

## **Davidson, Florene, EMNRD**

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**From:** Goetze, Phillip, EMNRD  
**Sent:** Tuesday, December 22, 2015 9:46 AM  
**To:** Loretta H  
**Cc:** Wade, Gabriel, EMNRD; Davidson, Florene, EMNRD; Jones, William V, EMNRD  
**Subject:** Case No. 15431

Ms. Hayoz:

OCD has received your notice to make a statement at hearing for Case No. 15431 (Breitburn Operating application for a SWD disposal well). I just wanted to ensure that you are aware that Mr. Markovic and you will be limited to only providing a statement and would not be qualified to question witnesses or submit exhibits for inclusion in the case record. To have these capabilities, you will have to follow the portions of 19.15.14 NMAC provided and submit a pre-hearing statement for appearance under OCD Rules:

### **Excerpt from Title 19, Chapter 15, Part 4 New Mexico Administrative Code**

#### **19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:**

**A.** The parties to an adjudicatory proceeding shall include:

- (1) the applicant;
- (2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 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) a 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 19.15.4.10 NMAC, 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 19.15.4.13 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 19.15.4 NMAC provides.

#### **19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:**

**A.** A 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

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

**B.** Pre-hearing statements.

(1) A 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 19.15.4.13 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 p.m. 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) A 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 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.

#### **19.15.4.17 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:**

**A.** Presentation of evidence. Subject to other provisions of 19.15.4.16 NMAC, the commission or division examiner shall afford full opportunity to the 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 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 each commissioner.

Examples of a pre-hearing statement can be found on the Imaging webpage linked to the OCD website (choose the "case" category and enter this case number). If your intent is to only provide a statement, then Mr. Markovic and you are qualified for presenting a statement. Please contact me with any questions about this matter. OCD will notify you of any changes in schedule due to weather or to request for a continuance by Breitburn. Thank you and Happy Holidays.  
PRG

**Phillip R. Goetze, PG**

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