



The Horizontal Rule

From April 17 to 19, 2018, the Oil Conservation Commission held two-and-a-half days of testimony on proposed changes to the Horizontal Rule. The rulemaking hearing was followed by a day-and-a-half of open deliberation by the OCC that concluded on April 20.

The petitioner for the proposed changes was the New Mexico Oil and Gas Association (NMOGA), who provided recommended changes that evolved out of discussions between industry, including IPANM, and the Oil Conservation Division over the past two years. Any group, association, interested party or individual company with legal representation was open to petition to be active participants in the hearing. IPANM hired Roswell attorney Drew Cloutier of Hinkle Shanor to provide our legal representation. The horizontal rulemaking hearing was led by NMOGA as the petitioner, and also included Marathon Oil, Energen Corporation, Jalapeno Corporation, and the New Mexico Oil Conservation Division (OCD) as legal parties to the hearing.

NMOGA presented six technical expert witnesses from industry to explain new rule language and offered operational field data to support the proposed changes. The NMOGA experts (from OXY, Encana, Chevron, Concho and Apache) presented field case scenarios to suggest changes on horizontal spacing units, well spacing, fracking, and horizontal drilling in New Mexico. Jalapeno Corp. also presented its owner, Harvey Yates, as a witness. Yates raised concerns on behalf of Jalapeno on issues related to correlative rights. IPANM did not present any witnesses, but our attorney did ask a number of substantive questions of witnesses. IPANM's questions centered on horizontal well design, construction, well-bore provisions that protect correlative rights in horizontal spacing units.

The new language added and approved by the OCC for final draft will do the following:

- Create new definitions for horizontal spacing unit, affected persons in spacing units, first take point, last take point, infill horizontal well, multi-lateral horizontal wells, and unitized areas.
- Allow for provisions for wells to be drilled with smaller setbacks within a spacing unit.
- Allow for special provisions for wells drilled in spacing units larger than 40-acres.
- Create new provisions that allow for standard units to be created that are non-rectangular.
- Create new provisions that allow for the drilling of multi-lateral horizontal wells.
- Allow for simultaneous drilling of in-fill horizontal wells that fall within a single horizontal spacing unit.*

This particular rulemaking hearing did not make any new rules or address any issues related to Compulsory Pooling or Risk Penalties Provisions. The decision not to include any of these issues into this rulemaking hearing was made after industry groups, including IPANM, and the Oil Conservation Division could not come up with any pre-hearing agreeable solution. As a result of this impasse, New Mexico Energy, Minerals & Natural Resources Department Secretary Ken McQueen has formed a small industry working group to attempt to find an acceptable solution. This group, chaired by New Mexico industry legal veteran Bill Carr, will meet in the next few months.

IPANM will be represented in this group by Tom Mullins and Larry Scott. IPANM seeks to lower existing risk penalties (up to 200%) that currently can be charged to partial-lease holders who are compulsory pooled. At the hearing, IPANM told to the Commission that the evidence put on and proposed amendments to the rule suggested that the risk profile for many of the horizontal wells drilled to source rock were considerably different from historic vertical drilling.

*IPANM supported all of the changes recommended by NMOGA with the exception of the redefining of an Infill Horizontal Well. The proposed (and later approved) definition of Infill Horizontal Well is now defined as “a horizontal well the completed interval of which is located wholly within the horizontal spacing unit dedicated to a previously drilled or proposed horizontal well in the same pool or formation and is designated by the operator as an infill horizontal well.” IPANM warned the commission that the addition of “or proposed” horizontal well allows a major operator to potentially drill simultaneous wells within in a single track all at once, which brings into question of how a smaller interest or lease holder in the single well unit would be charged a risk penalty via compulsory pooling on each well even though there was no production data from an initial well. Despite IPANM’s input, the OCC accepted this proposed language change. As a result of this change, IPANM still believes there is some ambiguity on how, whether, or if simultaneously-drilled wells would multiply the upfront compulsory pooling risk penalties by the number of infill horizontal wells drilled.