

SUMMARY OF CHANGES TO RULE 1207 "NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS"

A lot of cleanup of the existing language was done. The cleanup changes will not be addressed. Substantive changes are set forth below.

1207.A.

(1) Compulsory Pooling and Statutory Unitization

(a) Regular hearing:

CHANGE:

More clearly defines who is entitled to notice. Now it is:

"each owner of an interest in the mineral estate whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application"

This change avoids the problem of persons playing games with the hearing process by notifying the applicant after the filing of the application of interest owners not of record and whose interests are not evidenced by a document of conveyance.

OCD AND NMOGA AGREE ON THIS CHANGE.

(b) Alternate Procedure:

CHANGES:

Clarifies when this procedure can be used. Now "When the applicant is unable to locate all the interests owners to be pooled and the application is unopposed by those located".

Adds attestation to (b)(iii) listing of names/addresses of interest owners to be pooled that "a diligent search has been conducted of all public records and of phone directories, including computer searches".

OCD AND NMOGA AGREE ON THESE CHANGES.

(2) Unorthodox Well Locations

CHANGES:

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. <u>12177</u>	Exhibit No. <u>2</u>
Submitted by <u>OCD</u>	
Hearing Date <u>5/19/99</u>	

Clarifies which persons are entitled to notice. Current rule can be read to exclude working interest owners and limits notice only to adjoining **leases** which can be substantially less than adjoining **spacing units**.

OCD:

Creates definition of “affected persons” that tracks change made in 1207.A(1)(a) to make certain which persons are entitled to notice. Creates a ranking of interests to be notified: (1) Division-designated operator, (2) if no operator, then the lessees with a documents of conveyance of record or known to applicant, and (3) if no operator or lessee, then mineral interest owners with documents of conveyance of record or known to applicant.

Solves “common operator” problem by requiring notice to working interest owners if the operator of the proposed unorthodox well is the operator of the adjoining spacing unit, if the ownership is not common between those spacing units.

Requires notice to persons in “prospective” spacing units since the orientation of the offsetting rectangular spacing unit is not yet known. This would require notice to the owners of an additional 40 acres (if 80 acre spacing)---the immediately adjoining 40 acres and both of the 40 acre tracts that may be attached to form an 80 acre spacing unit---so notice would be given to 120 acres rather than the 80 acres of one spacing unit. The same problem occurs with 320 acres with 480 acres given notice rather than 320.

The Division strongly believes that the owners of both tracts that might be joined to the immediately adjacent tract should receive notice because the interests in whichever of the tracts is attached will definitely be potentially affected by the application. The Commission should err on the side of providing notice to all those that may be potentially affected (the two 40 or 160 acre tracts that may be attached to the immediately adjacent 40 or 160 acre tract), and not limit notice to those definitely known to be potentially affected (the immediately adjacent 40 or 160 acre tract).

NMOGA:

NMOGA agrees with the common operator solution and the types of interest owners entitled to notice but would limit notice to only the immediately adjacent 40 or 160 acre tract. Thus only 40 or 160 acres would receive notice even though the an 80 or 320 acre spacing unit, if formed, would be affected.

(3) Non-Standard Proration and Spacing Units

CHANGE:

Deletes notice to offset operators and owners of undrilled tracts.

OCD:

Substitutes “and to such other persons as required by the Division” for the notice to offsets.

NMOGA:

Just deletes notice to offset owners of undrilled tracts.

(4) Special Pool Rules

CHANGES:

Complies with Udden by requiring notice to all owners of interests in the mineral estate in the spacing unit if a change in the size of an existing spacing unit with a producing well is proposed.

In other cases, only requires notice to operators within pool and within one mile and same formation.

OCD AND NMOGA AGREE ON THESE CHANGES

(5) Potash Areas

CHANGE:

Add oil and gas lessees to notified parties.

OCD AND NMOGA AGREE ON CHANGE

(6) Downhole Commingling

CHANGE:

Deletes notice to offset operators.

OCD AND NMOGA AGREE ON CHANGE

(7) Surface Disposal

NO CHANGE

(8) Other Adjudications:

NO CHANGE

1207.B

CHANGE:

Requires that a copy of the application be included with the notice and that the time, place and date of hearing be stated.

OCD AND NMOGA AGREE

1207.C

NO CHANGE

1207.D

NO CHANGE

1207.E

CHANGE:

This paragraph was added to set forth in the rules current Division policy of not requiring additional notice of the hearing to potentially affected parties if they received notice of the administrative application. In that case, the Division will set the case for hearing and notify only the applicant and the protesting parties of the hearing date.

(2) the name or general description of the common source or sources of supply or the area affected by the order sought;

(3) briefly the general nature of the order, rule, or regulation sought; and

(4) any other matter required by a particular rule or rules, or order of the Division.

The application shall be signed by the person seeking the hearing or by his attorney. [1-1-50... 2-1-96]

1203.B. When conditions are such as to require verbal application to place a matter for hearing on a given docket, the Division will accept such verbal application in order to meet publishing deadlines. However, if written application, filed in accordance with the procedures outlined above, has not been received by the Division's Santa Fe office at least ten days before the date of the hearing, the case will be dismissed. [4-30-74...2-1-96]

1204 PUBLICATION OF NOTICE OF HEARING

Notice of each hearing before the Commission and before a Division Examiner shall be by publication once in accordance with the requirements of Chapter 14, Article 11, N.M.S.A. 1978, in a newspaper of general circulation in the county, or each of the counties if there be more than one, in which any land, oil, gas, or other property which is affected may be situated. [1-1-50...2-1-96]

1205 CONTENTS OF NOTICE OF HEARING

1205.A. Published notices shall be issued in the name of "The State of New Mexico" and shall be signed by the Director of the Division, and the seal of the Commission shall be impressed thereon. [1-1-50...2-1-96]

1205.B. The notice shall specify whether the case is set for hearing before the Commission or before a Division Examiner and shall state the number and style of the case and the time and place of hearing and shall briefly state the general nature of the order or orders, rule or rules, regulation or regulations to be promulgated or effected. The notice shall also state the name of the petitioner or applicant, if any, and unless the contemplated order, rule, or regulation is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply which may be affected by such order, rule or regulation. [1-1-50...2-1-96]

1206 RESERVED [Formerly "PREPARATION OF NOTICES".

1207 ADDITIONAL NOTICE REQUIREMENTS

1207.A. Each applicant for hearing before the Division or Commission shall give additional notice as set forth below:

(1) In cases of applications filed for compulsory pooling under Section 70-2-17 NMSA 1978, as amended, or statutory unitization under Section 70-7-1, et. seq. NMSA 1978, as amended: Actual notice shall be given to each known individual owning an uncommitted leasehold interest, an unleased and uncommitted mineral interest, or royalty interest not subject to a pooling or unitization clause in the lands affected by such application which interest must be committed and has not been voluntarily committed to the area proposed to be pooled or unitized. Such individual notice in compulsory pooling or statutory unitization cases shall be by certified mail (return receipt requested). [1-1-86...2-1-96]

(2) When an application for compulsory pooling is known to be unopposed, the applicant may file under the following alternate procedure:

- (a) Actual notice shall be given as required in (1) above. The application for hearing shall state that no opposition for hearing is expected and shall include the following:
- (i) a map outlining the spacing unit(s) to be pooled showing the nature and percentage of the ownership interests therein and location of the proposed well;
 - (ii) a listing showing the name and last known address of all parties to be pooled and the nature and percent of their interest;
 - (iii) the name of the formations and/or pools to be pooled (Note: The Division cannot pool a spacing unit larger in size than provided in the General Rules or appropriate special pool rules);
 - (iv) a statement as to whether the pooled unit is for gas and/or oil production as appropriate (see note under (iii) above);
 - (v) written evidence of attempts made to gain voluntary agreement including but not limited to copies of appropriate correspondence;
 - (vi) appropriate geological map(s) of the formation(s) to be tested and a geological and/or engineering assessment of the risk involved in the drilling of the well and a proposed risk penalty to be assessed against any owner who chooses not to pay his share of estimated well costs;
 - (vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with a demonstration that such changes are reasonable;
 - (viii) the location and proposed depth of the well to be drilled on the pooled units(s); and,
 - (ix) a copy of the AFE (Authorization for Expenditure) to be submitted to the interest owners in the well.

[1-1-87...2-1-96]

(3) All submittals required under this paragraph shall be accompanied by statements (sworn and notarized) by those persons who prepared the same attesting that the information is true and complete to the best of their knowledge and belief. [1-1-87...2-1-96]

(4) All unopposed pooling applications will be set for hearing. If the Division review of such application finds them acceptable, the information submitted above will be incorporated as the record in the case and an order will be written thereon. At the request of any interested party or upon the Division's own initiative, any pooling application submitted under paragraph (2) of this rule shall be set for full hearing with oral testimony by the applicant. [1-1-87...2-1-96]

(5) In cases of applications for approval of unorthodox well locations:

- (a) If the proposed location is unorthodox by virtue of being located closer to the outer boundary of the spacing unit, than permitted by rule, actual notice shall be given to any operator of a spacing unit or owner of an undrilled lease which adjoins the applicant's spacing unit on one or more of the two sides or the single corner closest to the proposed well. [1-1-86...2-1-96]
- (b) If the proposed location is unorthodox by virtue of its proximity

to another well or wells within the same spacing unit, actual notice shall be given to offsetting operators or owners of undrilled leases bordering applicant's spacing unit on a common boundary or unit corner. [1-1-86...2-1-96]

(c) If the proposed location is unorthodox by virtue of being located in a different quarter-quarter section or quarter section than provided in special pool rules, actual notice shall be given to offsetting operators or owners of undrilled leases bordering applicant's spacing unit on a common boundary or unit corner. [1-1-86...2-1-96]

(d) All such notices shall be given by certified mail (return receipt requested). [1-1-86...2-1-96]

(6) In the case of applications for the approval of any non-standard proration unit:

(a) Actual notice shall be given to all operators owning a leasehold interest to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations), or in the section (for 640-acre pools or formations) in which the non-standard unit is located and to each operator on any proration unit, or owner of an undrilled tract, which unit or tract adjoins or corners such quarter-quarter, quarter, half, or whole section. Such notice shall be by certified mail (return receipt requested). [1-1-86...2-1-96]

(7) In the case of applications for adoption of, or amendment of, special pool rules:

(a) Actual notice shall be given to all operators of wells and each unleased mineral owner within the existing or proposed pool boundaries and all operators of wells within one (1) mile of such boundaries. Such notice may be provided by regular mail. [1-1-86...2-1-96]

(8) In the case of applications to amend special rules of any Division designated potash area, actual notice shall be given to each potash owner, each oil or gas operator, and each unleased mineral owner within the designated area. Such notice shall be provided by certified mail (return receipt requested). [1-1-86...2-1-96]

(9) In the case of applications for approval of downhole commingling of the product of multiple formations:

(a) Actual notice shall be given to all offset operators. Such notice shall be provided by regular mail. [1-1-86...2-1-96]

(10) In cases of applications for exceptions to rules or orders controlling surface disposition of produced water or other fluids:

(a) Actual notice shall be given to any surface owner within one-half mile of the site for which the exception is sought. Such notice shall be provided by certified mail (return receipt requested). [1-1-86...2-1-96]

(11) In cases of applications not listed above, the outcome of which may affect a property interest of other individuals or entities:

a) Actual notice shall be given to such individuals or entities by certified mail (return receipt requested). [1-1-86...2-1-96]

1207.B. Any notice required by this rule shall be to the last known address of the party to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall apprise such party of the nature and pendency of such action and the means by which protests may be made. [1-1-86...2-1-96]

1207.C. At each hearing, the applicant shall cause to be made a record, either by testimony at the hearing or by an affidavit signed by the applicant or its authorized representative, that the notice provisions of this Rule 1207 have been complied with, that applicant has conducted a good-faith diligent effort to find the correct address of all interested persons entitled to receive notice, and that pursuant to Rule 1207, notice has been given at that correct address as provided by rule. In addition, such certificate shall contain the name and address of each interested person to whom such notice was sent and, where proof of receipt is available, a copy of same. [1-1-86...2-1-96]

1207.D. Evidence of failure to provide notice as provided in this rule may, upon a proper showing be considered cause for reopening the case. [1-1-86...2-1-96]]

1208 FILING PLEADINGS: COPY DELIVERED TO ADVERSE PARTY OR PARTIES

When any party to a hearing files any pleading, plea, or motion of any character (other than application for hearing) which is not by law or by these rules required to be served upon the adverse party or parties, he shall at the same time either deliver or mail to the adverse party or parties who have entered their appearance therein, or their respective attorneys of record, a copy of such pleading, plea, or motion. For the purposes of these rules, an appearance of any interested party shall be made either by letter addressed to the Division or in person at any proceeding before the Commission or before an Examiner, with notice of such appearance to the parties from whom such pleadings, pleas, or motions are desired. [9-15-55...2-1-96]

1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE

Any hearing before the Commission or an 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 again served or published. In the event of any continuance, a statement thereof shall be made in the record of the hearing which is continued. [1-1-50...2-1-96]]

1210 CONDUCT OF HEARINGS

Hearings before the Commission or Examiner shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent record of the Division. Any person testifying in response to a subpoena issued by the Commission or any member thereof, or the authorized representative of the Division Director, and any person seeking to testify in support of an application or motion or in opposition thereto shall be required to do so under oath. However, relevant unsworn comments and observations by any interested party will be designated as such and included in the record. Comments and observations by representatives of operators' committees, the United States Geological Survey, the United States Bureau of Mines, the New Mexico Bureau of Mines, and other competent persons are welcomed. Any Examiner legally appointed by the Division Director may conduct such hearings as may be referred to such Examiners by the Director. [1-1-50...2-1-96]

1211 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE

The Commission or any member thereof, or the authorized representative of the Division Director has statutory power to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the Commission or Division. A subpoena will be issued for attendance at a hearing upon the written request of any person interested in the subject matter of the hearing. In case of the failure of a person to comply with the subpoena