

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

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**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO
AMEND CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15, PART 5, SECTION 9
OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING COMPLIANCE**

CASE NO. 15536

APPLICATION FOR RULEMAKING

The New Mexico Oil Conservation Division ("OCD"), through its undersigned attorney, hereby applies to the New Mexico Oil Conservation Commission ("OCC") for an order to amend Title 19, Chapter 15, Part 5, Section 9 of the New Mexico Administrative Code addressing compliance by:

- A. Amending Subsection B of 19.15.5.9 NMAC to replace the provision that the OCD mail notice to operators on a monthly basis when according to records on file with the OCD a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months with a provision that requires the OCD to post the information on its website. In addition, the OCD would be required to notify an operator by first class mail 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC.
- B. Amending Paragraph (1) of Subsection E of 19.15.5.9 NMAC to provide that the OCD shall make available on its website penalty assessments assessed over the prior 12 months and the date the operator paid them.
- C. Amending Paragraph (2) of Subsection E of 19.15.5.9 NMAC to remove the first sentence stating that an operator who contests an order assessing penalties may appeal and may seek a stay of the order.
- D. Certifying the amended OCC rules for publication in the New Mexico Register as required by statute.

The proposed rule amendments establish a more efficient and readily accessible method of providing notice that a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months and of OCD enforcement actions that may result from the well's lack of production or injection. The proposed amendments to Paragraph (1) of Subsection E of 19.15.5.9 NMAC would provide a time period for which the OCD must post penalty assessments. The proposed amendments to Paragraph (2) of Subsection E of 19.15.5.9 reflect that the procedures for appealing and requesting a stay of an order are governed by other rules.

Copies of the proposed amendments to 19.15.5.9 NMAC are attached hereto as Exhibit A and incorporated herein. A copy of the legal notice for publication is attached as Exhibit B and made a part hereof.

WHEREFORE, the OCD respectfully requests that the OCC hold a hearing and following said hearing, enter an order adopting the proposed changes to 19.15.5.9 NMAC.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Keith Herrmann', is written over a horizontal line.

Keith Herrmann, Attorney
Oil Conservation Division
Energy, Minerals and Natural Resources
Department
1220 S. St. Francis Drive
Santa Fe, NM 87505

Exhibit A
OCC Case No. 15536

This is an amendment to 19.15.5 NMAC, amending Section 9, effective x/x/2016.

19.15.5.9 COMPLIANCE:

- A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:
- (1) currently meets the financial assurance requirements of 19.15.8 NMAC;
 - (2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;
 - (3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty; and
 - (4) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:
 - (a) two wells or 50 percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;
 - (b) five wells if the operator operates between 101 and 500 wells;
 - (c) seven wells if the operator operates between 501 and 1000 wells; and
 - (d) 10 wells if the operator operates more than 1000 wells.
- B. The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months by ~~sending a letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.9.8 NMAC~~ making such information available on the division's website. Further, at least 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC, the division shall notify the operator by first class mail to the address provided to the division pursuant to Subsection C of 19.15.9.8 NMAC.
- C. The division shall make available on its website and update weekly the status of operators' financial assurance 19.15.8 NMAC requires, according to division records.
- D. Orders requiring corrective action.
- (1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an operator to be in violation of an order requiring corrective action.
 - (2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.
 - (3) An operator who completes the corrective action the order requires may file a motion with the order's issuer to declare the order satisfied. The division or commission, as applicable, may grant the motion without hearing, or may set the matter for hearing.
- E. Penalty assessments.
- (1) The division shall make available on its website penalty assessments assessed over the last 12 months and the date the operator paid them, according to division records.
 - (2) ~~[An operator who contests an order assessing penalties may appeal and may seek a stay of the order. An] Any~~ order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.
- F. Inactive wells.
- (1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:
 - (a) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;
 - (b) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.14 NMAC; and
 - (c) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC and imposing sanctions if the operator does not meet the schedule.
 - (2) For purposes of 19.15.5.9 NMAC, the listing of a well on the division's inactive well list as a well inactive for more than one year plus 90 days creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.
- [19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/08; A, x/x/16]

Notice of Public Meeting and Public Hearing

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **October 6, 2016**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 72 hours preceding the meeting.

Application of the Oil Conservation Division to Amend Certain Provisions of Title 19, Chapter 15, Part 5, Section 9 of the New Mexico Administrative Code Concerning Compliance. The proposed rule amendments are intended to increase efficiency, make information more readily accessible, and to make other changes including:

- (1) amending Subsection B of 19.15.5.9 NMAC to replace the provision that the Oil Conservation Division ("OCD") mail notice to operators on a monthly basis when according to records on file with the OCD a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months with a provision that requires the OCD to post the information on its website. In addition, the OCD would be required to notify an operator by first class mail 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC;
- (2) amending Paragraph (1) of Subsection E of 19.15.5.9 NMAC to provide that the OCD shall make available on its website penalty assessments assessed over the prior 12 months and the date the operator paid them; and
- (3) amending Paragraph (2) of Subsection E of 19.15.5.9 NMAC to remove the first sentence stating that an operator who contests an order assessing penalties may appeal and may seek a stay of the order.

The proposed rule amendment and the meeting agenda are available from Commission Clerk Florene Davidson at (505) 476-3458 or can be viewed on the Hearings Page at the Oil Conservation Division's web site at <http://www.emnrd.state.nm.us/ocd>. Persons **recommending modifications** to the proposed rule amendment must file a notice of recommended modifications with the Commission Clerk no later than 5:00 P.M. on **September 22, 2016**. The notice must include the text of the recommended modifications of the proposed rule amendment, an explanation of the recommended modification's impact, and reasons for adopting the modification. Persons intending to provide **written comments** on the proposed rule change must submit their written comments no later than 5:00 P.M. on **September 29, 2016** to the Commission Clerk. Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer as evidence at the hearing, no later than 5:00 P.M. on **September 29, 2016**. Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or the New Mexico Relay Network at 1-800-659-1779. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection equipment at a hearing must contact Florene Davidson seven (7) business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this ____ day of _____, 2016.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**David Catanach
Director, Oil Conservation Division**

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