

This is an amendment to 19.15.5 NMAC, amending Sections 3, 8, 9, and 10, effective 2/25/2020.

**Explanatory statement: Statute citations were corrected throughout the rule to conform to correct legislative styles.**

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, ~~and~~ Section 70-2-12, Section 70-2-31, and Section 70-2-31.1 NMSA 1978. [19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state’s rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and ~~including~~ the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations. [19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

**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]~~ 30 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 or final 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 fifty 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 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 under the Oil and Gas Act over the last 12 months and the date the operator paid them, according to division records.~~

~~(2) Any order that is stayed pending appeal does not affect an operator’s compliance with Subsection A of 19.15.5.9 NMAC.~~

~~\_\_\_\_\_~~ **F] B. 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) shows no production or injection for past 15 months;  
~~\_\_\_\_\_~~ [(a)] (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

~~\_\_\_\_\_~~ [(b)] (c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

~~\_\_\_\_\_~~ [(c)] (d) is not subject to an agreed compliance or final 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] A~~ well inactive for more than ~~[one year plus 90 days]~~ 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

**C. Financial assurance.** The division shall make available on its website and update weekly the status of operators’ financial assurance that 19.15.8 NMAC requires, according to division records.  
[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

**19.15.5.10 [COMPLIANCE PROCEEDINGS:] ENFORCEMENT:**

~~\_\_\_\_\_~~ **A.** The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.

~~\_\_\_\_\_~~ **B.** A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:

~~\_\_\_\_\_~~ (1) requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;

~~\_\_\_\_\_~~ (2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A); Subsection A of Section 70-2-31 NMSA 1978;

~~\_\_\_\_\_~~ (3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;

~~\_\_\_\_\_~~ (4) plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;

~~\_\_\_\_\_~~ (5) denial, cancellation or suspension of a permit;

~~\_\_\_\_\_~~ (6) denial, cancellation or suspension of authorization to transport; or

~~\_\_\_\_\_~~ (7) shutting in a well or wells.

~~\_\_\_\_\_~~ **C.** The division initiates an administrative compliance proceeding by filing a written application with the division clerk:

~~\_\_\_\_\_~~ (1) identifying the operator and any other responsible parties against whom the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;

~~\_\_\_\_\_~~ (2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;

~~\_\_\_\_\_~~ (3) providing a general description of the facts supporting the allegations;

~~\_\_\_\_\_~~ (4) stating the sanction or sanctions sought; and

~~\_\_\_\_\_~~ (5) providing proposed legal notice.

~~\_\_\_\_\_~~ **D.** The division shall provide notice of compliance proceedings as follows:

~~\_\_\_\_\_~~ (1) the division shall publish notice in accordance with 19.15.4.9 NMAC.

~~\_\_\_\_\_~~ (2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.

~~\_\_\_\_\_~~ **E.** The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

~~\_\_\_\_\_~~ **F.** Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in

~~the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).~~

~~[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/2008]~~

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

**C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violator's good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

**D. Civil penalties.** A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time

specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

**E. Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

**(1) General provisions.**

**(a) Designation of parties.** The parties shall be the division and the person served with a notice of violation or order, referred to herein as “respondent”.

**(b) Representation.** Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

**(c) Rule applicability.** In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

**(d) Computation of time.** In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

**(e) Extensions of time.** The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

**(f) Filing of documents.** A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

**(g) Service of documents.** A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

**(h) Form of documents.** Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

**(2) Pre-hearing procedures.**

**(a) Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

**(b) Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

**(c) Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

**(d) Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

**(e) Pre-hearing statements.** No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

**(i)** the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) **Enforcement.** The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) **Motions.**

(i) **General.** All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) **Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) **Decision.** The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) **Shortening Deadlines.** On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) **Hearing procedures.**

(a) **General.** The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico Rules of Evidence is not admissible.

(b) **Witness examination.** Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) **Exhibits.** A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) **Burden of persuasion.** The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) **Post-hearing procedures.**

(a) **Transcript.** The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) **Recommended decision.** The hearing examiner shall prepare a recommended decision for review by the director.

(c) **Final order.** The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

**F. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3)

and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

**G. Rehearings.** A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

**H. Payment of civil penalty.** Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

**I. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**J. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

**K. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]