

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**IN THE MATTER
APPLICATION OF NEW MEXICO OIL
CONSERVATION DIVISION TO
AMEND 19.15.5 NMAC**

CASE NO. 20895

REQUEST OR CONTINUANCE/ PRE-HEARING STATEMENT

Party
Larry Marker (pro se)
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1-In the matter of the application of the New Mexico Oil Conservation to amend 19.15.5, NMAC. Larry Marker files this Notice of pending District Court action, Improper Notification, request for Continuance and in the alternative a Pre-Hearing Statement pursuant to 19.15.3.11, NMAC.

2-A Petition was filed April 10th 2019, in the Fifth District Court of the State of New Mexico. That petition does challenge the validity and legality of the Legislation authorizing the amending of the subject regulations.

3-The Court has set a Date of February 17th 2020 to consider that petition in a Summary Judgment Hearing to declare the legislation void or dismiss the petition.

4-Marker does request the Commission Postpone the rulemaking hearing until the Court has decided the matter.

5-The Notice of public meeting and public hearing does contain an error that requires the pre-hearing statements to be filed no later than 5:00 pm December 17th 2019.

6- Rule 19.15.3.11 part B (1) requires the pre-hearing statement to be filed no later than 10 days before the scheduled hearing date. The scheduled hearing is January 2nd 2020. The proper date of the hearing would be January 3rd 2020, using the calculation set forth in rule 19.15.2.13 NMAC, computation of time.

7-Marker does request the Commission Postpone the rulemaking hearing providing proper notification pursuant to 19.15.3.11 and 19.15.3.9 NMAC.

8- Larry Marker (Marker) in the alternative files this Pre-hearing statement pursuant to rule 19.15.3.11, NMAC.

9-Amended Rule 19.15.5.10 subsection A. (1), (2), (3). Exhibit A. The three actions available to the Division are presented as discretionary. The most basic rules of due process require notice and hearing.

10-Amended Rule 19.15. 5.10 subsection B. Elements of criminal penalties/sanctions are present in this provision. The presence of criminal sanctions require the protections assigned by law to criminal proceedings.

11-Amended Rule 19.15.5.10 subsection C. The language of the provisions are vague and ambiguous. Elements of criminal penalties/ sanctions are present in the provisions of the amended regulations.

12-The language of the amended regulation provides authority to issue a penalty for an alleged violation. The terms used to discern the amount penalties for violations are vague and ambiguous.

13-The potential for criminal and civil sanctions are present in the amended rules of 19.15.3.11 NMAC, the existence of that potential does require a complete evaluation of the adjudicatory procedures to insure the protections required to comply with the Constitutional mandates required for both criminal and civil sanctions.

11-Marker does not anticipate calling a witness.

12-Marker does wish to cross examine witnesses during the proceedings.

Respectfully presented by Larry Marker (pro se) December 16th 2019.

Larry Marker

Date 12/16/2019