

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

**IN THE MATTER OF THE APPLICATION OF
THE OIL CONSERVATION DIVISION TO
AMEND RULES 19.15.2 AND 19.15.7 NMAC**

**CASE NO. 22719
ORDER NO. R-22117-A**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division") to amend Rules 19.15.2 and 19.15.7 NMAC. The Commission conducted a hearing in this matter on June 3, 2022 and deliberated in open session on the same day. The Commission, having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. Statutory Authority. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 to -38 ("Act"). NMSA 1978, § 70-2-12.2. The Commission and the Division are given the duty to regulate the submission of required regulatory documents from regulated entities, as well as the location of the physical satellite locations of Division offices and the boundaries of lands managed by those offices. The proposed rule changes are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically Section 70-2-6 (authorizing the OCC to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the OCC and OCD). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

2. Application and Notice. The Division filed an Application on March 31, 2022 to update Rules 19.15.2 and 19.15.7 NMAC to align the Commission's rules with the current and proposed procedures and practices of the OCD, particularly those related to the electronic submission of documents to the OCD and updates to provisions concerning OCD's structure and the potential for future changes in response to operational priorities. The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.

3. At a public meeting on April 14, 2022, the Commission decided to hold a hearing on the proposed rule change and scheduled the rulemaking hearing for June 3, 2022. 19.15.3.8(C)

NMAC. The Commission determined that the hearing would be held in a virtual and telephonic format due to the public health restrictions in place to combat the COVID-19 pandemic. The Commission decided to require that anyone wishing to present technical testimony identify all witnesses to be presented at the hearing and a summary of each witness's anticipated testimony, and that all members of the public notify the Commission Clerk if they wished to address the Commission during the hearing. The Commission also provided a written comment period of fifty (50) days, from April 14, 2022 to noon on June 3, 2022.

4. Pre-hearing statements were submitted by the Division and the New Mexico Oil and Gas Association ("NMOGA"). The Division presented two technical witnesses, William Brancard and Brandon Powell, who provided testimony alongside technical exhibits. Only the Division proposed changes to 19.15.2 NMAC, whereas both Parties proposed changes to 19.15.7 NMAC. The Commission received no evidence or pleadings concerning the Division's proposed changes to 19.15.2 NMAC other than that of the Division. The Commission received evidence from both Parties concerning the Division's proposed changes to 19.15.7 NMAC. During the rulemaking hearing, the Commission received no public comment concerning the Division's proposed changes to 19.15.2 or 19.15.7 NMAC. Likewise, the Commission received no written comments concerning the Division's proposed changes to 19.15.2 and 19.15.7 NMAC.

5. Proposed Rule Changes. The Division proposed to amend Rules 19.15.2 and 19.15.7 NMAC. The proposed rule change generally included the following:

- a. Amendment of 19.15.2 to create an online process for the submittal of documents on the OCD's website and to require the filing of forms and other documents through the online portal. Also, OCD proposes to eliminate the specific locations of district offices and specific boundaries of districts within the rules and instead recognize the authority of the OCD Director to create organizational units and require information on such units to be placed on the website; and
- b. Amendment of 19.15.7 to provide for the creation and filing of electronic forms and documents and to clarify the filing requirements for oil and gas operators working on federal and tribal lands.

6. Public Hearing. The Commission conducted a virtual public hearing on the proposed rule changes on June 3, 2021 and subsequently deliberated in open session on the same day.

7. Documentary Evidence. In conjunction with its prehearing statement, the Division proposed ten (10) exhibits for the hearing, which included: the Curriculum Vitae of William R. Brancard; Curriculum Vitae of Brandon Powell; OCD's Proposed Modifications; OCD's Proposed Modifications – Part 7; PowerPoint Presentation; New Mexico Register – Notice of Public Hearing for Proposed Rulemaking; Proof of Publication; Copy of Legal Notice Publication in Albuquerque Journal; Excerpt of New Mexico Register Vol. XXXIII, Issue 9 May 3, 2022; and Notice to Persons on the OCC Rulemaking List. In conjunction with its prehearing statement, NMOGA proposed one (1) exhibit: NMOGA'S Proposed Modifications to Division's Proposed Rule Changes (March 30, 2022, Draft). Each Commissioner reviewed the proposed exhibits before,

during and after the rulemaking hearing and subsequently admitted into the record such exhibits during the course of the rulemaking hearing.

8. Public Comment. Members of the public were requested to notify the Commission Clerk in advance of the meeting if they planned to provide public comment. The Commission received no public comments. The Commission provided multiple opportunities for members of the public to provide public comment during the hearing.

9. Written Comments. The Commission received no written comments for this rulemaking.

10. Division Testimony. The Division presented two (2) witnesses in its case-in-chief: William Brancard, Hearings Bureau Chief for the Division, and Brandon Powell, Chief of the Division's Engineering Bureau. NMOGA cross-examined both Division witnesses. All Commissioners questioned Mr. Powell.

11. Mr. William Brancard, Hearings Bureau Chief for the Division, testified that he possesses a bachelor's degree, a law degree, and has worked for the State of New Mexico since 1991 with various State agencies. Mr. Brancard further testified that his current role is with the Division as the Chief of the Hearings Bureau.

12. Mr. Brancard explained that, as prior general counsel for EMNRD, he managed all Division attorneys and served as counsel the Commission.

13. Mr. Brancard testified that the purpose behind the Division's proposed rules changes is to update the processes that the Division uses to implement the Oil and Gas Act, particularly because of recent rule changes that resulted in a need for the Division to "catch up with reality." Mr. Brancard then provided a brief history of the Division and Commission, including the Division's recent shift to electronic submittal processes.

14. Concerning the Division's proposed changes to 19.15.2 NMAC, Mr. Brancard stated he was one of several Division employees who worked on the proposed amendment. Mr. Brancard testified similarly as to the Division's proposed changes to 19.15.7 NMAC.

15. Mr. Brancard detailed that the Division's proposed rules address filing of forms and reports, which falls under the obligations set forth in the Oil and Gas Act for the Division and Commission. Mr. Brancard also detailed how the Division solicited feedback from other entities as to the Division's proposed rules and how feedback played a role in the Division's proposals. Other entities included Tribal authorities and informal public comment solicitation, among other things.

16. Regarding the proposed amendments, Mr. Brancard explained that the proposed changes essentially change the format of all required submissions, from paper to electronic.

17. Regarding the proposed amendments to 19.15.2 NMAC, Mr. Brancard explained:

- a. why the three new definitions needed to be added to 19.15.2 NMAC;

- b. The need to clarify how time is computed for filings by reference to another New Mexico Statute;
- c. The need for district offices no longer exists given the electronic filing options available and the Division's understanding about how people move about the State.

18. Regarding the proposed amendments to 19.15.7 NMAC, Mr. Brancard explained:

- a. That it made sense to merge all Tribal land filings into one location in the regulations;
- b. That the Federal Government changes the names and titles of its forms frequently, so it made sense to remove references to those documents;
- c. That altering language concerning Tribal lands more accurately reflects the legal status of those lands;

19. When asked about NMOGA's proposed changes to 19.15.2 NMAC, Mr. Brancard rejected them based on the recognized legal principle, as outlined in New Mexico and United States Supreme Court opinions, that New Mexico has concurrent jurisdiction with the United States to regulate environmental and natural resources, justifying rejection of NMOGA's proposed changes.

20. Mr. Brandon Powell, Chief of the Division's Engineering Bureau, testified that he has worked for the Division for approximately 16 years. In his current role, he oversees administrative permitting for all oil field operations, underground injection control, and inspection program for approximately half of the State. Mr. Powell is familiar with the Division's relationship with the United States.

21. Regarding the Division's proposed amendments to 19.15.7 NMAC, Mr. Powell testified:

- a. That the 3 proposed definitions were included to ensure consistent understanding and application of the terms;
- b. That the proposed amendments address computation of time;
- c. That the proposed amendments now contain revised citations to other regulations.

22. Regarding the Division's proposed amendments to 19.15.2.10 NMAC, Mr. Powell testified that Section 19.15.2.10 NMAC provides for online applications and submittals of required Division filings, which includes new fees, processes for extension of allowances, and generally governs electronic submissions which also includes "e-permitting," with the overall effect being the Division's move away from hard copy submissions for purposes of efficiency and ease of use.

Additionally, the proposed revisions also increases the Division's ability to track filings and increases overall agency efficiency.

23. Regarding the Division's proposed amendments to 19.15.2.12 NMAC, Mr. Powell testified that the proposed Rule provides a process for how operators should submit filings or notifications to the Division, in particular that submissions be made electronically, but does not alter the requirement that those filing with the Division submit a hard copy of proof of financial assurance to the Division.

24. Regarding the Division's proposed amendments to 19.15.2.13 NMAC, Mr. Powell testified that the Division seeks to amend this provision to render it consistent with the New Mexico Statute that governs computation of time for deadlines.

25. Regarding the Division's proposed amendments to 19.15.2.16 NMAC, Mr. Powell testified that the Division's proposals update the Rule to be consistent with the organizational structure of the Division and ensures that OCD receives proper documentation of any changes to within that structure. Additionally, per Mr. Powell, the proposed amendments grant field personal leeway in making minor deviations to approvals granted in the field to avoid waste and protect public health, with deviations including, but not limited to, plugging a well in the field when paperwork has not been submitted for permission to do so – Mr. Powell averred that this particular language permits operational flexibility in the field. Mr. Powell then explained the outcome of the Division's restructuring, which included a discussion of field offices and their historical use, which is no longer needed.

26. Regarding the Division's proposed amendments to 19.15.2.17 NMAC, Mr. Powell testified that the Division's proposed amendments, similar to Rule 19.15.2.17 NMAC, address the restructuring of the Division, specifically the closing of field offices around the State due to the implementation of electronic submission of filings to the Division.

27. Regarding the Division's proposed amendments to 19.15.7.8 NMAC, Mr. Powell testified that the Division's proposals sets forth requirements on how operators should submit forms, brings the regulation into conformity with various statutes, and provides other updates for regulatory consistency.

28. Regarding the Division's proposed amendments to 19.15.7.9 and 10 NMAC, which concern Federal and Tribal land filings, Mr. Powell testified that the Division proposes to repeal these provisions as they apply only to hardcopy submissions, which are no longer required in light of the proposed amendments requiring electronic submission of documents. 19.15.7.9 NMAC, as proposed, consolidates prior sections 19.15.7.11 and 19.15.7.37 NMAC and repeals them as currently enacted. Mr. Powell explained that the proposed changes to 19.15.7.9 and 10 NMAC will remove various barriers, which include delays, in dealing with filings concerning Federal and Tribal lands; Mr. Powell detailed examples of these issues for the Commission.

29. Regarding the Division's proposed amendments to 19.15.7.16 NMAC, Mr. Powell testified that the proposed amendments update the rule to recognize current Division processes. Mr. Powell followed-up by explaining what has changed within the Division to justify the

proposed amendment, but emphasized that the proposed changes to 19.15.7.16 NMAC do not reflect a change in Division policy.

30. Reasons for Adopting Rule Changes. The Commission finds that the proposed rule amendments to 19.15.2 and 19.15.7 NMAC are supported by substantial evidence. The proposed rule amendments appropriately amend Rules 19.15.2 and 19.15.7 NMAC to ensure that each rule is consistent with the Oil and Gas Act and the Division's objectives in requesting amendment of both Rules. The Commission finds that the proposed rule changes appropriately update the Division's document submittal process and portal. The proposed rule changes also appropriately amend Rule 19.15.2 NMAC to match the internal changes in how the Division operates. The proposed rule changes also appropriately amend Rule 19.15.7 NMAC to clarify the filing requirements for oil and gas operators working on federal and tribal lands. The Commission, however, finds that the following changes to the Division's proposals are appropriate:

- a. That all use of the lower-case term "native" shall be corrected to "Native;"
- b. That 19.15.7.9 NMAC shall be altered as follows:
 - i. The title of section 19.15.7.9 NMAC shall be changed from "FORMS REQUIRED ON FEDERAL LAND OR MINERALS" to "FORM REQUIREMENTS ON FEDERAL OR TRIBAL LANDS OR MINERALS;"
 - ii. 19.15.7.9(C) NMAC shall be amended to add the phrase "to completion" after "approved or processed" and "approves or processes;"
 - iii. 19.15.7.9(C)(1) NMAC shall be amended to add the phrase "to completion" after "approved or processed;"
 - iv. 19.15.7.9(C)(2) NMAC shall be amended to add the phrase "to completion" after "processes," omit "approved or" after "submittal," and add "to completion or approved" after "processed;" and
 - v. 19.15.7.9(D) NMAC shall be amended to add the phrase "to completion" after "processing."

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.
2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.
3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. The Commission held a public rulemaking

hearing and provided a reasonable opportunity for all persons present or interested in the subject matter of the rulemaking hearing to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and that each Commissioner reviewed all transcripts and admitted evidence consistent with the Commissioner's duties and obligations. All Commissioners analyzed and considered all the evidence presented during the hearing, including the proposed amendments submitted by the parties. The Commission deliberated at a public hearing on June 3, 2022 and adopted the rule changes as stated above.

5. The Commission concludes that there is substantial evidence in the record to support the Division's proposed rule changes and the Commission's revisions to those changes, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT:

The proposed amendments to 19.15.2 and 19.15.7 NMAC are hereby approved by the Commission. The adoption of the rule changes will be final upon the latter of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) twenty (20) days from the date of this order if no rehearing application is filed. The rule change shall not be filed with the state records administrator until the rule change is adopted and then must be filed within fifteen (15) days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, § 14-4-5.5 (2017).

DONE at Santa Fe, New Mexico, on this 14th Day of July 2022.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

William Ampomah

**DR. WILLIAM AMPOMAH, P.E.,
MEMBER**

Gregory B. Bloom

GREG BLOOM, MEMBER

Adrienne Sandoval

ADRIENNE SANDOVAL, M.E., CHAIR

SEAL