

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

**IN THE MATTER OF THE PROPOSAL OF THE OIL CONSERVATION  
COMMISSION, ON ITS OWN MOTION, TO AMEND OIL CONSERVATION  
DIVISION RULES 1201, 1203 through 1205, 1207, 1208, 1211, 1214 and 1220.**

**CASE No. 13482  
Order No. R-12327-A**

**ORDER OF THE COMMISSION**

**BY THE COMMISSION:**

This matter having come before the Commission for consideration at the regular meeting of the Commission on August 18, 2005 the Commission now, on this fifteenth day of September, 2005,

**FINDS THAT:**

1. Section 70-2-7 NMSA 1978 provides that the Oil Conservation Division shall prescribe by rule its rules of procedure in hearings and other proceedings. Section 70-2-6B NMSA 1978 provides that the Oil Conservation Commission (Commission or OCC) shall have concurrent jurisdiction or authority with the Division to the extent necessary for the Commission to perform its duties.
2. The Commission initiated this rulemaking effort on September 9, 2004 by appointing a committee to review the existing rules for procedures for hearings and related activities. The committee submitted recommendations to the Commission on January 13, 2005. The Commission raised additional issues and directed the committee to present additional recommendations on March 8, 2005.
3. The Commission issued an order establishing a timeline, notice requirements and comment periods for the proposed rule changes prior to hearing.
4. Notice requirements were met and sworn testimony and exhibits were presented to the Commission on August 18, 2005. At the conclusion of the hearing the Commission deliberated in open session by reviewing the proposed changes to the draft prepared by counsel and voting on each one separately and then voting on the entire package of rule changes as one unit. The following Statement of Reasons

indicates the Commission's analysis of certain key provisions and of the entire package. Additional reasons are included in the transcript of the hearing.

### **STATEMENT OF REASONS**

5. The rule changes are designed to have the ultimate goal of improving the hearings before the Division and the Commission so that ultimately better orders result. By resolving ambiguity and committing prior practice to written rule the rule changes provide the public a better understanding of their participation in the hearing process. The rule changes allow for a more effective and efficient operation. Standards are set for hearing participation rather than relying on differing interpretations as in the past. The new rules will assist the Commission and the Division in efficiently regulating the oil and gas industry and more effectively protect the water resources of New Mexico.

6. Between the time the rules were originally proposed and the time of the hearing the objections of many stakeholders were resolved and the new rules reflect that process. Nevertheless, at the time of the hearing a number of issues still required discussion by the Commission.

7. One of the more controversial subjects concerned who could participate in cases before the Commission and Division. Some participants at the hearing wanted the Commission to allow all participants who had a substantial interest in the subject matter. The Commission did not adopt this standard because it would have to be interpreted and then perhaps reinterpreted by the courts in order to provide guidance to someone who wanted to initiate a case. The Commission determined that "standing" would be required to initiate a case. No definition of the term was provided, because court decisions continue to refine the term and should be relied upon to define standing requirements. Some participants in the rulemaking hearing argued that anyone should be able to bring a case. This proposal was rejected because it would in effect create a citizens' lawsuit provision and that was not provided for in the statutes defining the Commission's powers.

8. "Standing" is also required to intervene in a case, but in the event a person wanting to participate in a case was found not to meet the requirements for "standing" then the person could ask the Commission to be allowed to intervene in the case if the person requesting intervention could show the Commission the intervention was important to the mandates of the Commission. To be permitted to intervene the person would have to show they had special expertise or interest the Commission determines would be helpful to its decision-making process. The Commission, exercising its discretion, would make this determination on a case-by-case basis.

9. Notice periods were expanded in order to allow would-be participants longer to learn of a pending case, decide if they want to participate, and to prepare their

presentations. If emergency circumstances require a shorter time frame, then emergency rules could be used to shorten the notice periods.

10. Timelines were set in terms of business days if the time frames were less than eleven days in order to comply with current statutes and to give a clear understanding of the deadlines.

11. A distinction was made in the new rules between adjudicatory hearings and rulemaking hearings. This adds clarity to the two types of hearings.

12. Clear direction was given for those wanting to participate in an adjudicatory case as a party so their participation and interest would be known and not a surprise to other parties.

13. Prehearing statements are required of all those wanting to testify at a hearing. All those testifying at a hearing are subject to cross-examination by any person filing a prehearing statement. This clarifies who may cross-examine witnesses and the new rule goes on to limit the cross-examination to the subject and matter of the direct testimony. This is in accord with the current practice of the Commission.

14. The Commission established a process of requesting continuances by motion in advance of a hearing so that other participants would not appear only to learn a case had been continued. The Commission retained its authority to continue a case once it had started without giving additional notice so that a case in progress could continue the next day or later and the time, place and date would be announced at the hearing.

15. The Commission established a process for commenting on proposed rules and expanded the methods of filing such rules so they may be presented in writing and by electronic and facsimile means in order to facilitate the participation of the public.

16. The Commission decided to retain its present numbering system for the rules because it is familiar to many people. For this reason the Commission directed staff to request State Records and Archives to allow the definitions in the proposed rule changes to be incorporated within the existing part of the rules addressing definitions.

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**IT IS THEREFORE ORDERED THAT:**

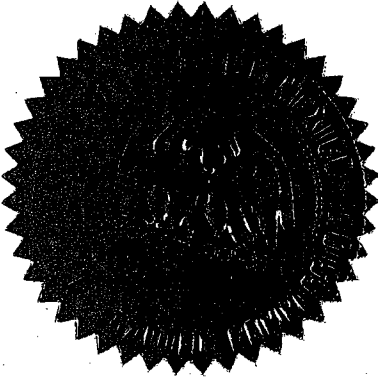
1. Oil Conservation Division Rule 19.15.14 NMAC is repealed as indicated in Exhibit A to this Order;

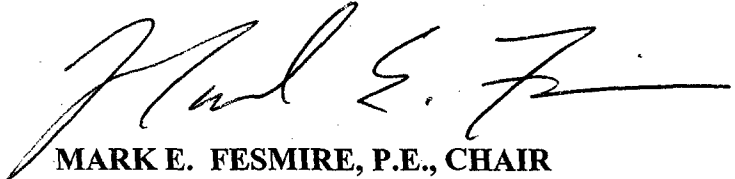
2. New Oil Conservation Division Rule 19.15.14 NMAC is adopted as indicated in Exhibit B to this Order; and

3. Oil Conservation Division Rule 19.15.1.7 NMAC is amended as indicated in Exhibit C to this Order.
4. Oil Conservation Division staff is instructed to secure prompt publication of the referenced rule amendments in the New Mexico Register.
5. The Commission retains jurisdiction of this matter for entry of such further orders as may be necessary.

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



  
MARK E. FESMIRE, P.E., CHAIR

  
JAMI BAILEY, CPG, MEMBER

  
FRANK T. CHAVEZ, MEMBER

SEAL

**EXHIBIT A**  
**CASE NO. 13482**  
**ORDER NO. R-12327-A**

19.15.14 NMAC, Procedure, (filed August 14, 2003), is hereby repealed, effective \_\_\_, 2005.

**EXHIBIT B**  
**CASE NO. 13482**  
**ORDER NO. R-12327-A**

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15   OIL AND GAS**  
**PART 14       PROCEDURE**

**19.15.14.1      ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505, (505) 476-3440.  
[19.15.14.1 NMAC - Rp, 19.15.14.1 NMAC, 09/30/05]

**19.15.14.2      SCOPE:** All rulemaking hearings before the oil conservation commission or adjudicatory hearings before the oil conservation commission (commission) or oil conservation division (division).  
[19.15.14.2 NMAC - Rp, 19.15.14.2 NMAC, 09/30/05]

**19.15.14.3      STATUTORY AUTHORITY:** NMSA 1978, Sections 70-2-1 through 70-2-38 set forth the Oil and Gas Act, which grants the division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and grants the commission concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties.  
[19.15.14.3 NMAC - Rp, 19.15.14.3 NMAC, 09/30/05]

**19.15.14.4      DURATION:** Permanent.  
[19.15.14.4 NMAC - Rp, 19.15.14.4 NMAC, 09/30/05]

**19.15.14.5      EFFECTIVE DATE:** September 30, 2005, unless a later date is cited at the end of a section.  
[19.15.14.5 NMAC - Rp, 19.15.14.5 NMAC, 09/30/05]

**19.15.14.6      OBJECTIVE:** This part's objective is to set forth general provisions and definitions pertaining to the division's and the commission's authority pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, by encouraging participation in the division's and commission's hearings, making possible effective presentation of the evidence and the parties' and the general public's points of view, allowing all participants a reasonable opportunity to submit data, views and arguments and to assure that division and commission hearings are conducted in a fair and equitable manner.  
[19.15.14.6 NMAC - Rp, 19.15.14.6 NMAC, 09/30/05]

**19.15.14.7 - 1200 [RESERVED]**

**19.15.14.1201   RULEMAKING INITIATION:**

**A.** The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, any operator or producer or any other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule with the commission clerk. The application shall be in writing and applicants shall specifically identify the rule the applicant seeks for the commission to adopt, amend or repeal. The application or order initiating rulemaking shall include the following:

- (1) a brief summary of the proposed rule change's intended effect;
- (2) a proposed draft of the new rule or amendment;
- (3) the applicant's name;
- (4) the applicant's address, or the address of its attorney, including an e-mail address and fax number if available;
- (5) a proposed legal notice for publication; and
- (6) any other matter a commission order requires.

**B.** An applicant shall file six sets of the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person, by mail or by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day.

**C.** Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk's delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission shall determine within 60 days of the application's filing whether to hear the application, and if the commission decides to hear the application, the chairman shall schedule a hearing on the rule change application.

**D.** 19.15.14.1201 NMAC shall not apply to special pool rules, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.14.1207 and 1210 NMAC's notice provisions.

[19.15.14.1201 NMAC - Rp, 19.15.14.1201 NMAC, 09/30/05]

#### **19.15.14.1202 RULEMAKING NOTICE:**

**A.** The division shall publish notice of any proposed rulemaking set for the hearing in the name of the "State of New Mexico", signed by the division director and bearing the commission's seal. The notice shall state the hearing's date, time and place and the date by which those commenting shall submit their written comments to the commission clerk. The notice shall be published as follows:

- (1) one time in a newspaper of general circulation in the counties that the proposed rule change affects, or if the proposed rule change will have statewide effect, in a newspaper of general circulation in the state, no less than 20 days prior to the scheduled hearing date;
- (2) on the applicable docket for the commission hearing at which the commission will hear the matter, which the commission clerk shall send by regular or electronic mail not less than 20 days prior to the hearing to all who have requested such notice;
- (3) one time in the New Mexico register, with the publication date not less than 10 business days prior to the scheduled hearing date; and
- (4) by posting on the division's website not less than 20 days prior to the scheduled hearing date.

**B.** In cases of emergency, the division director may shorten these time limits by written order.

[19.15.14.1202 NMAC - Rp, 19.15.14.1201 & 1205 NMAC, 09/30/05]

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**19.15.14.1203 COMMENTS ON RULEMAKING:** Any person may submit written, electronic or facsimile comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than five business days before the scheduled hearing date, unless the division director or the commission extends the time for filing comments. The division director or the commission may extend the time for filing written, electronic or facsimile comments by making an announcement at the

hearing, or by posting notice on the division's website. Any person may review written, electronic or facsimile comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written, electronic or facsimile comments that individuals or entities have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.14.1203 NMAC - N, 09/30/05]

#### **19.15.14.1204 RULEMAKING HEARING PARTICIPATION:**

##### **A. Non-technical testimony.**

(1) Any person may testify or make an un-sworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.

(2) Any person may also offer exhibits in connection with his testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file any exhibits prior to the scheduled hearing date or submit them at the hearing. A person offering exhibits shall provide six sets of each exhibit for the commission, copies for each of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing and five additional copies for others who may attend the hearing.

(3) Members of the general public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

##### **B. Technical testimony.**

(1) Any person, including the division, who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than five business days before the scheduled hearing date, file six sets of a pre-hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member.

(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time the person or entity will need to present its testimony. The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.

(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.

(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. Any person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.

##### **C. Modifications to proposed rule changes.**

(1) Any person, other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modifications with the commission clerk.

(2) The notice shall include:

- (a) the text of the recommended modifications to the proposed rule change;
- (b) an explanation of the recommended modification's impact; and
- (c) reasons for adopting the modification.

[19.15.14.1204 NMAC - Rp, 19.15.14.1208 & 1212 NMAC, 09/30/05]

**19.15.14.1205 RULEMAKING HEARINGS:**

**A. Conduct of hearings.**

- (1) The rules of civil procedure and the rules of evidence shall not apply.
- (2) The commission shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:
  - (a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;
  - (b) the commission may allow any person to make a brief opening statement;
  - (c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;
  - (d) the commission chairman shall establish an order for other participants' testimony based upon notices of intent to present technical testimony, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;
  - (e) the commission may allow any person to make a brief closing statement;
  - (f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;
  - (g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision. In considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision. If the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and
  - (h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

**B. Testimony and cross-examination.**

- (1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, any person may make an un-sworn position statement.
- (2) The commission shall admit any relevant evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.
- (3) Any person who testifies at the hearing is subject to cross-examination by any person who has filed a pre-hearing statement on the subject matter of his direct testimony. Any person who presents technical testimony may also be cross-examined on matters related to his background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

**C. Exhibits.**

- (1) Any person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing and five additional copies for others who may attend the hearing.
- (2) All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

**D. Transcript of proceeding.**

- (1) A verbatim record shall be made of the hearing.
- (2) Any person may obtain a copy of the hearing transcript. The person requesting the copy shall pay for the cost of the copy of the hearing transcript.

E. Deliberation and decision.

(1) If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change based on a motion that includes reasons for the decision.

(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.14.1202 NMAC.

(3) The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken.

(4) Upon the commission's issuance of the order, the commission clerk shall post the order on the division's website and mail or e-mail a copy of the order to each person who presented non-technical testimony at the hearing or who filed a pre-hearing statement, or the person's attorney.

F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.  
[19.15.14.1205 NMAC - Rp, 19.15.14.1212 NMAC, 09/30/05]

**19.15.14.1206 INITIATING AN ADJUDICATORY HEARING:**

A. The division, attorney general, any operator or producer or any other person with standing may file an application with the division for an adjudicatory hearing. The division director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have standing. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. The application shall include:

- (1) the applicant's name;
- (2) the applicant's address, or the address of the applicant's attorney, including an e-mail address and fax number if available;
- (3) the name or general description of the common source or sources of supply or the area the order sought affects;
- (4) briefly, the general nature of the order sought;
- (5) a proposed legal notice for publication; and
- (6) any other matter these rules or a division order require.

B. Applicants for adjudicatory hearings shall file written applications with the division clerk at least 30 days before the application's scheduled hearing date.  
[19.15.14.1206 NMAC - Rp, 19.15.14.1203 NMAC, 09/30/05]

**19.15.14.1207 ADJUDICATORY HEARING NOTICE:**

A. The division shall publish notice of any adjudicatory hearing in the name of the "State of New Mexico", signed by the division director and bearing the commission's seal, stating:

- (1) the adjudicatory hearing's time and place;
- (2) whether the case is set for hearing before the commission or a division examiner;
- (3) the applicant's name and address, or address of the applicant's attorney, including an e-mail address and fax number if available;
- (4) a case name and number;
- (5) a brief description of the hearing's purpose;
- (6) a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application;

(7) if the application seeks to adopt, revoke or amend special pool rules; establish or alter a non-standard unit; permit an unorthodox location or establish or affect any well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and

(8) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

B. The division shall publish notice of each adjudicatory hearing before the commission or a division examiner at least 20 days before the hearing by:

(1) posting notice on the division's website;

(2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and

(3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.14.1207 NMAC - Rp, 19.15.14.1204 & 1205 NMAC, 09/30/05]

#### **19.15.14.1208 PARTIES TO ADJUDICATORY PROCEEDINGS:**

A. The parties to an adjudicatory proceeding shall include:

(1) the applicant;

(2) any person to whom statute, rule or order requires notice (not including those persons to whom 19.15.14.1207 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and

(3) any person who properly intervenes in the case.

B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.14.1208 NMAC below, by oral appearance on the record at the hearing.

C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.14.1211 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as these rules provide.

[19.15.14.1208 NMAC - Rp, 19.15.14.1203 NMAC, 09/30/05]

#### **19.15.14.1209 ADJUDICATORY PROCEEDING INTERVENTION:**

A. Any person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:

(1) the intervenor's name;

(2) the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;

(3) the nature of intervenor's interest in the application; and

(4) the extent to which the intervenor opposes issuance of the order applicant seeks.

B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.14.1206 NMAC, or by oral appearance on the record at the hearing.

C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

[19.15.14.1209 NMAC - N, 09/30/05]

**19.15.14.1210 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:**

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that 19.15.14.1207 NMAC requires, as set forth below:

(1) Compulsory pooling and statutory unitization.

(a) The applicant shall give notice to any owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(b) When the applicant has given notice as required in Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC, of a compulsory pooling application, the proposed unit is not larger in size than provided in 19.15.3.104 NMAC or applicable special pool orders, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

(i) a statement that the applicant expects no opposition including the reasons why;

(ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled;

(v) a statement as to whether the pooled unit is for gas or oil production or both;

(vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the authorization for expenditure (AFE) the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set all unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application will constitute the record in the case, and the division shall issue an order based on the record.

(e) At any interested person's request or upon the division's own initiative, the division shall set any pooling application for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) "Affected persons" are the following persons owning interests in the adjoining spacing units:

(i) the division-designated operator;

(ii) in the absence of an operator, any lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he files the application; and

(iii) in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he filed the application.

(b) In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit.

(c) If the proposed location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.3.104 NMAC or applicable special pool rules permit, the applicant shall notify the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than special pool orders provide, the applicant shall notify all affected persons.

(3) Non-standard proration unit. The applicant shall notify all owners of interest in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations) or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as the division requires.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

(i) all division-designated operators in the pool; and

(ii) all owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

(i) all division-designated operators in the pool; and

(ii) all division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify any surface owner within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as 19.15.5.303 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send any notice 19.15.14.1207 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place and the means by which protests may be made. When an applicant has been unable to locate all persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony of affidavit, that the applicant or its authorized representative has signed, that:

- (1) the applicant has complied with notice provisions of 19.15.14.1207 NMAC;
- (2) the applicant has conducted a good-faith diligent effort to find the correct addresses of all persons entitled to notice; and
- (3) the applicant has given notice at that correct address as 19.15.14.1207 NMAC requires.

In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.14.1207 NMAC requires may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required.  
[19.15.14.1210 NMAC - Rp, 19.15.14.1207 NMAC, 09/30/05]

#### **19.15.14.1211 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:**

A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the business day immediately preceding the date when the party files the pleading or correspondence with the division or the commission clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to any party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. Parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at any hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. Any initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an e-mail and facsimile number if available.

B. Pre-hearing statements.

(1) Any party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented, their attorneys in the manner Subsection A of 19.15.14.1211 NMAC provides, at least four business days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00 pm mountain time, on the Thursday preceding the scheduled hearing date. The statement shall include:

- (a) the names of the party and the party's attorney;
- (b) a concise statement of the case;
- (c) the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;
- (d) the approximate time the party will need to present its case; and
- (e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) Any party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of all exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The

commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by an attorney shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to present the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.14.1211 NMAC - Rp, 19.15.14.1208 NMAC, 09/30/05]

#### **19.15.14.1212 CONDUCT OF ADJUDICATORY HEARINGS:**

A. Testimony. Hearings before the commission or a division examiner shall be conducted without rigid formality. The division or commission shall take or have someone take a transcript of testimony and preserve the transcript as a part of the division's permanent records. Any person testifying shall do so under oath. The division examiner or commission shall designate whether or not an interested party's un-sworn comments and observations are relevant and, if relevant, include the comments and observations in the record.

B. Pre-filed testimony. The division director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of the prepared written testimony, which shall contain line numbers on the left-hand side.

C. Appearances pro se or through an attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.14.1208 NMAC, except that a representative of a federal, state or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The commission or division examiner shall have the discretion to allow any other person present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. Any person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.

[19.15.14.1212 NMAC - Rp, 19.15.14.1210 NMAC, 09/30/05]

**19.15.14.1213 CONTINUANCE OF AN ADJUDICATORY HEARING:** Any adjudicatory hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being served or published.

[19.15.14.1213 NMAC - Rp, 19.15.14.1209 NMAC, 09/30/05]

**19.15.14.1214 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE FOR ADJUDICATORY HEARINGS:**

A. Subpoenas. The commission or its members and the division director or the division director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, records, other tangible things or electronic data in any proceeding before the commission or division. The division director or the division director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request. The division director or the division director's authorized representative shall, upon a party's request, issue a subpoena for production of books, papers, records, other tangible things or electronic data in advance of the hearing. The division director or the division examiner assigned to hear the case have discretion to consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.14.1214 NMAC or to reserve such matters for consideration at a hearing on the merits. The commission and division director or the division director's authorized representative shall issue subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown.

B. Pre-hearing conferences. The division examiner or the division director may hold a pre-hearing conference prior to the hearing on the merits in cases pending before the division or the commission, respectively, either upon a party's request or upon the division director or a division examiner giving notice. The pre-hearing conference's purpose shall be to narrow issues, eliminate or resolve other preliminary matters and encourage settlement. The division director or examiner may issue a pre-hearing order following the pre-hearing conference. The division director or division examiner shall either provide or ensure that written or oral notice of a pre-hearing conference is given to the applicant and to all other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. Hearings on motions. The division director or any division examiner may rule on motions that are necessary or appropriate for disposition prior to a hearing on the merits. If the case is pending before the commission, the division director shall rule on any such motion; provided that the division director may refer any such motion for hearing by a division examiner specifically designated for the purpose, who, if the case is a de novo application, shall not have participated in the case prior to the filing of the application for de novo hearing. Prior to ruling on any motion, the division director or division examiner shall give written or oral notice to each party who has filed an appearance in the case and who may have an interest in the motion's disposition (except a party who has indicated that it does not oppose the motion), and shall allow interested parties an opportunity, reasonable under the circumstances, to respond to the motion. The division director or division examiner may conduct a hearing on any motion, following written or oral notice to all interested parties, either at a pre-hearing conference or otherwise. If the commission or division receives oral testimony at any hearing, the commission or division examiner shall ensure that a record is made of the testimony as at other hearings.

[19.15.14.1214 NMAC - Rp, 19.15.14.1211 NMAC, 09/30/05]

**19.15.14.1215 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:**

A. Presentation of evidence. Subject to other provisions of 19.15.1214 NMAC, the commission or division examiner shall afford full opportunity to all parties at an adjudicatory hearing before the commission or division examiner to present evidence and to cross-examine witnesses. The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. The commission or division examiner may admit any relevant evidence, unless it is immaterial, repetitious or otherwise unreliable. The commission or division examiner may take administrative notice of the authenticity of documents copied from the division's files.

B. Parties introducing exhibits at hearings before the commission or a division examiner shall provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record.

C. A party requesting incorporation of records from a previous hearing at a commission hearing shall include copies of the record for all commissioners.  
[19.15.14.1215 NMAC - Rp, 19.15.14.1212 NMAC, 09/30/05]

**19.15.14.1216 DIVISION EXAMINER'S QUALIFICATIONS, APPOINTMENT AND**

**REFERRAL OF CASES:** The division director shall appoint as division examiners division staff who are licensed attorneys, or who have experience in hydrogeology, hydrology, geology, petroleum engineering, environmental engineering or a related field and a college degree in geology, engineering, hydrology or related field. Nothing in this section shall prevent any commission member from serving as a division examiner. The division director may refer any matter or proceeding to a division examiner for hearing in accordance with these rules.

[19.15.14.1216 NMAC - Rp, 19.15.14.1213 & 1214 NMAC, 09/30/05]

**19.15.14.1217 DIVISION EXAMINER'S POWER AND AUTHORITY:** The division examiner to whom the division director refers any matter under these rules shall have full authority to hold hearings on such matter in accordance with these rules, subject only to such limitations as the division director may order in a particular case. The division examiner shall have the power to perform all acts and take all measures necessary and proper for the efficient and orderly conduct of such hearing, including administering oaths to witnesses, receiving testimony and exhibits offered in evidence and ruling upon such objections as may be interposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the division director as hereinafter provided.

[19.15.14.1217 NMAC - Rp, 19.15.14.1215 NMAC, 09/30/05]

**19.15.14.1218 ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE**

**COMMISSION:** Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the commission if:

- A. it is a hearing pursuant to NMSA 1978, Section 70-2-13; or
- B. the division director directs the commission to hear the matter.

[19.15.14.1218 NMAC - Rp, 19.15.14.1216 NMAC, 09/30/05]

**19.15.14.1219 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S**

**HEARING:** Upon conclusion of any hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the hearing's record prepare a written report with recommendations for the division's disposition of the matter or proceeding. The division examiner shall draft a proposed order and submit it to the division director with the certified record of the hearing.

[19.15.14.1219 NMAC - Rp, 19.15.14.1218 NMAC, 09/30/05]

**19.15.14.1220 DISPOSITION OF CASES HEARD BY DIVISION EXAMINER:** After receipt of the division examiner's report, the division director shall enter the division's order, which the division director may have modified from the division examiner's proposed order, disposing of the matter.

[19.15.14.1220 NMAC - Rp, 19.15.14.1219 NMAC, 09/30/05]

**19.15.14.1221 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:**

A. ~~De novo applications.~~ When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. If any party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission.

**B.** Stays of division or commission orders. Any party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon all other parties who appeared in the case, as Subsection A of 19.15.14.1208 NMAC provides. The party shall attach a proposed stay order to the motion. The division director may grant a stay pursuant to a motion for stay or upon his own initiative, after according all parties who have appeared in the case notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to any affected party. Any division director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

[19.15.14.1221 NMAC - Rp, 19.15.14.1220 NMAC, 09/30/05]

**19.15.14.1222 COPIES OF COMMISSION AND DIVISION ORDERS:** Within 10 business days after the division or commission issues an order in an adjudicatory case, including any order granting or refusing rehearing or order following rehearing, the division or commission clerk shall mail a copy of such order to each party or its attorney of record. For purposes of 19.15.14.1222 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the commission clerk or by entering an appearance on the record at a hearing.

[19.15.14.1222 NMAC - Rp, 19.15.14.1221 NMAC, 09/30/05]

**19.15.14.1223 REHEARINGS:** Within 20 days after entry of any commission order any party of record whom the order adversely affects may file with the commission clerk an application for rehearing on any matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission shall grant or refuse any such 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.

[19.15.14.1223 NMAC - Rp, 19.15.14.1222 NMAC, 09/30/05]

**19.15.14.1224 EX PARTE COMMUNICATIONS:**

**A.** In an adjudicatory proceeding, except for filed pleadings, at no time after a party files an application for hearing shall any party, interested participant or his representative advocate any position with respect to the issues the application involves to any commissioner or the division examiner appointed to hear the case unless all other parties of record to the proceedings have an opportunity to be present.

**B.** The prohibition in Subsection A of 19.15.14.1224 NMAC, above, does not apply to those applications that the applicant believes are unopposed. However, in the event that a party files an objection in a case previously believed to be unopposed, the prohibition in Subsection A of 19.15.14.1224 NMAC, above, is immediately applicable.

**C.** This provision does not prohibit communications between the division's attorney or other division staff and the division director that are essential to management of a case.

[19.15.14.1224 NMAC - Rp, 19.15.14.1223 NMAC, 09/30/05]

**19.15.14.1225 EMERGENCY ORDERS AND RULES:**

**A.** Notwithstanding any other provision of 19.15.14 NMAC, in the event the division or commission finds an emergency exists that requires adoption of a rule or issuance of an order without a hearing, such emergency rule or order shall have the same validity as if the division or commission has held a hearing before the division or commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date.

**B.** Notwithstanding any other provision of 19.15.14 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on any application within less than 30 days after party files an application, and the division director may set the notice period at his discretion.

[19.15.14.1225 NMAC - Rp, 19.15.14.1202 NMAC, 09/30/05]

**19.15.14.1226 COMPUTATION OF TIME:** In computing a period of time this part prescribes, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which state agencies observe a legal holiday. In such case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

[19.15.14.1226 NMAC - N, 09/30/05]

**EXHIBIT C**  
**CASE NO. 13482**  
**ORDER NO. R-12327-B**

This is an amendment of 19.15.1 NMAC, section 7.

**19.15.1.7 DEFINITIONS:**

**A.** Definitions beginning with the letter "A".

- (1) Abate or abatement shall mean the investigation, containment, removal or other mitigation of water pollution.
- (2) Abatement plan shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution.
- (3) Adjoining spacing units are those existing or prospective spacing units in the same pool(s) that are touching at a point or line the spacing unit that is the subject of the application.
- (4) Adjusted allowable shall mean the allowable production a well or proration unit receives after all adjustments are made.
- (5) Allocated pool is one in which the total oil or natural gas production is restricted and allocated to various wells therein in accordance with proration schedules.
- (6) Allowable production shall mean that number of barrels of oil or standard cubic feet of natural gas authorized by the division to be produced from an allocated pool.
- (7) Aquifer shall mean a geological formation, group of formations, or a part of a formation that is capable of yielding a significant amount of water to a well or spring.

**B.** Definitions beginning with the letter "B".

- (1) Back allowable shall mean the authorization for production of any shortage or underproduction resulting from pipeline proration.
- (2) Background shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the director from exercising enforcement authority under any applicable statute, regulation or common law.
- (3) Barrel shall mean 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.
- (4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.
- (5) Below-grade tank shall mean a vessel, excluding sumps and pressurized pipeline drip traps, where any portion of the sidewalls of the tank is below the surface of the ground and not visible.
- (6) Berm shall mean an embankment or ridge constructed for the purpose of preventing the movement of liquids, sludge, solids, or other materials.
- (7) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.
- (8) Bradenhead gas well shall mean any well producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

**C.** Definitions beginning with the letter "C".

- (1) Carbon dioxide gas shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) Casinghead gas shall mean any gas or vapor or both gas and vapor indigenous to and produced from a pool classified as an oil pool by the division. This also includes gas-cap gas produced from such an oil pool.

(3) Commission shall mean the oil conservation commission.

(4) Commission clerk means the oil conservation division employee the division director designates to provide staff support to the commission, and accept filings in rulemaking or adjudicatory cases before the commission.

(45) Common purchaser for natural gas shall mean any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(56) Common purchaser for oil shall mean every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(67) Common source of supply. See pool.

(78) Condensate shall mean the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(89) Contiguous shall mean acreage joined by more than one common point, that is, the common boundary must be at least one side of a governmental quarter-quarter section.

(910) Conventional completion shall mean a well completion in which the production string of casing has an outside diameter in excess of 2.875 inches.

(1011) Correlative rights shall mean the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy.

(1112) Cubic feet of gas or standard cubic foot of gas, for the purpose of these rules, shall mean that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 pounds per square inch (15.025 psia), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) Deep pool shall mean a common source of supply which is situated 5000 feet or more below the surface.

(2) Depth bracket allowable shall mean the basic oil allowable assigned to a pool and based on its depth, unit size, or special pool rules, which, when multiplied by the market demand percentage factor in effect, will determine the top unit allowable for the pool.

(3) Director shall mean the director of the oil conservation division of the New Mexico energy, minerals and natural resources department.

(4) Division shall mean the oil conservation division of the New Mexico energy, minerals and natural resources department.

(5) Division clerk means the oil conservation division employee the division director designates to accept filings in adjudicatory cases before the division.

E. Definitions beginning with the letter "E".

(1) Exempted aquifer shall mean an aquifer that does not currently serve as a source of drinking water, and which cannot now and will not in the foreseeable future serve as a source of drinking water because: is hydrocarbon producing;

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location which makes the recovery of water for drinking water purposes economically or technologically impractical; or,

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(2) Existing spacing unit is a spacing unit containing a producing well.

F. Definitions beginning with the letter "F".

(1) Facility shall mean any structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile.

(2) Field means the general area which is underlaid or appears to be underlaid by at least one pool; and field also includes the underground reservoir or reservoirs containing such crude petroleum oil or natural gas, or both. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) Fresh water (to be protected) includes the water in lakes and playas, the surface waters of all streams regardless of the quality of the water within any given reach, and all underground waters containing 10,000 milligrams per liter (mg/l) or less of total dissolved solids (TDS) except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use which would be impaired by contamination of such waters. The water in lakes and playas shall be protected from contamination even though it may contain more than 10,000 mg/l of TDS unless it can be shown that hydrologically connected fresh ground water will not be adversely affected.

G. Definitions beginning with the letter "G".

(1) Gas lift shall mean any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(2) Gas-oil ratio shall mean the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(3) Gas-oil ratio adjustment shall mean the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(4) Gas transportation facility shall mean a pipeline in operation serving gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported or used for consumption.

(5) Gas well shall mean a well producing gas or natural gas from a gas pool, or a well with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(6) Ground water shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

(7) Groundwater sensitive area shall mean an area specifically so designated by the division after evaluation of technical evidence where groundwater exists that would likely exceed Water Quality Control Commission standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) Hazard to public health exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant as defined at Subsection VV of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(2) High gas-oil ratio proration unit shall mean a unit with at least one producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which the unit is located.

I. Definitions beginning with the letter "I".

(1) Illegal gas shall mean natural gas produced from a gas well in excess of the allowable determined by the division.

(2) Illegal oil shall mean crude petroleum oil produced in excess of the allowable as fixed by the division.

(3) Illegal product shall mean any product of illegal gas or illegal oil.

(4) Inactive well shall be a well which is not being utilized for beneficial purposes such as production, injection or monitoring and which is not being drilled, completed, repaired or worked over.

(5) Injection or input well shall mean any well used for the injection of air, gas, water, or other fluids into any underground stratum.

J. Reserved.

K. Reserved.

L. Definitions beginning with the letter "L".

(1) Limiting gas-oil ratio shall mean the gas-oil ratio assigned by the division to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil producing units within that particular pool.

(2) Load oil is any oil or liquid hydrocarbon which has been used in remedial operation in any oil or gas well.

(3) Log or well log shall mean a systematic detailed and correct record of formations encountered in the drilling of a well.

M. Definitions beginning with the letter "M".

(1) Marginal unit shall mean a proration unit which is incapable of producing top unit allowable for the pool in which it is located.

(2) Market demand percentage factor shall mean that percentage factor of 100 percent or less as determined by the division at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, will determine the top unit allowable for that pool.

(3) Mineral estate is the most complete ownership of oil and gas recognized in law and includes all the mineral interests and all the royalty interests.

(4) Mineral interest owners are owners of an interest in the executive rights, which are the rights to explore and develop, including oil and gas lessees (i.e., "working interest owners") and mineral interest owners who have not signed an oil and gas lease.

(5) Minimum allowable shall mean the minimum amount of production from an oil or gas well which may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(6) Multiple completion (combination) shall mean a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well-bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well-bore, the conventional diameter strings of which might or might not be a multiple completion (conventional).

(7) Multiple completion (conventional) shall mean a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(8) Multiple completion (tubingless) shall mean completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well-bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by use of cement.

N. Definitions beginning with the letter "N".

(1) Natural gas or gas shall mean any combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool classified by the division as a gas pool.

(2) Non-aqueous phase liquid shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material.

(3) Non-marginal unit shall mean a proration unit which is capable of producing top unit allowable for the pool in which it is located, and to which has been assigned a top unit allowable.

O. Definitions beginning with the letter "O".

(1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by order of the division by such method and means and in such manner as prescribed by the division.

(2) Oil, crude oil, or crude petroleum oil shall mean any petroleum hydrocarbon produced from a well in the liquid phase and which existed in a liquid phase in the reservoir.

(3) Oil field wastes shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities.

(4) Oil well shall mean any well capable of producing oil and which is not a gas well as defined herein.

(5) Operator shall mean any person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of the operation or management of a facility.

(6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

(7) Owner means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another.

P. Definitions beginning with the letter "P".

(1) Penalized unit shall mean a proration unit to which, because of an excessive gas-oil ratio, an allowable has been assigned which is less than top unit allowable for the pool in which it is located and also less than the ability of the well(s) on the unit to produce.

(2) Person shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees.

(3) Pit shall mean any surface or sub-surface impoundment, man-made or natural depression, or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for the purpose of safety and secondary containment.

(4) Playa lake shall mean a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) Pool means any underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein. "Pool" is synonymous with "common source of supply" and with "common reservoir."

(6) Potential shall mean the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the division.

(7) Pressure maintenance shall mean the injection of gas or other fluid into a reservoir, either to maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

(8) Produced water shall mean those waters produced in conjunction with the production of crude oil and/or natural gas and commonly collected at field storage, processing, or disposal facilities including but not limited to: lease tanks, commingled tank batteries, burn pits, LACT units, and community or lease salt water disposal systems and which may be collected at gas processing plants, pipeline drips and other processing or transportation facilities.

(9) Producer shall mean the owner of a well or wells capable of producing oil or natural gas or both in paying quantities.

(10) Product means any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all derivatives of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil, and blends or mixtures of crude petroleum oil or natural gas or any derivative thereof.

(11) Proration day shall consist of 24 consecutive hours which shall begin at 7 a.m. and end at 7 a.m. on the following day. The language in this paragraph is different than that which was filed 02-28-97 (effective

(12) Proration month shall mean the calendar month which shall begin at 7 a.m. on the first day of such month and end at 7 a.m. on the first day of the next succeeding month.

(13) Proration period shall mean for oil the proration month and for gas the twelve-month period which shall begin at 7 a.m. on January 1 of each year and end at 7 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(14) Proration schedule shall mean the order of the division authorizing the production, purchase, and transportation of oil, casinghead gas, and natural gas from the various units of oil or of natural gas in allocated pools.

(15) Proration unit is the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (See NMSA 1978 Section 70-2-17.B) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. A proration unit will be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units.

(16) Prospective spacing unit is a hypothetical spacing unit that does not yet have a producing well.

Q. Reserved.

R. Definitions beginning with the letter "R".

(1) Recomplete shall mean the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(2) Regulated naturally occurring radioactive material (regulated NORM) shall mean naturally occurring radioactive material (NORM) contained in any oil-field soils, equipment, sludges or any other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(3) Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

(4) Remediation plan shall mean a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report.

(5) Responsible person shall mean the owner or operator who must complete division approved corrective action for pollution from releases.

(6) Royalty interest owners are owners of an interest in the non-executive rights including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

S. Definitions beginning with the letter "S".

(1) ~~Secondary recovery shall mean a method of recovering quantities of oil or gas from a~~ reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool which has a depth range from 0 to 5000 feet.

(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well which is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25% or more of the compliance sampling stations, for any single medium, as designated pursuant to Subsection E, Paragraph (4), Subparagraph (b), Subsubparagraph (iv) of Section 19.15.5.19 NMAC.

(7) Spacing unit is the area allocated to a well under a well spacing order or rule. Under the Oil & Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without first creating proration units. See *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 NM 286 (1975). This is the area designated on division form C-102.

(8) Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

T. Definitions beginning with the letter "T".

(1) Tank bottoms shall mean that accumulation of hydrocarbon material and other substances which settles naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two (2%) percent of basic sediment and water; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

(2) Temporary abandonment shall be the status of a well which is inactive and has been approved for temporary abandonment in accordance with the provisions of these rules.

(3) Top unit allowable for gas shall mean the maximum number of cubic feet of natural gas, for the proration period, allocated to a gas producing unit in an allocated gas pool.

(4) Top unit allowable for oil shall mean the maximum number of barrels for oil daily for each calendar month allocated on a proration unit basis in a pool to non-marginal units. The top unit allowable for a pool shall be determined by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(5) Treating plant shall mean any plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oil marketable.

(6) Tubingless completion shall mean a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

U. Definitions beginning with the letter "U".

(1) Underground source of drinking water shall mean an aquifer which supplies water for human consumption or which contains ground water having a total dissolved solids concentration of 10,000 mg/l or less and which is not an exempted aquifer.

(2) Unit of proration for gas shall consist of such multiples of 40 acres as may be prescribed by special pool rules issued by the division.

(3) Unit of proration for oil shall consist of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by special pool rules issued by the division.

(4) Unorthodox well location shall mean a location which does not conform to the spacing requirements established by the rules and regulations of the division.

V. Definitions beginning with the letter "V". ~~Vadose zone shall mean unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.~~

W. Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste which is prohibited by the Oil and Gas Act; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b), and (c) of this definition and causes waste by violating Section 70-2-16 of the Oil and Gas Act;

(e) the production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

(2) Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) Water contaminant shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) Watercourse shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.

(5) Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(6) Well blowout shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

(7) Wellhead protection area shall mean the area within 200 horizontal feet of any private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment, or disposal site was established.

(8) Wetlands shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

(9) Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil & gas minerals. Working interests are cost bearing. [1-5-50...2-1-96; A, 7-15-96; Rn, 19 NMAC 15.A.7.1 through 7.84, 3-15-97; A, 7-15-99; 19.15.1.7 NMAC - Rn, 19 NMAC 15.A.7, 5-15-001; A, 3/31/04; A, 9/15/04; A //05]