - Violation poses significant imminent environmental harm
- Procedure:
  - OCD issues TCO
  - TCO remains in effect until earlier of abatement or 30 days
  - OCD must hold hearing within 30 days to get new TCO

## 19.15.5.10(B)- Sanctions

**B. Sanctions.** The division may seek one or more of the following sanctions:

- (1) a civil penalty;
- (2) modification, suspension, cancellation or termination of a permit or authorization;
- (3) plugging and abandonment of a well;
- (4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;
- (5) remediation and restoration of a location affected by a spill or release;
- (6) forfeiture of financial assurance;
- (7) shutting in a well or wells; and
- (8) any other remedy authorized by law.

- Tracks Amended 70-2-31 verbatim
- OCD may:
  - Modify, suspend, cancel, or terminate permit or authorization
  - Shut in and/or plug & abandon wells
  - Require remediation or restoration of wells and other locations affected by a spill
  - Forfeit financial assurance
- New Sanction in 70-2-31:
  - OCD may assess civil penalties

# 19.15.5.10(C)- Notice of Violation

## C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division;

(e) the availability of a process for informal review and resolution of the alleged violation;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

## 19.15.5.10(C) NMAC - Notice of Violation

- Provides written notice to an operator of alleged noncompliance
- Provides specific information required by Amended 70-2-31:
- NOV states:
  - alleged violation
  - specific provision of the statute, rule or order allegedly violated
  - statement that alleged violator must comply immediately or by a certain time
  - sanction(s) sought for each alleged violation, if any
  - statement of availability of an informal process to resolve alleged violation(s)
  - statement that OCD will hold hearing if the NOV is not resolved within 30 days
  - hearing date
- See NMOGA/IPANM proposed edits to this section



## OCD's Ex. 4 Amendment 5.10(C)(1)(b)

### C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature, factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

- Based on discussions with NMOGA, OCD agrees
- Adds clarity to description of basis of alleged violation

# NMOGA/IPANM Proposed 19.15.5.10(C)(1)(d)

## **NMOGA: C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division if the notice of violation is not cured;

- Both proposals remove sanctions if violator “resolves” violation in settlement period

Inconsistent with Amended 70-2-31(A):  
“*Whenever the division determines that a person **violated** or is violating . . .* can impose sanction

- Past violations may be “cured” or “resolved” already
- If a violation “cured”, then may be a factor in penalty calculation- not whether the OCD can assess a penalty
- Creates a “catch me if you can” effect, non-compliant operators will wait to get caught then fix
- Allowing NOV to “cure” violations without sanctions undermines the deterrent effect of sanctions

## **IPANM: C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(d) the sanction(s) available for the alleged violation and ~~the~~ any sanction(s) proposed by the division if the matter is not resolved during the informal review process:

## OCD's Ex. 4 Amendment 19.15.5.10(C)(2)

### **C. Notice of violation.**

**(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.**

- Based on discussions with IPANM
- Allows OCD to expedite process (if operator provides email)
- Still follows traditional service procedure by certified mail
- Only operator's mailing address is required to be provided by OCD rule

# IPANM Proposed 19.15.5.10(C)(3)

## IPANM: C. Notice of violation.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission. No civil penalties shall be proposed by the division if the division and the alleged violator agree to a stipulated final order and the alleged violator fulfills its obligations under that order.

## OCD objects:

- Creates a “catch me if you can” effect, non-compliant operators will wait to get caught then fix
- Undermines statutory criteria to calculate a penalty: seriousness, good faith, history
- Undermines settlement because OCD cannot scale sanctions to “bad actors” even through settlement
- Not fair to diligent operators
- Undermines deterrent effect penalties have on noncompliance

## 19.15.5.10(D)- Civil Penalties (Original Proposed)

**D. Civil penalties.** The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

## 19.15.5.10(D)- Civil Penalties

Section 10(D) establishes procedures to assess civil penalties (tracks 70-2-31):

- OCD will calculate penalty for each alleged violation in NOV
- OCD must apply criteria to assess penalty amounts:
  - seriousness of violation
  - good faith efforts to comply with applicable requirement(s)
  - operator's history of noncompliance with OGA or rules

Reflects statutory limits on civil penalties that may be assessed

- OCD cannot assess more than \$2,500 per day for each violation unless:
  - violation presents risk to public health, safety, or significant harm to environment or
  - violation continues longer than time specified in NOV or final order
- Then OCD can assess up to \$10,000 per day for each violation
- Total cap of \$200,000 per violation

# OCD's Ex. 4 Amendment 19.15.5.10(D)

## Sentence 1 of 10(D)

**D. Civil penalties.** The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors.

- Based on discussions with NMOGA
- Sentence one of 10(D) deleted
- Consistent with Amended 70-2-31



# NMOGA's Proposed 19.15.5.10(D)

## Sentence 2 of 10(D)

The civil penalty assessed by the division shall commence no earlier than the date that the Division demonstrates that the respondent was aware or should have been aware of the violation and shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

## OCD objects:

- “Aware” synonymous with “knowingly”
- Legislature expressly removed “knowingly” from Amended 70-2-31
- “Aware or should have been aware” can be a criteria in calculating penalty amounts not if OCD can assess

# IPANM's Proposed 19.15.5.10(D)

(D) Civil penalties. Except as provided in 19.15.5.10(C)(3) and 19.15.5.10(E) NMAC, the division shall may calculate a proposed civil penalty for each alleged violation in the notice of violation. The calculation shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of non-compliance under the Oil and Gas Act, and other relevant factors and be in conformity with the fine amounts, factors for enhancement, and factors in mitigation set forth in Tables 1, 2, 3, 4, and 5 to this Rule. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$ 10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000. Daily fines recommended by the division shall commence no earlier than the date the operator knew or in the exercise of ordinary care, should have known about the alleged violation.

OCD objects:

- Directly violates 70-2-31 by:
  - Deleting verbatim language from Amended 70-2-31 (criteria that shall be applied)
  - Adding “knowing” standard for civil penalties
- Replaces statutory criteria with Texas guidelines for fine amounts
  - Not in rule in Texas, “guidance”
  - Multiple problems with proposed table:
    - Based on Texas rules not NM
    - Some fines exceed statutory limits
- Adds an enhancement/mitigation table no known precedence

## OCD Proposed 19.15.5.10(D) Should be Adopted

- Consistent with and tracks almost verbatim Amended 70-2-31
- Consistent with other state oil/gas commissions in allowing guidelines to be developed (Texas)
- Allows flexibility to adjust penalties on a case-by-case basis (scale to statutory criteria)
- Allows OCD to calculate penalties below the statutory limits
- Allows OCD to work with stakeholders to develop calculation method

# IPANM's Proposed new Sections (E) & (F)

- OCD objects to the proposed sections
- Both rely on a determination that violations can be the “same” under different laws

## IPANM's Proposed New 19.15.5.10(E)

(E) Exceptions to Civil Penalties. The division shall not propose or impose civil penalties for an alleged violation if the BLM has imposed civil penalties or fines on the alleged violator for the same alleged violation and it shall revoke any civil penalties imposed if the BLM subsequently imposes civil penalties or fines for the same alleged violation.

OCD objects:

- (E) proposes that OCD can't ask for penalties on "same" violations as BLM has imposed on, OCD shall refund if BLM imposes penalties
- No such thing as a "same" violation (different laws)
- No mechanism to refund fees
- This proposal has no precedent in any law

## IPANM's Proposed New 19.15.5.10(F)

(F) Credits to Civil Penalties. Except as provide in 19.15.10.5(E), if the alleged violator pays civil penalties or fines any state agency or federal agency for an alleged violation, the sums actually paid by the alleged violator shall operate a credit to the civil penalties imposed by the division for the same alleged violation.

OCD objects:

- (D) proposes that OCD can't ask for penalties on "same" violations for any other state or federal penalties imposed
- No such thing as a "same" violation (different laws)
- No mechanism to refund fees
- This proposal has no precedent in any law

# OCD's 19.15.5.10(E)- Adjudicatory Procedures

- Procedures for hearings if informal resolution does not succeed
- Section 5.10(E) Roadmap:
  - E(1) - General provisions
  - E(2) - Pre-hearing procedures
  - E(3) - Hearing procedures
  - E(4) - Post-hearing procedures



# 19.15.5.10(E)(1) NMAC - General Provisions

E. **Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

## (1) General provisions.

(a) **Designation of parties.** The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) **Representation.** Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) **Rule applicability.** In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico Rules of Civil Procedure and Evidence.

(d) **Computation of time.** In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) **Extensions of time.** The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) **Filing of documents.** A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) **Service of documents.** A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) **Form of documents.** Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

- Identifies OCD and alleged violator as parties
- Prohibits participation by third parties
- Allows parties to appear pro se or by counsel, except certain "collective entities"
- Clarifies that rules of evidence and civil procedure are guidance only
- Establishes standard computation of time
- Allows extensions of time and continuances
- Requires parties to serve pleadings
- Describes format and criteria for documents

Similar general provisions are used by other state agencies for administrative proceedings

# 19.15.5.10(E)(2)- Pre-Hearing Procedures

(a) **Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order, and serve a notice of docketing on respondent.

(b) **Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and sanction, including each element of the assessed civil penalty, in the notice of violation or order.

(c) **Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary matters, eliminate the need for oral testimony, and make a recommended decision. After the initiation and before the conclusion of a proceeding under this section, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) **Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) **Pre-hearing statements.** No later than 15 days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

- (i) the name, address, employment and qualifications, including education and work history, of each witness;
- (ii) the direct testimony in narrative form of each witness;
- (iii) the exhibits and other evidence to be presented by each witness; and
- (iv) procedural matters that are to be resolved prior to the hearing.

(f) **Enforcement.** The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

## (g) **Motions.**

(i) **General.** All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) **Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) **Decision.** The hearing examiner shall decide all motions without a hearing, unless ordered by the hearing examiner sua sponte or upon written request of a party.

- OCD docketes unresolved NOV's, TCO's and OCC appeals before 30 day deadline

## Steps in pre-hearing process:

- After docketing, alleged violator files answer
- Hearing Examiner (HE) assigned to run hearing
- HE barred from talking about substance of case with parties (no ex parte)
- HE may hold pre-hearing conference to resolve procedural and evidentiary issues
- Parties must file pre-hearing statements and exchange testimony and evidence at least 15 days before hearing
  - ensures that parties have opportunity to prepare effectively
  - facilitates settlement

## OCD's Ex. 4 Amendment 19.15.5.10(E)(2)(a)-(b)

### (2) Pre-hearing procedures.

**(a) Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

**(b) Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction, including each element of the assessed civil penalty, in the notice of violation or order.

- Based on discussions with NMOGA
- Provides the factual basis for alleged violation and proposed sanction(s)
- Highlights that disputed sanctions after informal agreement period are still “proposed”

# OCD's Ex. 4 Amendment 19.15.5.10(E)(2)(c)-(e)(ii)

## (2) Pre-hearing procedures.

(c) **Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the initiation and before the conclusion of a proceeding under this section issuance of the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) **Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) **Pre-hearing statements.** No later than 15 7 calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) the direct testimony in narrative form of each witness a statement identifying the opinions and factual assertions supporting those opinions of each witness' testimony;

- Based on discussions with NMOGA
- Clarifies when ex-parte applies
- Highlights that penalties are “proposed” at this stage
- Shortens timeline to allow for preparation but still allows for sufficient notice (15 to 7 calendar days)
- Allows exchange of enough information without requiring a “narrative”

## IPANM's Proposed New 19.15.5.10(E)(2)(h)

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing officer may shorten any deadlines hereunder to conduct the hearing as expeditiously as possible. If the request for shortening deadlines is opposed by the division the procedures for opposed motions set forth in 19.15.5.10(G)(2)(g) shall not apply and the hearing officer shall decide the request, with or without hearing, as quickly as practicable.

OCD objects:

Contrary to explicit language in Amended 70-2-31

- 30 day maximum for TCO:

(A) A “cessation order will remain in effect until the earlier of when the violation is abated **or thirty days** unless a hearing is held before the division and a new order is issued.”

- 30 day minimum for NOV:

C. If the notice of violation is not resolved informally **within thirty days** after service of the notice, the division shall hold a hearing . .

# OCD's 19.15.5.10(E)(3)- Hearing Procedures

## (3) Hearing procedures.

**(a) General.** The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

**(b) Witness examination.** Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

**(c) Exhibits.** A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

**(d) Burden of persuasion.** The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

- Commonly used administrative procedures
- Parties can present and cross-examine witnesses
- OCD has burden of proof on each element of alleged violation
  - Standard is “preponderance of evidence”
  - Common civil standard of evidence

## OCD's 19.15.5.10(E)(4)- Post Hearing Procedures

### (4) Post-hearing procedures.

**(a) Transcript.** The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

**(b) Recommended decision.** The director may request that the hearing examiner prepare a recommended decision.

**(c) Final order.** The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

- Hearings must be transcribed
- OCD Director may request HE to prepare a recommended decision
- OCD Director solely responsible to issue final order



## NMOGA's Proposed 19.15.5.10(E)(4)(b)

### (4) Post-hearing procedures.

OCD objects to proposal:

**(b) Recommended decision.** The director ~~may~~ shall request that the hearing examiner prepare a recommended decision.

- Not required by statute
- Adds additional burden to efficient and effective enforcement
- Many cases may be “routine” and do not require a recommended decision

## OCD's 19.15.5.10(F) – Commission Review

**F. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission may appoint a hearing examiner, who may be a member of the commission. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2). Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC,

- Party may appeal to OCC (same as existing rule)
- OCC's review is de novo (required by OGA)
- Parties can stipulate to issues and the record from OCD hearing (expedites OCC hearing)
- OCC will use relevant portions of adjudicatory procedures in 5.10(E)
- Need to correct 2 typographical errors
  - period should be comma
  - comma should be period

See Proposed Amendment to (F)

## OCD's Ex. 4 Amendment to 19.15.5.10(F)

**F. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission may appoint a hearing examiner, who may be a member of the commission.

- NMOGA proposes deleting sentence 2
- OCD agrees because OCC already has power to assign HE under 70-2-13:  
“Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein.”
- Only proposed change in (F)

## OCD's Ex. 4 NEW Amendment 19.15.5.10(G)

**G. Rehearings.** A party may file an application for rehearing with the Commission pursuant to Section 70-2-25, NMSA 1978.

- Based on discussions with NMOGA and IPANM
- OCD prefers IPANM's version; contains applicable reference
- Provides clear path for appeals to district court

## OCD's Ex. 4 Amendment to 19.15.5.10(G)(H)

**GH.** **Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided however that if respondent files a notice of appeal to the commission, or to a district court pursuant to Section 70-2-25, NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order.

- Based on discussions with NMOGA
- Re-lettered OCD's previously proposed 5.10(G)
- OCD's 10(G) originally required payment of civil penalty within 30 days of final order
- Adds stay provision for appeals, penalty isn't paid until a "final order" is issued after appeal

# IPANM's Proposed Amended 19.15.5.10(G)(H)

**Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided however that if respondent files a notice of appeal to the commission, no later than ~~30~~ 35 days after the commission files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order. If the respondent files an appeal to district court pursuant to Section 70-2-25(B) NMSA, any civil penalty paid by the respondent pursuant to the final order is subject to refund, in whole or in part, by the division if and to the extent that respondent is successful in respondent's appeal to the district court.

OCD objects:

- Proposal is that if appeal is successful, penalties collected must be refunded
- OCD cannot collect penalties and refund \$ from general fund
- OCD proposed language easier to administer (no fines to refund)
- Adds arbitrary timeline of 35 days for penalty to be paid

## 19.15.5.10(H)(I)- Resolution

- HI. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.
- Allows for settlement after hearing has commenced
  - OCD encourages and supports resolution whenever possible
  - Resolution will be memorialized in written order
  - Written order contains key elements of legally binding document, including admission of jurisdiction, consent to relief, and waiver of appeal

## 19.15.5.10(I)(J) – Publication

- IJ. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.
- This is the 70-2-31.1 requirement that OCD publish information regarding enforcement actions during the preceding year



## 19.15.5.10(J)(K) - Reservation

- JK. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.
- Standard savings clause to protect OCD and OCC's authority to enforce other parts of OGA and OCD rules

# Effective Date of Proposed Rule

- Amended 70-2-31 went into effect on January 1, 2020
- Rule goes into effect on date of publication in NM Register
- OCD can publish rule in NM Register no earlier than 20 days after OCC enters final order or denies rehearing application

# Conclusion

## Proposed rule:

- Complies with and implements Amended 70-2-31 and 70-2-31.1
- Establishes efficient procedures to file and adjudicate NOVs and TCOs and assess sanctions, including civil penalties
- Consistent with procedures used by other state agencies and NM laws
- Encourages settlement where possible
- Provides due process:
  - notice and opportunity to contest alleged violation(s) and proposed sanction(s)
  - preserves right to appeal to OCC and district court
- Holds all operators to same standard of compliance
- Protects correlative rights, prevents waste, and protects public health and environment
- OCD requests that this Commission adopts the rule as proposed today by the OCD

This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9 and 10 effective x/xx/xxxx.

Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12 and Section 70-2-31 NMSA 1978.  
[19.15.5.3 NMAC – N, 12/1/2008, A, X/XX/XXXX]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, X/XX/XXXX]

**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] 30 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 or final 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 fifty 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 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:~~

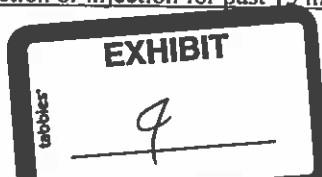
~~(1) The division shall make available on its website penalty assessments assessed under the Oil and Gas Act over the last 12 months and the date the operator paid them, according to division records.~~

~~(2) Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

~~F] B. 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) shows no production or injection for past 15 months;~~



~~[(a)]~~ (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

~~[(b)]~~ (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

~~[(e)]~~ (d) is not subject to an agreed compliance or final 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]~~ A well inactive for more than ~~[one year plus 90 days]~~ 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.  
[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, xx/xx/xxxx]

#### 19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:

~~A.~~ The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.

~~B.~~ A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:

~~(1)~~ requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;

~~(2)~~ assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A); Subsection A of Section 70-2-31 NMSA 1978;

~~(3)~~ corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;

~~(4)~~ plugging and abandonment of a well and restoration and remediation of the well location; and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;

~~(5)~~ denial, cancellation or suspension of a permit;

~~(6)~~ denial, cancellation or suspension of authorization to transport; or

~~(7)~~ shutting in a well or wells.

~~C.~~ The division initiates an administrative compliance proceeding by filing a written application with the division clerk:

~~(1)~~ identifying the operator and any other responsible parties against whom the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;

~~(2)~~ identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;

~~(3)~~ providing a general description of the facts supporting the allegations;

~~(4)~~ stating the sanction or sanctions sought; and

~~(5)~~ providing proposed legal notice.

~~D.~~ The division shall provide notice of compliance proceedings as follows:

~~(1)~~ the division shall publish notice in accordance with 19.15.4.9 NMAC.

~~(2)~~ the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.

~~E.~~ The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

~~F.~~ Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978,

~~Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).~~  
~~[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008]~~

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

**C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation and ~~the any~~ sanction(s) proposed by the division ~~if the matter is not resolved during the informal review process;~~

(e) the availability of a process for informal review and resolution of the alleged violation;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail ~~and, if contact information is reasonably available to the division also by facsimile and/or e-mail.~~

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, ~~including the civil penalty, if any,~~ and waives the alleged violator's right of review by the commission. ~~No civil penalties shall be proposed by the division if the division and the alleged violator agree to a stipulated final order and the alleged violator fulfills its obligations under that order.~~

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

**D. Civil penalties.** ~~Except as provided in 19.15.5.10(CX3) and 19.15.5.10(E) NMAC, the division shall determine the civil penalty for each violation based on the factors set forth in Tables 1, 2, 3, 4, and 5 to this Rule. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000. Daily fines recommended by the division shall commence no earlier than the date the operator knew or, in the exercise of ordinary care, should have known about the alleged violation.~~



**E. Exceptions to Civil Penalties.** The division shall not propose or impose civil penalties for an alleged violation if the BLM has imposed civil penalties or fines on the alleged violator for the same alleged violation and it shall revoke any civil penalties imposed if the BLM subsequently imposes civil penalties or fines for the same alleged violation.

**F. Credits to Civil Penalties.** Except as provide in 19.15.10.5(E), if the alleged violator pays civil penalties or fines any state agency or federal agency for an alleged violation, the sums actually paid by the alleged violator shall operate a credit to the civil penalties imposed by the division for the same alleged violation.

**GE. Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

**(1) General provisions.**

**(a) Designation of parties.** The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

**(b) Representation.** Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

**(c) Rule applicability.** In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico Rules of Civil Procedure and Evidence.

**(d) Computation of time.** In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

**(e) Extensions of time.** The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

**(f) Filing of documents.** A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

**(g) Service of documents.** A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

**(h) Form of documents.** Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

**(2) Pre-hearing procedures.**

**(a) Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order, and serve a notice of docketing on respondent.

**(b) Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and sanction, including each element of the assessed civil penalty, in the notice of violation or order.

**(c) Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the initiation and before the conclusion of a proceeding under this section, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

**(d) Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

**(e) Pre-hearing statements.** No later than 45 days before the hearing, a party who

intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) the direct testimony in narrative form of each witness;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing officer may shorten any deadlines hereunder to conduct the hearing as expeditiously as possible. If the request for shortening deadlines is opposed by the division the procedures for opposed motions set forth in 19.15.5.10(G)(2)(g) shall not apply and the hearing officer shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The director may request that the hearing examiner prepare a recommended decision.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

**FH. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission may appoint a hearing examiner, who may be a member of the commission. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or



part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

**I. Rehearing before the Commission.** Any party adversely affected by the decision of the Commission may file a petition for rehearing with the Commission which the Commission shall act upon as provided in Section 70-2-25(A) NMSA.

**G.JI. Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided however that if respondent files a notice of appeal to the commission, no later than ~~30-35~~ days after the commission files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order. If the respondent files an appeal to district court pursuant to Section 70-2-25(B) NMSA, any civil penalty paid by the respondent pursuant to the final order is subject to refund, in whole or in part, by the division if and to the extent that respondent is successful in respondent's appeal to the district court.

**HKJ. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**ILK. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

**JML. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008, A, xx/xx/xxxx]

Figure: 19.15.5.10(D)

Table 1. Penalty Guideline

General Description	Base Fine Amount
Commission denied access	\$500.00
failure to comply with well sign requirements	\$250.00
failure to comply with entrance sign requirements	\$250.00
failure to comply with tank battery sign requirements	\$250.00
no drilling permit approved	\$2,500
no drilling permit: no application filed	\$5,000
use of prohibited pits: fresh water pit area	\$2,500
use of prohibited pits: salt water or other fluid area	\$2,500
reserve pits: fresh water pit area	\$2,500
reserve pits: salt water or other fluid pit area	\$2,500
workover and other pits: dry	\$1,200
workover and other pits: wet	\$2,500
no permit to dispose or inject	\$2,500
failure to comply with tubing and packer requirements	\$1,000
open casing/tubing	\$1,000
failure to comply with wellhead control requirements	\$2,500
failure to comply with surface casing requirements	\$1,000
failure to notify of setting plugs	\$750
failure to follow general plugging requirement	\$500.00
failure to remove miscellaneous loose junk and trash	\$500.00
failure to remove tanks, vessels, and related piping	\$1,250.00
failure to empty tanks, vessels, and related piping	\$2,500
failure to test prior to reactivating well	\$500
failure to file completion records/logs	\$1,000
failure to notify of incident	\$1,500
improper fire prevention	\$500
improper storage tank signs in a non-public area	\$250.00
improper storage tank signs in a public area	\$250.00
improper entry signs in a non-public area	\$250.00
improper entry signs in a public area	\$250.00
improper entry signs in a populated public area	\$250.00
failure to update contingency plan	\$1,250.00
failure to notify of H2S contingency plan activation	\$2,500
failure to notify of H2S contingency plan activation	\$5,000
intentional failure to file written report of H2S release	\$1,500
failure to file written report of emergency H2S release	\$2,500
no permit to dispose or inject	\$2,500
failure to comply with tubing and packer requirements	\$1,000
failure to comply with hazardous waste disposal operation requirements	\$1,000

<b>Table 1 (cnt'd)</b>	
<b>General Description</b>	<b>Base Fine Amount</b>
failure to file completion report	\$500
failure to permit seismic/core holes penetrating usable quality water	\$500
failure to properly plug seismic/core holes	\$500

Figure: 19.15.5.10(D) NMAC

**Table 2: Factors in Enhancements**

<b>Evidentiary Factors</b>	<b>Threatened or Actual Pollution</b>	<b>Safety Hazard</b>	<b>Severity of Violation</b>
Agricultural land or sensitive wildlife habitat	\$500 to \$2,500		
Endangered or threatened species	\$1,000 to \$5,000		
Minor freshwater source (minor aquifer, seasonal watercourse)	\$1,250 to \$3,750		
Major freshwater source (major aquifer, creeks, rivers, lakes, and reservoirs)	\$2,500 to \$12,500		
Impacted residential/public areas		\$500 to \$7,500	
Hazardous material release		\$1,000 to \$12,500	
Reportable incident/accident		\$2,500 to \$12,500	
Reckless conduct of operator			Double total penalty
Intentional conduct of operator			Triple total penalty

Figure: 19.15.5.10(D) NMAC

**Table 3. Penalty enhancements based on number of prior violations within four years**

<b>Number of violations in four years prior to action</b>	<b>Enhancement amount</b>
One	\$500
Two	\$1,000
Three	\$1,500
Four	\$2,000

Figure: 19.15.5.10(D) NMAC

**Table 4. Penalty enhancements based on total amount of prior penalties within four years**

<b>Total administrative penalties assessed in the four years prior to action</b>	<b>Enhancement amount</b>
Less than \$5,000	\$500
Between \$5,000 and \$12,500	\$1,250
Between \$12,500 and \$25,000	\$2,500
Between \$25,000 and \$50,000	\$5,000
Between \$50,000 and \$100,000	\$10,000
Over \$100,000	10% of total amount

Table 5: Factors in Mitigation

Factors in Mitigation	Adjustments to Penalty		
Absence of similar prior violations by operator in previous 24 months	50% reduction		
Low productive capacity of well for first violation on well*	20-30 bbls. oil/day or 400-600 mcf/day: 25% reduction	10-19.9 bbls. oil/day or 200-399 mcf./day 50% reduction	Less than 10 bbls./oil day or 200 mcf./day 75% reduction
Lack of Severity to Violation	Tangible efforts made to comply: 25% reduction	Substantial efforts to comply: 50% reduction	
Size of Operator/ Financial ability of operator to pay fine	Operates 501-1,000 wells in NM: 25% reduction	Operates 101-500 wells in NM: 50% reduction	Operates less than 100 wells in NM: 75% reduction

\*Average of 12 months prior to month of violation using reported barrels of oil for oil wells and reported mcf. of gas for gas wells.

**NMOGA EXHBIIT A**  
**NMOGA's Proposed Modifications (Highlighted)**

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, [and] Section 70-2-12 and Section 70-2-31 NMSA 1978.

[19.15.5.3 NMAC – N, 12/1/2008, A, X/XX/XXXX]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and [including] the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, X/XX/XXXX]

**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] 30 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 or final 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:

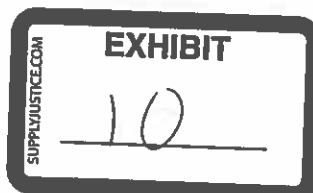
(a) two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;

(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 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)~~ Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

~~F]~~ **B. 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)~~ shows no production or injection for past 15 months:  
~~[(a)]~~ (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

~~[(b)]~~ (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

~~[(e)]~~ (d) is not subject to an agreed compliance or final 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] A well inactive for more than [one year plus 90

days] 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

**C. Financial assurance.** The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, xx/xx/xxxx]

#### **19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:**

~~[A.—The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.~~

~~—B.—A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:~~

~~—(1)—requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;~~

~~—(2)—assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A); Subsection A of Section 70-2-31 NMSA 1978;~~

~~—(3)—corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;~~

~~—(4)—plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;~~

~~—(5)—denial, cancellation or suspension of a permit;~~

~~—(6)—denial, cancellation or suspension of authorization to transport;~~

~~or~~

~~—(7)—shutting in a well or wells.~~

~~C.—The division initiates an administrative compliance proceeding by filing a written application with the division clerk:~~

~~—(1)—identifying the operator and any other responsible parties against whom the order is sought, including the surety if the division seeks an order allowing forfeiture of a surety bond;~~

~~—(2)—identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued~~

~~pursuant to the act, allegedly violated;~~

~~\_\_\_\_\_ (3) providing a general description of the facts supporting the allegations;~~

~~\_\_\_\_\_ (4) stating the sanction or sanctions sought; and~~

~~\_\_\_\_\_ (5) providing proposed legal notice.~~

~~D. The division shall provide notice of compliance proceedings as follows:~~

~~\_\_\_\_\_ (1) the division shall publish notice in accordance with 19.15.4.9 NMAC.~~

~~\_\_\_\_\_ (2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.~~

~~E. The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.~~

~~F. Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).~~

~~[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008]~~

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

- (1) a civil penalty;
- (2) modification, suspension, cancellation or termination of a permit or authorization;
- (3) plugging and abandonment of a well;
- (4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;
- (5) remediation and restoration of a location affected by a spill or release;
- (6) forfeiture of financial assurance;
- (7) shutting in a well or wells; and
- (8) any other remedy authorized by law.

**C. Notice of violation.**

- (1) A notice of violation issued by the division shall state with reasonable specificity:
  - (a) the identity of the alleged violator;
  - (b) the nature, *factual and legal basis* of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;
  - (c) whether compliance is required immediately or within a specified time period;
  - (d) the sanction(s) available for the alleged violation and the sanction(s) proposed by the division *if the notice of violation is not cured*;
  - (e) the availability of a process for informal review and resolution of the alleged violation;
  - (f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing; and
  - (g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.
- (2) The division shall serve the notice of violation on the alleged violator by certified mail.
- (3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

**D. Civil penalties.** ~~The division shall calculate a proposed civil penalty for each alleged violation in the notice of violation. Any civil penalties assessed by the Division after hearing.~~ The calculation shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall *commence no earlier than the date that the Division demonstrates that the respondent was aware or should have been aware of the violation* and shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

**E. Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

**(1) General provisions.**

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico Rules of Civil Procedure and Evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an

extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order ~~for hearing, identify the factual basis for the alleged violation and proposed sanctions,~~ and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and ~~proposed~~ sanction, including each element of the assessed civil penalty, in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. ~~After the initiation and before the conclusion of a proceeding under this section,~~ *After the issuance of the notice of violation,* the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including ~~proposed~~ civil penalties or elements thereof, and any other matter

necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than 15.7 calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions of each witness's testimony; the direct testimony in narrative form of each witness;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not

admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The director shall ~~may~~ request that the hearing examiner prepare a recommended decision.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. ~~The commission may appoint a hearing examiner, who may be a member of the commission.~~ The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. Within 20 days after entry of a commission order a party of record whom the order adversely affects may file with the commission clerk an application for rehearing on a matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission



shall grant or refuse the application in whole or in part within 10 business days after the party files it, and the commission's failure to act on the application within such period shall be deemed a refusal and a final disposition of such application. In the event the commission grants the rehearing, the commission may enter a new order after rehearing as the circumstances may require.

**F.G. Payment of civil penalty.** No later than 30 days after the director serves the final order, respondent shall pay the full amount of the civil penalty assessed in the final order, provided **however** that if respondent files a notice of appeal to the commission or a district court, no later than 30 days after the issuance of commission files a final order or the appeal is withdrawn, respondent shall pay the full amount of the civil penalty assessed in the final order.

**G.H. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**H. I. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

**I.J. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008, A, xx/xx/xxxx]

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(575) 625-2222  
Fax (575) 622-2512

January 2, 2020

Ms. Florene Davidson  
Commission Clerk  
Administration and Compliance Bureau  
florene.davidson@state.nm.us

JAN 02 2020 PM 01:04

RE: Comments for Proposed Administrative Penalties Rule

Armstrong Energy Corporation ("AEC") appreciates the opportunity to comment on the proposed Administrative Penalties Rule (the "Proposed Rule"). AEC is a small independent oil and gas exploration and production company with fewer than 30 employees, and the Proposed Rule has the potential to adversely impact our daily operations, and unnecessarily increase operating expenses at a time when the industry is already under economic stress.

Proposed Rule 19.15.5.10 must be revised because the enforcement provision exceeds the authority granted to the OCD under NMSA 1978 70-2-31 (2019). Pursuant to 70-2-31(B), a notice of violation "shall provide notice of *potential* sanctions" (emphasis added), and does not authorize the division to propose sanctions. However, under proposed 19.15.5.10(C)(1)(d), the division is allowed to propose sanctions which are then included in any stipulated final order that results from informal review.

Further, under proposed 19.15.5.10(D), the division shall calculate a proposed civil penalty for each alleged violation. However, 70-2-31(C), explicitly provides that if the notice of violation is not resolved informally within thirty days after service of notice, "the division *shall hold a hearing and determine whether ... any sanctions, including civil penalties, shall be assessed.*" (emphasis added) Based on a plain reading of 70-2-31, the division is not authorized to assess sanctions, to include civil penalties, without holding a hearing.

NMSA 1978 70-2-31 (2019) authorizes the division to assess sanctions during a hearing held after failure of the parties to informally resolve the notice of violation. Any rule which purports to authorize the division to assess civil penalties without a hearing would exceed the authority granted under the statute and should be revised to conform to the language and intent of the statute.

Thank you for your consideration of these comments.

Sincerely,

ARMSTRONG ENERGY CORPORATION

By:

A handwritten signature in blue ink, appearing to read "Ronald D. Hillman", is written over a horizontal line.

Ronald D. Hillman, Vice President  
and General Counsel



RDH/vs

JAN 02 2020 PM 01:05

**Thomas M. Beall**  
**P.O. Box 3098**  
**Midland, TX 79702**

January 2, 2020

**Via Email: [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us)<mailto:florene.davidson@state.nm.us>**

To Whom It May Concern:

I was born, raised in New Mexico and was graduated from New Mexico State University. I am involved in the management and operations of multiple companies in the Permian Basin of West Texas and Southeastern New Mexico. My companies operate over 300 wells on multiple NM State, BLM and Fee leases throughout Texas and New Mexico. Further, I own interests in many wells that are operated by multiple other companies both independent and publicly held. My involvement embraces over 50,000 gross acres in Southeast New Mexico.

I am not in favor of the new rules that will allow the Oil Conservation Division (OCD) the authority to administer monetary penalties for violations. My 40 + years of experience in the oil & gas industry dictates that this new authority is an overreach. I believe and have witnessed how the existing framework gave OCD more than enough authority and leverage to assure compliance over operators to pull their permits, limit their oil & gas marketing or refer violators to the Attorney General's office for prosecution.

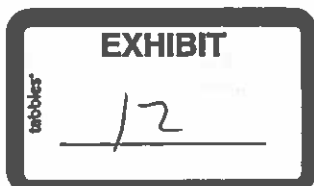
Further, this new authority granted to OCD by the State Legislature has the opportunity for unintended consequences. The capricious and arbitrary application of fines and penalties will negatively impact production and development of the oil and gas resources of New Mexico. These policies will drive operators to seek other venues for investment and operations. What little potential new income to the OCD in penalties will be more than offset by the much greater potential negative impact to the State of New Mexico and will not provide incentive to the valuable income generated from state and federal leasing bonuses on new leases or the substantial royalty income from new wells.

Please consider this new authority as a potential negative to the oil industry, to the OCD and to the State of New Mexico.

Respectfully,



Thomas M. Beall



**Carolyn R. Beall  
P. O. Box 1518  
Roswell, NM 88202**

**January 2, 2020**

**To Whom it may Concern:**

My dad came to New Mexico to pursue a future in the oil and gas industry some seventy years ago. He experienced many challenges throughout his life including the national and international influences causing the unpredictable prices of oil and gas. On top of an unpredictable market, there have been hurdles to overcome in ever-changing technology, turnover of personnel, volatile government regulations, and of course the geological mystery of New Mexico itself. The oil and gas industry has many moving parts and is difficult at best. We should admire those who have the stomach to continue down this path.

New Mexico has recently experienced more financial success than almost any other area of the country. The OCD has the opportunity to endorse or punish its strongest industry. Which will it be?

The state of Texas endorses oil and gas, working to help the industry solve critical issues. The OCD has an opportunity today to show support for the industry that has enabled the state to improve its school systems, educate the population, encourage other industries, and provide excellent jobs for its people. When New Mexico punishes the oil and gas industry, it punishes everyone in the state.

Our industry is one that evolves slowly over time. Decisions made today will have long-term effects on everyone in the state. Will the OCD endorse or punish with more regulations? The OCD is presently in a position to make good decisions for a strong state future. I urge you not to bite the hand that feeds you – endorse the oil and gas industry and step forward to help New Mexico continue to thrive. Adding burdens to a strong industry will leave long lasting scars to our state's economy. New Mexico and its people will reap benefits for many years to come if we can work together for our state's future. It is our responsibility to keep New Mexico the Land of Enchantment.

Sincerely,

*Carolyn R. Beall*  
Carolyn Read Beall



# NEW MEXICO OIL CONSERVATION SPECIAL COMMISSION MEETING

Santa Fe, New Mexico

January 2, 2020 - 9:00 a.m.

EXHIBIT

tabbier

14

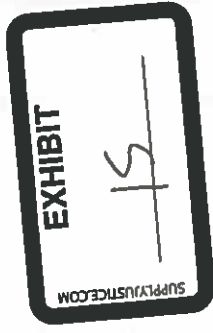
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# NEW MEXICO OIL CONSERVATION COMMISSION SPECIAL MEETING

Santa Fe, New Mexico  
January 2, 2020 - 9:00 A.M.



## Public Comments

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Duffy	billydeloye@gmail.com	Salt	Artesia NM



[illegible]