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**MODEL OIL & GAS REGULATORY AGENCY  
CONCEPT PAPER**

**NIS Institutional Based Services Under the  
Energy Efficiency and Market Reform Project  
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**Central Asian Republics Oil & Gas Sector Reform Program**

*Final Report*

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## EXECUTIVE SUMMARY

As developing nations move forward toward a free-market economy and began privatizing their previously state-owned energy companies, one inevitable question that arises is how to control such strategically important industries beyond the time of state-ownership. Western nations have answered the question through the use of impartial administrative agencies, exercising both judicial and legislative functions through their dispute resolution procedures and their rulemaking authority. Such agencies, functioning as independent non-political bodies, play a vital role in developing a stable domestic oil & gas industry that will attract badly needed private foreign investments.

The purpose of this Model Oil & Gas Regulatory Agency (OGRA) Concept Paper is to acquaint local government officials with the initiation and operation of such regulatory agencies. The Model OGRA is not country specific. It is written in terms of the fictitious country of Neftestan, which is assumed to be a developing nation that is rich in oil & gas resources. This Model is designed to be adapted to fit the individual countries. As of the time of preparation of this report, the Enabling Legislation from the Model OGRA has been tailored to fit the requirements in Kazakhstan, and has been delivered to elements of the government of Kazakhstan. The complete Model OGRA has been tailored to fit the requirements of Uzbekistan, and has been delivered to the Petroleum Law Work Group, which is a committee representing various state agencies and charged with review and enactment of the new Uzbekistan Petroleum Law. The Model OGRA is being revised to fit the situation in Turkmenistan, and will subsequently be delivered to an appropriate agency of that government. A secondary purpose of the Model OGRA is to give participants in the Energy Regulatory Agency Law Short-Course a hands-on look at the formation of such an agency, and the day-to-day administrative practice and procedures required for information gathering, licensing, permitting, dispute resolution, and rulemaking.

This Model OGRA is divided into three sections:

- ▶ enabling legislation
- ▶ rules of practice and procedures, including general definitions and a list of applicable forms
- ▶ example oil & gas hearing transcript (included only for short-course presentation)

The Model OGRA was set in the fictitious country of the Republic of Neftestan, with the idea that it was representative of the Republics of Central Asia. At this Concept Paper level, however, it still contains information that though desirable, is representative of western practices with only minimal application in Central Asia with its state ownership of all mineral resources. This non-

applicable information can be removed when the Model OGRA is tailored for the individual countries

The OGRA depicted in this Model is designed to have complete authority over the domestic oil & gas industry as to regulation of exploration, drilling, production, storage, transportation, and some aspects of refining and marketing. Its major purposes include conservation of the resource base, orderly production, protection of the environment, and with an overall goal of creating a stable domestic oil & gas industry that will attract foreign private investors. The Model OGRA's only role is regulatory. It is not the primary state agency involved in the negotiation of fiscal terms and conditions for the contractual participation of foreign oil companies or investors in the domestic industry. Negotiation of foreign participation in the local oil & gas industry is thought to be the arena of the financial, economic, and foreign relations experts and is more political in nature. The OGRA primarily possess technical expertise, and may advise the state during the tender and negotiation process, but should not be the responsible agency. The OGRA will issue licenses to conduct oil & gas activities to persons or companies as competent, financially stable, oil & gas operators, only after they have obtained some type of oil & gas right by virtue of a contract, agreement, lease, etc., with the mineral interest owner. This mineral interest owner is assumed to be the state, but possibly different state agencies for different areas of the state, i.e., land versus water, or provincial involvement. Any person receiving a license will be required to be in current compliance with all OGRA Rules & Regulations, particularly as regards any previous operations. No oil & gas activity is permitted without a valid license.

The emphasis in the Enabling Legislation is on the OGRA being **open, transparent, independent, unbiased, fair and accurate, and predictable**

Openness and transparency are obtained through a system that includes the conduct of meetings that are announced in advance, open to the public, and requires complete meeting records be maintained with such records also being made available to the public. The agency with its requirement and enormous power to collect industry information is required to share all such non-confidential information in the interest of being open to the public, by both preparing routine reports and responding to individual requests for data. To ensure an understanding and acceptance by both the public and the industry participants, all rules, regulations, and final orders must be published with a recitation of the facts, reasoning behind the agency decision, and a citation to the legal authority under which the agency is acting.

An agency's independence and freedom from short-term political influence is primarily a function of the system of appointment and retention of the OGRA's ruling board, usually referred to as Directors or Commissioners. Requiring the presidential or state chief executive appointees to the OGRA board to be confirmed by the legislative body is a major factor in insuring independence. Certainly the President is going to appoint people who share his long-term political beliefs, but once appointed and confirmed these Directors need to be allowed to function free of short-term political pressure and overt criticism. This independence is aided by

making these board positions full-time jobs, not subject to part-time political appointment. The jobs are high paying by government standards, enjoy senior status privileges, and should be sought-after by well qualified people. This use of lengthy terms-of-office helps ensure the Directors will not be removed from office for minor factors, or political differences with administrative or legislative leaders over agency decisions. The Model OGRA's Enabling Legislation limits a Director's removal from office to certain clearly defined problems or offenses. The staggered terms ensure that a President can not stack the board with a complete new slate of Directors of his own choosing at one time. Another method to assist in ensuring independence is to allow the Directors to elect their own chairman from among their own numbers. This prevents the President from appointing one domineering individual who attempts to control the entire process unilaterally. Further to independence, there is no system of appeal of agency decisions to the executive branch, the only appeal paths are for an agency's own review, or a resort to judicial review. Any party with "Standing" (a legitimate interest or actual injury from rules or decisions) is entitled to petition the courts for a review. However, this review is limited to questions of law, and does not allow for a rehearing on the facts of the case. Just as lower courts are finders-of-fact, so to the OGRA with the technical expertise of its Directors and staff, is entitled to have its factual decisions upheld. The judicial review only requires that the OGRA's decisions be supported by "Substantial Evidence." The Court can vacate the agency order, but is not allowed to substitute its own order in place of the agency's. The Court's only recourse is to remand back to the agency for reconsideration.

The Enabling Legislation establishing the OGRA endeavors to ensure the board members are unbiased, by requiring appointees to divest themselves of any interest in oil & gas matters that might come before the agency. The legislation further provides for criminal penalties for anyone exerting, or attempting to exert, undue influence on the Directors or the agency staff in the performance of their duties.

To ensure that OGRA decisions are fair and accurate, the Enabling Legislation both requires legislative confirmation of appointments and specifically states that appointees be skilled in the affairs of the industry in question. This is an attempt to avoid cronyism in the board appointments, and the legislation further seeks to avoid political appointments by requiring the staff be qualified subject to the Civil Service System. The Freedom from Undue Influence clause also helps ensure decision fairness. The requirement that Final Orders and Rules be justified by a recitation of the facts or need, and by outlining the reasoning behind the board's decision supports the acceptance of these decisions as being accurate.

Virtually all organizations dislike change, especially unexpected change, and the companies operating in this regulated industry will more readily accept the actions of the OGRA if they are predictable and consistent. One of the major reasons for the staggered terms-of-office is to provide for consistency, and to avoid a complete turnover of the board at one time. New Directors should make every effort to keep promises and commitments made by previous Directors to the regulated companies. Standard procedures ease the acceptance of changes by

requiring that early notice be given of anticipated changes, and that regulated companies have a chance to comment or react to anticipated changes. Predictability is an added reason for requiring justification and reasoning for any new Rules and Final Orders. From a legal standpoint, the system builds-in an added deterrent to unnecessary change by assigning the "Burden of Proof" to any party seeking to change existing rules, or seeking an exception to such existing rules.

One of the primary functions of the OGRA is the issuance of Rules & Regulations that have the effect of law, and are used to control and structure the industry. The formal procedure for rulemaking involves general notice to the public and specific notice to industry participants, of any anticipated new rule being considered. This notice for a new rule must cite the legislative authority for advancing such a rule. A waiting period is then required to allow industry participants time to review the new rule and submit written comments. The eventual enactment of the new rule must include a detailed justification of the facts that require the new rule. Only in specific instances of rulemaking, required by statute, is it mandatory to hold an open meeting to receive oral comments, and hear adverse testimony from expert witnesses. An example of this requirement to hold an open meeting is the issuance of rules that involve tariffs or per diem rates. Informal rulemaking does not require industry reaction, but generally can be used only for internal matters.

A second primary function of the OGRA is dispute resolution between competing industry participants, or between such participant and the agency itself, in an adjudicatory type process. Dispute resolution can easily be identified as it always leads to a final declaratory order. Dispute resolution is a trial like proceeding involving discovery and depositions, similar to a civil trial. The OGRA accomplishes this dispute resolution function in a formal hearing with a panel of Judges (the Directors), attorneys, witnesses giving sworn testimony, imposition of rules of evidence, a hearing record by a Court Reporter, and a requirement that decisions be based on the factual testimony presented and not outside information. Final Orders from dispute resolution can be appealed to the OGRA for a reevaluation, rarely granted, or an aggrieved party can petition the courts for review. As discussed above, such judicial review is primarily limited to question of law and the factual determination of the OGRA board is normally accepted by the court. The key legal question on judicial review is most often, "has the agency exceeded the authority granted it by the legislature?" The court's sole remedy is to remand the question back to the agency for further review.

The distinction between rulemaking and dispute resolution can frequently become vague, and has been the subject of some of the better known litigation involving Administrative Agency Law. Agencies frequently resort to rulemaking to avoid the formalities and contentious hearings required in dispute resolution. In the *United States v. Florida East Coast Railroad*, 410 U.S. 224 (1973), a closely divided Supreme Court upheld the Interstate Commerce Commission's issuance of rate base rules, despite rather clear wording in the legislation that such decisions required opening hearings with a right to present oral testimony and cross-examine adverse witnesses, in a case that led to millions of dollars changing hands on thinly supported rules. In adopting agency

enactment legislation, developing countries should endeavor to err on the side of openness rather than on the side of secrecy

Much of the Model OGRA's authority to control the oil & gas industry is exercised through its permitting system. Permits are required for drilling every well, well completion and recompletion, pit construction, pipeline construction, and installation of processing or storage facilities. Essentially anything that constitutes a potential safety or environmental hazard, or effects resource conservation requires a permit. By virtue of the permitting requirement for processing equipment and all storage facilities, the OGRA plays a role in the operation of refineries and retail outlets for fuel. The permit system is the basis and source of information for the OGRA's completion of one of its explicit responsibilities, the preparation of a national map that shows the location of every well, pipeline, and storage or treating facility.

Where a pipeline is determined to constitute a Natural Monopoly, said pipeline is required to serve the public interest and be available to all potential users. This regulation will be through the OGRA. This regulation is usually restricted to main pipelines, with infield gathering lines being exempt. This regulation of pipelines includes permitting construction, establishment of tariff rates based on a cost-of-service methodology, requiring routine reports on pipeline operations, and systematic auditing of pipeline operators.

The Model OGRA is intended to be financially independent, and is funded entirely from its cash flow from fines, and fees for its services such as permitting, required inspections, hearing costs, information supply, etc. These fees for services are intended to be nominal, reflecting only the cost of providing the service. The OGRA is required to publish a schedule of these fees, and is required to recognize a waiting period for protest when proposing to increase such fees.

For local citizens and domestic companies, appeal or relief from OGRA rulings is limited to the judicial review. However, foreign nationals or entities are guaranteed a right to international arbitration before a recognized world body. This international arbitration body is identified and approved in advance by both the government and any license holder, in the actual legislation or as modified in the contract authorizing foreign company involvement in the domestic oil & gas activity.

The Practice and Procedures section of the Model OGRA outlines the administrative rules for the day-to-day activities of the regulatory body, including qualifications and bonding requirements for licensing and permitting, hearing schedule and rules of procedure, granting of rule exceptions, commonly used definitions, various application forms, etc. These Rules of Practice and Procedures are quite broad, and all clauses will not be applicable in all countries. This section is meant to outline possible procedures, forms, etc., from which a country can select items that are applicable.

The Rules of Practice and Procedures does prescribe in detail the conduct of adjudicatory hearings. This section outlines the responsibilities and authority of the hearing's Presiding Officer and the Conduct and Decorum required by the OGRA. It covers the procedures for filing of Petitions, Motions, Complaints, Answers, etc. These Rules of Practice and Procedures cover the legal procedure for Notice, Rules of Evidence, Discovery activities of Subpoena, Deposition, etc., and gives the OGRA the right to align the parties to a dispute in order to avoid multiple hearings on the same issues. These rules prescribe the order of presentation among the parties, the qualification of witnesses and requirement that they testify under oath, the allocation of costs, and the requirement for a court reporter to maintain a transcript. These Rules of Practice and Procedures seek to differentiate between Interim or Emergency Orders and Final Orders, which require complete recitation of the factual situation and justification of the decision. These rules also cover the Administrative Appeals Process.

The Rules of Practice and Procedures section includes some General Definitions and a Schedule of Applicable Forms that is a good indication of the comprehensive nature of the OGRA and the intent of legislation establishing it. Many of the terms defined in the Rules of Practice and Procedures Section are not utilized in the Enabling Legislation, but it is assumed they will be used in the technical Rules & Regulations. The list of application forms covers virtually all activities requiring permits by various countries oil and gas regulatory agencies.

No attempt has been made to include examples of technical Rules & Regulations for the actual control and oversight of oil & gas operations. Such Rules & Regulations, sometime referred to as "Best Operating Methods," are technical in nature and thought to be more in the arena of the engineer or geologist, rather than the lawyer or administrator. Preparation of such technical Rules & Regulations is believed to be outside the current scope of this Model OGRA Concept Paper.

The example transcript (included only with Model OGRA in its training form) is of a contested oil & gas hearing, which offers an example of the conduct of a hearing and this procedure for dispute resolution. This transcript is designed to simply be read, or since it is a word-for-word transcript, used as a basis for role-playing during the presentation of the short-course. The hearing involves a dispute between two oil operators over the establishment of Field Wide Operating Rules for a newly discovered gas field. The hearing transcript identifies a fictitious gas-condensate field known the Goodone Field, but the field and hearing are developed from an actual hearing for a gas field lying in South Texas on the U.S. border with Mexico. The hearing includes the legal issues of determination of Standing, qualification of expert witnesses, cross-examination of such witnesses, and application of the "Hearsay" rule of evidence. The key technical issue in the hearing, the subject of conflicting expert testimony, is the expected drainage radius of a gas well in this newly discovered gas reservoir, and the spacing rules (well density) that would result from such a determination. The transcript package includes the Final Order with its fact summary and reasoning section. The presentation of this Model OGRA can be tailored to fit the audience by selection of a different hearing transcript, such as a pipeline tariff rate-base hearing if addressing pipeline regulators.

One potential area of regulatory control that is not covered in the Model OGRA is the assessment of oil or gas demand and subsequent allocation of required production to meet said demand. This process, generating the term Allowable Production or Proration, requires the state to determine total demand for internal consumption plus exports, and then, assuming there is excess capacity to produce, requires the state to equitably allocate the right to meet this demand to operators, fields, or individual wells. If the Republic of Nefestan engages in such a practice, it would be the OGRA's responsibility to regulate such a program. This allocation of demand process has been used in western countries to minimize waste, and indirectly establish a stable pricing structure. Upon request, the Model OGRA can be expanded to include the demand allocation process.

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# THE CREATION OF OIL & GAS REGULATORY AGENCIES IN CENTRAL ASIA

## INTRODUCTION

In all three Central Asia Republics, Kazakhstan, Turkmenistan, and Uzbekistan, Hagler Bailly has continued to promote the creation and adoption of an independent Oil and Gas Regulatory Agency (OGRA) for each individual country. From our perspective, the OGRA is needed as the backbone for the oil and gas industry to successfully function in a market competitive economy, ensuring a stable regulatory environment for investors. Without independence, or a "one stop" regulatory structure within each government, there will continue to be overt political and industry influence on decision making and jurisdictional contradictions, redundancies, and inefficiencies between and among state and local government apparatuses, translating directly to, at best, cautionary and prudent investments in the industry.

## REPUBLIC OF KAZAKHSTAN

Since the adoption of the Presidential Edict "On Petroleum" in June 1995, there has been great concern about the proper regulation of the oil and gas industry. In the edict, a "Competent Body" is referred to in several articles having jurisdiction over the industry, however in reality there are many Government bodies that have been appointed as the "Competent Body" with specific regulatory functions. In other words, what may be the Competent Body in Article 30 may differ from the Competent Body in Article 39, or what may have been the Competent Body in 1996 is no longer considered to be the Competent Body in 1998. Additionally, the Government has various levels of regulatory jurisdiction, which is not further defined, but supposedly those authorities could be farmed out to other government bodies for purposes of licensing, permitting, inspections, etc.

**Current Situation** Presently, the oil and gas industry does not have an independent OGRA providing oversight of its activities. In fact, nearly every state and several provincial governments have jurisdictional authority. As an example, up to five different state government apparatuses and, depending upon the oblast, several local committees monitor and enforce oil and gas safety regulations. Many investors agree that it is worthwhile to resolve oblast concerns first before approaching the state authorities for licences and contracts, due to the oblast governments ability to politically influence decisions. Sighting

these issues, as pointed out by the oil and gas community of investors and certain state government counterpart officials, Hagler Bailly introduced a draft Law "On the Regulation of Oil and Gas," tailored to the issues and concerns of Kazakhstan. Serious discussion of this concept was initiated on June 15, 1998 at a committee meeting of Gas Transportation and Distribution Issues, whereby Hagler Bailly proposed the consideration of such a draft law and forwarded a written proposal to all of the members of the committee. In a follow-up meeting with Vice-Minister of Energy Abetaev, we were told that our draft law creating an independent OGRA was good, however the Government is not ready to consider such a proposal at this time.

**Supporters versus Detractors** Within the Government of Kazakhstan, most state and provincial entities would not support the creation of an independent OGRA, simply because they will lose regulatory authority over an industry with traditionally monies to pay for licenses, permits, and other fees and fines. Supporters of an OGRA would be at the executive branch levels, such as the Agency for Strategic Planning and Reform (ASPR) and the Committee for Regulation of Natural Monopolies and Protection of Competition (Natural Monopolies Committee), but only if politically and economically properly designed, so that it could be justified. We also believe that KazakhOil and KazTransOil would support the concept of OGRA, since they are subject to the regulatory outcomes of multi-level government decision making.

**Changes in Laws and Decrees** If an OGRA is created by the Government, the following major umbrella laws and decrees will have to be changed: On Petroleum, On Natural Monopolies, On Licensing, and On Protection of the Subsoil. In addition, there are many other specific laws and decrees which allow Government entities regulatory jurisdiction of the oil and gas sector and will consequently need amendments and changes.

**New Laws and Decrees to Create OGRA** Hagler Bailly has proposed the draft Law "On the Regulation of Oil and Gas" to the Government, which creates an independent OGRA, tailored to the needs of Kazakhstan. If this law is adopted in its current draft form, it would be sufficient for the jurisdiction and authorities envisioned.

**Functions That Should Be Transferred to the OGRA From Existing Uzbekistan Government Agencies** The OGRA would assume many of the reporting requirements from the Ministry of Energy, Industry, and Trade (MEIT), the regulation of oil and gas pipelines from the Natural Monopolies Committee, environmental enforcement from the Ministry of Ecology and Natural Resources (MENR), inspection functions from the State Emergency Committee (SEC) and several oblast committees, licensing from the State Inspection Committee (SIC), and other regulatory authorities from a variety of government entities.

**OGRA Funding** As drafted into the proposed law by Hagler Bailly, Article 7.1 states that "The OGRA will be fully funded by registration and user fees, permit and information service fees, fines based on enforcement operations costs, and other charges as set forth in the

oil and gas regulations Permits, information service fees, fines, and other related charges are required to reflect the actual cost incurred by the OGRA in performing these functions and should not be the primary source of revenue for the OGRA Registration and user fees are the primary source of funding for the OGRA and shall consist of a surcharge included in all transportation and distribution rates These fees may be amended, effective upon 60 days notice by public hearing, and after publication in both the local and national news media These fees shall reflect their associated costs and shall be applicable to all registered persons with oil and gas activities in the Republic of Kazakhstan All such user fees, service fees, fines, and related charges collected shall be dedicated to funding the OGRA and deposited in a separate account, managed by the Ministry of Finance The OGRA shall undergo the same budgetary process as any other state ministry ”

**Political Issues** There are several political issues in the regulatory landscape that would have to be addressed and favorably resolved in order to create an independent OGRA Besides the issue of “independence” in decision making, which is certainly an important concern, the relationship between the OGRA and the Natural Monopolies Committee will have to be resolved, and the Government would have to agree that the OGRA would have jurisdictional authority of the oil and gas industry Other key players in this process would include certain oblast governments, MEIT, MENR, SEC, SIC, ASPR, KazakhOil, and KazTransOil

**Realistic Possibility for Independence** We believe that independence in decision making is critical for attracting world class investment in the oil and gas sector In fact, an independent OGRA will not set a precedence in Kazakhstan In the past year, an independent Board for the Bank of Kazakhstan has been established under similar circumstances and the Government is currently evaluating the need for an independent State Regulatory Commission to regulate the electric power sector

**Benefits to Country and Industry** Clearly the implementation of an independent OGRA benefits the interests of the Republic of Kazakhstan and the investors in industry activities It ensures fair and reasonable decision making, giving confidence to long term investors in exploration and development A stable predictable regulatory environment in the oil and gas sector should translate directly into greater production of resources, more revenues to the state and local budgets, creation of new jobs, attraction of start-up businesses and services, and an overall healthier economy for the country

**Investor Support** At this time there are over 35 foreign oil and gas companies with representative offices located in Kazakhstan Several of these companies have begun operations and are literally plagued by the quagmire of Government multi-agency regulation of the industry As a group and individually, the representative companies of the Kazakhstan Petroleum Association support the concept of an independent OGRA as proposed by Hagler Bailly

## REPUBLIC OF TURKMENISTAN

**Current Situation** The new Petroleum Law, adopted December 30, 1996, and effective in March, 1997, is the enabling legislative basis for the oil and gas regulatory agency, the Competent Body. Article 5 of the Law prescribes the main functions of the Competent Body including rule-making, as well as most commercial aspects of the governmental interests in their petroleum reserves. The Competent Body is currently engaged in a rule-making effort to develop rules complying with the uniform standards of international practice. Draft rules are now in the hands of the Competent Body staff, the Expert Council which oversees the activities of the Competent Body, and industry representatives active in petroleum operations in Turkmenistan. These rules will be considered, debated, possibly amended and ultimately in one form or another become the law of the land.

**Supporters versus Detractors** Understandably, the creation of a new agency for the regulation of oil and gas has necessarily shifted powers which theretofore had resided in other agencies. By carrying their debate and advocacy to the Expert Council, essentially the Board of Directors of the Competent Body, those agencies today are fighting a battle to remain in control of their authority. The essence of their arguments has some merit: that the Competent Body does not possess a staff competent and knowledgeable in matters of the oil and gas industry. Indeed, the Competent Body itself has shown more interest in development of the commercial aspects of its job and has shown only begrudging interest in developing the regulatory aspects of the agency's duties. Principal among the agencies wishing to maintain their foothold in the regulation of oil and gas is the office of the Main State Inspection for Standards, Metrology, Protection of Underground Resources and Safe Working Conditions. Similarly, the Ministry of Nature and Environment seeks to remain in control of environmental protection relating to petroleum operations. Other agencies—notably the local velayat organizations—also wish to remain in a position of power over oil and gas.

**Changes in Laws and Decrees** Perhaps the most serious defect in the new Petroleum Law is its joinder of the regulatory aspects of the oil and gas industry with the commercial aspects. Thus the Competent Body is both the negotiator of Production Sharing Agreements with firms wishing to engage in petroleum operations in Turkmenistan, and the regulator of those same firms. These roles should be separated if not into separate agencies, at least into two distinct and independent arms of the Competent Body. Also, some clarity should be brought to the function to be played by "licenses" as opposed to "contracts." Both are to be issued at the same time, both can provide for the various restrictions, limitations and requirements of a particular firm engaging in petroleum operations, and the distinction between the two is blurred.

**New Laws and Decrees to Create OGRA** Legislation would need to be adopted providing for the appointment of regulatory commissioners separate and distinct from the Expert

Council which presently oversees the Competent Body To insulate these regulatory commissioners from the potential of being affected by political influences the law should provide for specific terms without removal except for serious malfeasance in office Further to clarify the nature and role of administrative agencies in Turkmenistan, something in the nature of an Administrative Procedures Act should be adopted specifying rule-making procedures, adjudication procedures, appellate procedures, and boundaries for the imposition of penalties and sanctions

**Functions That Should Be Transferred to the OGRA From Existing Turkmenistan Government Agencies** The Competent Body should assume the safety inspection function from Main State Inspection, perhaps by absorbing their Inspectors The Competent Body should be responsible for information gathering and distribution Actual conduct of environmental audits be assumed by the Competent Body, with the Ministry of Nature charged only with a responsibility to assist the Competent Body in making environmental audits during an interim period Other Competent Body functions and responsibilities, such as licensing, permitting, and dispute resolution, have been handled by a variety of agencies, including some local or velayat entities and these should all be absorbed into the "one-stop-shop" Competent Body

**OGRA Funding** The Model Production Sharing Agreement provides for the Competent Body to receive the Government of Turkmenistan share of royalties, production, and other receipts due to the country on behalf of petroleum operations Some statutory basis for the levying of fines, and penalties should be enacted

**Political Issues** As with most agencies of the Government of Turkmenistan, the President currently plays a major—indeed, dominant—role in the overseeing of the activities of the agency

**Realistic Possibility for Independence** It is conceivable that a Competent Body regulatory arm guided by commissioners appointed for fixed terms and removable for only major malfeasance in office could exercise its powers independent from the political process and life of the country That said, history has shown that the current President of Turkmenistan will not any time soon give up any power

**Investor Support** The private investors at present in Turkmenistan include Mobil Oil Corporation of the United States, Monument Resources Petroleum, a United Kingdom firm and Dragon Oil, an Irish firm The national oil company of Malaysia, Petronas, is also engaged in petroleum operations within Turkmenistan Hagler Bailly has generated good relations with Mobil and Monument, but has had little connection with Dragon Oil whose small operations are in a remote location on the Caspian Sea Hagler Bailly has also cultivated a good relationship with Petronas

## REPUBLIC OF UZBEKISTAN

The implementation of an OGRA in Uzbekistan in keeping with the Model OGRA Concept Paper is both aided in some ways, but complicated in other ways, by our eleven month effort to draft and push for enactment of the Uzbekistan Petroleum Law. The Uzbekistan Petroleum Law does contain language creating an OGRA, identified in the Law as the Petroleum Regulatory Authority. This legislative language creating the Petroleum Regulatory Authority is very similar to the language used in the Enabling Legislation of the Model OGRA Concept Paper. However, the Uzbekistan Petroleum Legislation also reduces to writing the Republic's national oil & gas policy, something that no other OGRA creating legislation (which was reviewed in preparation of the Model OGRA Concept Paper) attempts to accomplish. In modifying the Deliverable (generic version) OGRA Concept Paper for Uzbekistan, it was necessary not only to address local conditions, but to also avoid conflicts with the previously submitted proposed Petroleum Law.

**Current Situation** At the present time, no one other than the National Corporation for the Oil and Gas Industry, Uzbekneftegaz, conducts oil & gas operations in Uzbekistan. Uzbekneftegaz is self-policing in many areas that would be the responsibility of the OGRA, including inspection, information control, regulation of pipeline monopoly, production levels, and legal rights and consequences. Uzbekneftegaz does have to comply with several other state agency regulations. They have to undergo an environmental review and receive a permit from the State Committee for Nature Protection, before commencing drilling operations in a new area. They have to receive a Mining Allotment, authorizing them to operate in a subsurface area identified by geographic coordinates and depth, from the State Committee for Mining and Technical Supervision (safety concerns). Uzbekneftegaz has to comply with Uzbekistan legal process and procedures. The international arbitration procedures outlined in the Model OGRA, are as always limited to foreign investors.

**Supporters versus Detractors** Identifying supporters and detractors is extremely risky, since it is quite easy to be misled by a government counterpart, who is not correctly representing their superior's viewpoint (knowingly or unknowingly). In identifying supporters and detractors of an OGRA, we rely on our experience in who is supporting and who is resisting the new Petroleum Law in Uzbekistan. Clear and long-time supporters of the proposed Law include Uzbekneftegaz, the State Committee for Geology, and the State Committee for Mining and Technical Supervision. This doesn't mean Uzbekneftegaz supports every detail of our established OGRA, only the concept. It now appears that we have won recent support from the Ministry of Justice, the Chairman of the Parliamentary Committee for Industry, Energy, Transportation, Communication, and Public Services, and at least consideration from a previous detractor in the State Committee for Nature Protection. Less is known about the specific position of the State Committee for State Property and Entrepreneurship Support, but since they are seeking our support on efforts for the Restructuring and Commercialization of Uzbekneftegaz, we probably can anticipate their

support At the present time, the chief detractor on the Law appears to be the Tax Division of the Ministry of Finance, but their objections are primarily not related to the OGRA In the way of critical statements, what we hear continuously is “Your Law Conflicts With Existing Laws ” It is difficult to determine whether this supposed conflict is with their constitution, existing legislation, existing decrees of the President or Cabinet of Ministers, or just the current way things are done

**Changes in Laws and Decrees** In drafting legislation to create the Petroleum Regulatory Authority in the proposed Uzbekistan Petroleum Law, we have tried to comply with existing laws where possible As noted immediately below, we have specifically complied with the Republic’s Constitution in creating, appointing Board Members, and staffing the OGRA We have also specifically complied with the current legislation on Foreign Investment in drafting the legal rights and remedies of foreign oil companies to resolve disputes with the OGRA through international arbitration Undoubtably the power and responsibilities given to the Petroleum Regulatory Authority will conflict with, and require changes in, the Uzbekistan Law on Concessions (OGRA licensing procedures), Law on the Subsoil (OGRA power to authorize use of the subsurface), Law on Nature Protection (OGRA right to ensure protection of the environment), and Law on Land Usage (OGRA, but more specifically Petroleum Agreements authorized by the proposed Petroleum Law, right to allow activities on land) Some of these conflicts have been accommodated for in our draft of the Law Others will undoubtably arise Most of these conflicts are as to “Who Does What,” and do not concern the larger issues of actual rights or prohibitions

**New Laws and Decrees to Create OGRA** It is clear that under the Uzbekistan Constitution, the OGRA as a new administrative body, will be created by an edict of the President that is then confirmed by the Oliy Majlis Less clear is the procedure for appointment of the OGRA Board Members It is considered desirable, as outlined in the Enabling Legislation of the Model OGRA Concept Paper, to have the President appoint the members, subject to confirmation by the legislature However, under the Uzbekistan Constitution such appointment procedure is reserved for Deputy Prime Ministers, the Cabinet of Ministers, Procurator-General (Attorney General), Judges of the High Courts, Chairman of the Central Bank, and Chairman of the State Committee for Nature Protection (as this Committee has the unique position of having been created in the Constitution) In all discussions of the position of OGRA Board Members, the level suggested has been that of either Ministers or First Deputy Ministers Both Ministers and First Deputy Ministers are appointed by the Cabinet of Ministers (the President is also the Chairman of the Cabinet of Ministers), but do not require Oliy Majlis confirmation It appears we are going to have to accept this appointment process Legislation creating the OGRA will grant it the right to enact Regulations concerning Petroleum Operations, that will have the effect of law upon registration by the Ministry of Justice

**Functions That Should Be Transferred to the OGRA From Existing Uzbekistan Government Agencies**

The OGRA will assume the inspection function from Uzbekneftegaz, perhaps by absorbing their Inspection Division. The OGRA will assume regulation of main pipelines from Uzbekneftegaz. The OGRA will be responsible for information gathering and distribution, but Uzbekneftegaz will continue to handle its own information needs. Current intent is that actual conduct of environmental audits will remain in the hands of the State committee for Nature Protection, with the OGRA charged only with a responsibility to ensure the environmental audits are carried out. The OGRA could logically assume the safety of the subsurface function from the State Committee on Mining and Technical Supervision, perhaps by absorbing this Committee's Petroleum Division. Other OGRA functions and responsibilities, such as licensing, permitting, and dispute resolution, will be new functions that do not usurp any existing functions of other authorities in the oil and gas sector.

**OGRA Funding** The idea of OGRA's self-funding has generally been acceptable to those with whom the measure was discussed in the Petroleum Law Work Group. A question did arise concerning the use of fines for violations being used as part of this funding. A previous experience with an agency in Uzbekistan levying heavy fines for its own enrichment, led to a requirement that such fines be paid into the General Revenue Fund. It has been agreed to fund the OGRA from just fees for services, with fines going to the General Revenue Fund. The Law does provide for initial start-up funding for two years from the General Revenue Fund.

**Political Issues** One of the major political issues is whether or not Kayim Khakkulov, Deputy Prime Minister and Chairman of Uzbekneftegaz, will also be appointed Chairman of the OGRA. This is a potential problem that first appeared in the Clifford Chance Draft No. 4 of the proposed Law. The conflicts and lack of independence that would result from this occurrence are obvious. A resulting political issue that will occur, assuming Khakkulov is not Chairman, will be the first time Uzbekneftegaz receives an OGRA order not to their liking. A second major political issue is the potential conflict with the State Committee for Nature Protection, which has a unique position in the Uzbekistan government by virtue of its being created in the Constitution. An additional major political issue concerns conflicting regulations that may be issued by the OGRA, although registration with the Ministry of Justice is supposed to identify and reconcile such conflicts. Other possible areas of political conflict include position level of OGRA Board Members, cronyism in Board appointments, conflicts with local or provincial governments.

**Realistic Possibility for Independence** It is suspected that Uzbekneftegaz sees the OGRA as an additional arm of its own operations, which would definitely hinder independence. If international oil companies begin to appear in great numbers, the need for an independent regulatory authority to control all these competing companies would be more acceptable. An independent OGRA is hard to justify if Uzbekneftegaz is the sole operator in the industry.

The argument that an independent OGRA alone will attract international oil companies in large numbers to Uzbekistan is weak. The best situation might be for different factions (for example, President Karimov, Deputy Prime Minister Khakkulov, local Environmentalists, and so forth) to each succeed in appointing a Board Member, and the Board Members would among themselves realize they must cooperate, and strive to function independently.

**Benefits to Country and Industry** The introduction of an independent OGRA is an integral and necessary part of a successful picture of the Uzbekistan Oil & Gas Industry in the future. Other essential requirements are privatization efforts in Uzbekneftegaz that lead to more efficient industry participants. Also, reform of the existing legal and tax framework is needed to encourage private investment. Entrance into a world energy market, that has stabilized prices at reasonable levels, should allow Uzbekistan to develop export markets in its near neighbors. What will the Uzbekistan Oil & Gas Industry look like in ten years? **Most Optimistic Answer** A new Petroleum Law is passed creating an OGRA, along with favorable tax revisions establishing proper legal and fiscal framework to attract foreign private investment. Uzbekneftegaz is further privatized, generating five or six regional producing companies that are allowed to compete with each other, and attract varying degrees of foreign interest and private investment. The Uzbekneftegaz headquarters company continues to enjoy certain privileges, and forms several joint-ventures with foreign oil companies on major projects. A number of domestic, privately owned oil companies are formed, two or three survive, and attract foreign private investment. In addition, several foreign oil companies take independent positions, probably in association with a consortium building a new pipeline to a particular market, and one new grass-roots refinery is constructed.

An overview of a stable and successful Uzbekistan oil & gas industry at that point in ten years would show ten to 15 companies competing within the domestic oil & gas industry, oil and condensate production of 16 million tons per year, with export of five million tons per year of oil products to Kazakhstan (product for oil swap), Tadjikistan, Kyrghyzstan, and on to China, gas production of 75 billion cubic meters per year, with export of eight to ten billion cubic meters to neighbors to the South and East, the only upside to this scenario would be a major gas pipeline to the South or East to a large market in India, or China, or interest of a top-tier international oil company (Shell) in Uzbekistan who muscles Uzbekistan gas through GazProm to Europe, in which case domestic gas production hits 85 billion cubic meters per year with 20 billion being exported. This domestic oil and gas picture will require an active OGRA to regulate the successful, though still moderately small, industry.

**Investor Support** There are no private investors at present. Of the "potential" investors, UNOCAL and Shell are the only companies to have shown any real interest in USAID efforts on the Uzbekistan Petroleum Law or the creation of an Oil & Gas Regulatory Authority. Support from either of these companies, particularly Shell, would undoubtedly have a positive effect on the Uzbekistan government.

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# STATUTES OF THE REPUBLIC OF NEFTESTAN

*Current through the close of the General Assembly Session — December 1997*

## CHAPTER 2: OIL & GAS

### PREAMBLE

The General Assembly of the Republic of Neftestan, acting under its Constitution dated October 1, 1991, does hereby create and establish the Oil & Gas Regulatory Agency. This Agency is created in order to conserve the natural resources of the Republic of Neftestan, protect the natural environment, and maximize the benefits of such oil & gas resources to the citizens of the Republic.

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- Article 2 Agency Members
- Article 3 Agency Responsibilities
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- Article 5 Agency Funding
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### PROVISIONS

#### Article 1 Empowerment

- 2 1 1 The Oil & Gas Regulatory Agency is hereby empowered to regulate all oil & gas activity within the territorial boundaries of the Republic of Neftestan. The Oil & Gas Regulatory Agency is granted exclusive jurisdiction, authority, and power over all persons and property, public and private, involved in exploration, drilling, production, gathering, processing, storing, transporting, refining, and marketing of oil & gas and their resulting products, and to the protection of the natural state of the environment from contamination by any oil & gas activity. The Oil & Gas Regulatory Agency shall

have all such legal capacities as are necessary for the exercise of its power and the performance of its duties and functions

2 1 2 All Petroleum Operations within the territory of the Republic of Neftestan shall be regulated by the terms of this Law, and the Constitution of the Republic of Neftestan In the event of conflict between this Law and other current legislation in the Republic of Neftestan, the terms of this law are assumed to apply, subject only to judicial review

2 1 3 Should an international treaty to which the Republic of Neftestan is a party establish principles of conduct dealing with Petroleum Operations which are in conflict with the terms of this Law, the terms of the international treaty shall apply

2 1 4 No person shall conduct oil & gas activity in or upon the territory of the Republic of Neftestan without a License, and then only in accordance with the Rules & Regulations promulgated by the Oil & Gas Regulatory Agency

## **Article 2 Agency Members**

2 2 1 The Oil & Gas Regulatory Agency's Executive Board shall consist of three members to be appointed by the President upon the advice and consent of the Upper House of the General Assembly, each to serve a staggered six-year term

2 2 1 1 In order to effect the staggered terms, initial appointments will be for six years for Position A, four years for Position B, and two years for Position C Thereafter all appointments or re-appointments shall be for full six-year terms No Oil & Gas Regulatory Agency member shall serve more than two full six-year terms

2 2 2 The members of the Oil & Gas Regulatory Agency shall possess skills, professional training, expertise, experience, and qualifications in the oil & gas sector, in order to properly assess all issues and concerns, and make fair, reasonable, and independent decisions Each member of the Oil & Gas Regulatory Agency shall be a citizen of the Republic of Neftestan, or have Resident Work Visa status in the Republic of Neftestan

2 2 3 The Chairman of the Oil & Gas Regulatory Agency shall be selected from among its own numbers by majority vote of the three members for a two-year term, and is to be responsible for the administration and management of the affairs of the Oil & Gas Regulatory Agency

2 2 4 In the making of all decisions, each member of the Oil & Gas Regulatory Agency shall have the equal voting right of one vote, and a majority shall determine the course of action

2 2 5 Members of the Oil & Gas Regulatory Agency can only be removed from office by decision of the President of the Republic of Neftestan in recitation of one or more of the following

2 2 5 1 Inability to perform duties due to health based upon the opinion of a qualified medical doctor,

2 2 5 2 Conviction of criminal activities under the laws of the Republic of Neftestan,

2 2 5 3 Serious or systematic violation of the Oil & Gas Regulatory Agency's administrative rules or the inability to perform the professional duties required of a Agency member,

**OR**

2 2 5 4 Loss of citizenship or residential status in the Republic of Neftestan

2 2 6 The Chairman of the Oil & Gas Regulatory Agency shall receive the same compensation as a Minister, and shall enjoy all of the privileges of a Minister. The other two members of the Oil & Gas Regulatory Agency shall receive the same compensation as a First Deputy Minister, and shall enjoy all of the privileges of a First Deputy Minister. The staff of the Oil & Gas Regulatory Agency shall be evaluated, employed, and serve under the Government Job Classification System of the Republic of Neftestan, as established for other major departments. Staff positions shall not be the subject of political appointments.

2 2 7 Members and staff of the Oil & Gas Regulatory Agency shall have no interest, financial or otherwise, direct or indirect, in any oil & gas activity under the control of the Oil & Gas Regulatory Agency.

**Article 3 Agency Responsibilities**

2 3 1 The Oil & Gas Regulatory Agency shall have the authority and the duty to administer and regulate oil & gas activities upon the territory of the Republic of Neftestan.

2 3 2 The Oil & Gas Regulatory Agency shall issue a License to a person to conduct oil & gas activity on a certain area of land or inland waterway only where the person 1) has a valid contract or agreement with the mineral interest owner, or in the case of state land that state agency exercising jurisdiction over that area, to conduct such oil & gas operations, and 2) is in good standing with the Oil & Gas Regulatory Agency and in compliance with its Oil & Gas Rules & Regulations, and all other laws of the Republic of Neftestan. A License is required prior to making any application to the Oil & Gas Regulatory Agency for permits for specific operations.

- 2 3 3 The Oil & Gas Regulatory Agency will establish procedures for the collection, storage, and dissemination of data, records, and information regarding all oil & gas activities conducted within the Republic of Neftestan
- 2 3 3 1 All person engaged in activities in the oil & gas industry within the territory of the Republic of Neftestan shall provide to the Oil & Gas Regulatory Agency all geochemical, geophysical, geological, technical, and economic data, maps, samples, and required reports in accordance with the Oil & Gas Rules & Regulations
- 2 3 3 2 Non-confidential data will be retained and stored for a period to be specified by the Oil & Gas Regulatory Agency in the Oil & Gas Rules & Regulations The Oil & Gas Regulatory Agency will make such non-confidential information available to the general public, including preparation of routine reports and studies to summarize the submitted data as to geographic areas, geologic formations, geologic trends, and time periods
- 2 3 3 3 Members and staff of the Oil & Gas Regulatory Agency shall maintain in secrecy all Confidential Information, as defined by the Oil & Gas Regulatory Agency, that comes into their possession or to their attention during the performance of their duties Release of such Confidential Information, except as required by law, by the members or staff of the Agency shall constitute a violation of this statute and be punishable under both the criminal and civil penalties of the Republic of Neftestan
- 2 3 4 The Oil & Gas Regulatory Agency shall prepare and maintain maps denoting the location of all permitted oil & gas activities, specifically but not limited to all wells, pipelines, and processing and storage facilities, located within the territory of the Republic of Neftestan
- 2 3 5 The Oil & Gas Regulatory Agency shall develop, propose, adopt, publish, and enforce Oil & Gas Rules & Regulations relating to oil & gas activities within the territory of the Republic of Neftestan Upon registration with the Ministry of Justice, these Rules & Regulations shall have the effect of law in the Republic of Neftestan
- 2 3 6 The Oil & Gas Regulatory Agency shall issue permits for all operations of a critical nature, as defined by the Oil & Gas Rules & Regulations, including but not limited to 1) drilling of a well, 2) initial completion of a well for production or injection purposes, 3) re-completion of a well for production or injection purposes, 4) temporary abandonment of a well, 5) permanent abandonment of a well, 6) disposal of any produced fluid, 7) disposal of any fluid introduced into a well that is later recovered, 8) construction of any pipeline other than infield gathering lines, 9) erection of any facility for the storage of produced fluids (either above or below the surface of the

- land), and 10) erection of any facility for the preparation, processing, or refining of produced fluids or their resulting products
- 2 3 7 The Oil & Gas Regulatory Agency will ensure that environmental investigations are conducted in accordance with the laws of the Republic of Neftestan, as regards any area on the territory of the Republic of Neftestan that is involved in oil & gas activities
- 2 3 7 1 The Oil & Gas Regulatory Agency shall enforce all environmental protection statutes legislated by the Republic of Neftestan, and all pollution control regulations promulgated by itself or any other state agencies as they relate to oil & gas activities
- 2 3 7 2 The Oil & Gas Regulatory Agency shall regulate the injection of any substance in to any sub-surface formation, whether for the purpose of testing, disposal, or production enhancement
- 2 3 8 The Oil & Gas Regulatory Agency shall have the authority and the duty to designate concentrated areas of oil or gas production as a Field, and to issue Field-Wide Rules in order to conserve natural resources and maximize their recovery
- 2 3 9 If the state determines that an oil or gas pipeline constitutes a Natural Monopoly requiring control and administration to protect the public interest as a Common Carrier, the Oil & Gas Regulatory Agency will undertake the regulation of that pipeline
- 2 3 9 1 The Oil & Gas Regulatory Agency shall insure that any duly licensed person involved in oil & gas activities has access to the use of such pipelines
- 2 3 9 2 The Oil & Gas Regulatory Agency shall establish fair and equitable tariff rates for utilization of such pipelines based on a cost-of-service methodology
- 2 3 9 3 The Oil & Gas Regulatory Agency shall require through established Rules & Regulations the submission of routine reports of actual and forecasts concerning purchases and sales by the pipeline operator for its own account, in-put and off-take as transportation service, segment tariff rates, etc , from the pipeline operators Records of pipeline operations are subject to periodic audit as established by the Oil & Gas Regulatory Agency
- 2 3 10 The Oil & Gas Regulatory Agency shall have the authority and the duty to at all time go upon the land and inspect any area or facility where oil & gas activities are being conducted, in order to ensure that operations are in accordance with this law and all other laws of the Republic of Neftestan Such inspections shall have complete access

to all exploration, drilling, production, treating, processing, storage, and transportation facilities, all data and information files, and other sites related to oil & gas activities

2 3 11 The Oil & Gas Regulatory Agency shall resolve conflicts and disputes of a technical nature through an adjudicatory type process

2 3 12 The Oil & Gas Regulatory Agency, having due regard for Good Oil Field Practice, may issue specific directions for compliance with the Oil & Gas Rules & Regulations in such a manner as would reflect the actions of a prudent operator

2 3 13 The Oil & Gas Regulatory Agency shall have the authority and the duty to ensure that other relevant state agencies provide the oil & gas operator with all necessary permits and authorizations required during the course of their oil & gas activities

#### **Article 4 Transparency and Fairness**

2 4 1 All decisions of the Oil & Gas Regulatory Agency shall be made and announced at open and public hearings, which has allowed for the airing and collection of comments by the public and all interested parties At such hearings, all persons shall have the right to present prepared statements, testimony from expert witness, cross-examine expert witnesses from adversarial positions, introduce printed matter (maps), and to have such material presented be made part of the permanent record

2 4 1 1 Hearings of a routine or recurring nature shall be held at regularly scheduled times to be announced by publication in relevant newspapers, trade journals, and Agency postings

2 4 1 2 Special hearings for specific purposes shall be held only after 10-day notice to the public by publication, and by process of service notice to declared parties of interest

2 4 1 3 A record of the proceedings at all hearing shall be made, and be available for examination at the Oil & Gas Regulatory Agency Headquarters during normal hours of business

2 4 2 All decisions of the Oil & Gas Regulatory Agency shall be made through published orders, which will include a recitation of the key facts, assumptions, opinions, and reasoning in justification of such decision

2 4 3 Members of the Oil & Gas Regulatory Agency are covered under the “Undue Influence” Statues of the Republic of Neftestan, and as such any person who communicates with them or attempts to communicate with them for the purposes of

wielding undue influence or persuasion is subject to criminal and civil penalties as prescribed by law

- 2 4 4 It is the intent of the General Assembly that the Oil & Gas Regulatory Agency be an independent administrative and regulatory agency, free from short-term political pressures, and able to function objectively in its decision making Staff employment and advancement will be on the merit system under the Government Job Classification Code of the Republic of Neftestan, and no political appointments will be made to this staff

#### **Article 5 Agency Funding**

- 2 5 1 The Oil & Gas Regulatory Agency will be fully funded by permit and information services fees, fines, and other charges as set-forth in the Oil & Gas Rules & Regulations These fees may be amended, effective upon 60 days notice by public hearing and after publication in both the local and national news media These fees shall reflect their associated cost to deliver such services and shall be applicable to all persons engaged in oil & gas activities on the territory of the Republic of Neftestan All such fees and fines collected shall be dedicated to funding the Oil & Gas Regulatory Agency and deposited in a separate account, managed by the Ministry of Finance The Oil & Gas Regulatory Agency shall undergo the same budgetary process as any other state ministry
- 2 5 1 1 Funding for the initial two years of operation of the Oil & Gas Regulatory Agency shall be through the general revenue fund of the Republic of Neftestan

#### **Article 6 Judicial Review**

- 2 6 1 Any person who has suffered an injury in fact due to the Oil & Gas Regulatory Agency acting outside the boundary of its authority and discretion, and who has exhausted all administrative remedies, may petition the Court of Civil Appeals for the Republic of Neftestan for judicial review of such action
- 2 6 1 1 In deference to the independence of the Oil & Gas Regulatory Agency, judicial review will be limited to questions of law The Oil & Gas Regulatory Agency as a finder of facts shall have its decisions reviewed only as to a requirement for substantial evidence to be in support of its decision
- 2 6 1 2 Judicial review of the Oil & Gas Rules & Regulations promulgated by the Oil & Gas Regulatory Agency is limited and subject to revocation only upon a finding of such Rules & Regulations being arbitrary, capricious, or outside of the legislated authority of the Agency

- 2 6 1 3 The sole remedy available to the Court of Civil Appeals is to vacate the order in question, and remand for reconsideration to the Oil & Gas Regulatory Agency
- 2 6 1 4 The Oil & Gas Regulatory Agency or any person judge to have standing in a matter before the Court of Civil Appeals may appeal any ruling of this court to the Supreme Court of the Republic of Neftestan

**Article 7 International Arbitration**

- 2 7 1 Any dispute arising between the Oil & Gas Regulatory Agency and a foreign national or entity concerning the interpretation or performance of the terms of any contract, license, or permit, or the application of the Oil & Gas Rules & Regulations that cannot be settled between the parties, shall be submitted to international arbitration. In any such arbitration proceeding, the state shall be represented by the Oil & Gas Regulatory Agency
- 2 7 1 1 The state hereby consents, and by making application for a License all foreign persons agree, to submission of such disputes to the International Centre for Settlement of Investment Disputes pursuant to the Convention of Settlement of Investment Disputes between States and Nationals of Other States, OR
- 2 7 1 2 By such other mode of international arbitration as may be provided for in individual contracts or agreements involving the Republic of Neftestan

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# RULES OF PRACTICE AND PROCEDURE

## SUBCHAPTER A DEFINITIONS AND GENERAL PROVISIONS

### 1 1 Purpose, Scope and Conflict with Special Rules

#### (a) Purpose

These rules provide a system of procedures for practice before all divisions of the Oil & Gas Regulatory Agency of the Republic of Neftestan that will enable the just disposition of proceedings and public participation in the decision-making process

#### (b) Scope

These rules govern the institution, conduct and determination of Agency proceedings required or permitted by law, whether instituted by order of the Agency or by the filing of an application, complaint, petition or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify or otherwise alter the jurisdiction, powers or authority of the Agency or the substantive rights of any person or agency. These rules apply to all proceedings before the Agency or any of its divisions or branches.

#### (c) Conflict with Special Rules

The Agency may adopt special rules of practice and procedure to be applicable only to proceedings before a specific division. Special rules may be adopted when a division has unique requirements which are not accommodated by these rules. When a special rule is in conflict with these rules, the division's special rule shall control.

### 1 2 Definitions

The following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise.

*Agency* – The Oil & Gas Regulatory Agency of the Republic of Neftestan, or a state board, agency, department, or officer having statewide jurisdiction, other than the courts and institutions of higher education, which makes rules or determines contested cases.

**APTRA** — The Administrative Procedure and Register Act, of the Republic of Nefestan

**Authorized representative** — A person or persons representing anyone before the Agency pursuant to these rule

**Contested case** — A proceeding in which the legal rights, duties, or privileges of a party, are to be determined by the Agency after an opportunity for an adjudicatory hearing

**Deputy Director** — An administrator appointed by the Agency in charge of a division or section within the Agency. When these rules delegate authority to a Deputy Director or the appropriate Deputy Director, that authority shall be deemed delegated to the Deputy Director of the division which is responsible for the disposition of the matter at issue. A grant of authority to a Deputy Director by these rules shall not be construed to deny the Agency the power to exercise the authority so granted. Action taken by a Deputy Director under authority of these rules is subject to review by the Agency.

**Director** — One of the appointed members of the Agency

**Division** — An administrative subdivision of the Agency, including the operating divisions (i.e., Oil and Gas, Transportation/Gas Utilities, Surface Mining, and Liquefied Petroleum Gas) and the Legal Division

**Examiner** — A person appointed by the Agency to conduct a specific hearing

**Final Order** — The Agency's final disposition whether affirmative, negative, injunctive, or declaratory

**Party** — Each person or entity named or admitted as a party

**Person** — An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization other than an agency

**Pleading** — A written document submitted by a person, an agency, or their representative setting forth allegations of fact, legal arguments, claims, requests for relief, or other matters. Pleadings may take the form of applications, petitions, complaints, protests, exceptions, replies, motions, responses or answers, or other requests for action.

**Proceeding** — A formal hearing, investigation, inquiry, or other fact-finding or decision-making procedure. It may be rulemaking or non-rulemaking.

**Protested Contested Case** — A contested case in which a party appears and contests or opposes the relief sought in the application, petition, or complaint.

**Register** — The Nefestan Registry as established by Act of the General Assembly, and maintained by the Ministry of Justice

**Rule** — An Agency statement of general applicability that implements, interprets or prescribes law or policy, or that describes the Agency's procedure or practice requirements. The term includes the amendment or repeal of a rule but does not include statements concerning only the internal management or organization of the Agency and not affecting private rights or procedures

**Rulemaking proceeding** — A proceeding to implement a new rule or to amend or repeal an existing rule as provided in the definition of "rule" set forth in this section

### **1 3 Suspension of Rules and Waiver of Fees**

- (a) The Agency may suspend the operation of one or more of its general or special rules of practice and procedure if it finds that there exists a public emergency or imperative public necessity
- (b) The Agency may waive any fee established by one or more of its general or special rules of practice and procedure for good cause shown, except those fees required by statute

### **1 4 Violation of Procedural Rules**

In addition to any other penalties authorized by law or by Agency rule, the violation of any general or special rule of practice and procedure shall be sufficient cause for the Agency, after notice and hearing, to enter an order holding the offender in contempt or subjecting the offender to just, reasonable, and lawful disciplinary action

### **1 5 Conduct and Decorum**

Parties, authorized representatives, witnesses, and other participants in Agency proceedings shall conduct themselves with proper dignity, courtesy, and respect for the Agency and its Directors, Deputy Directors, the Examiner, and all other participants. Disorderly conduct will not be tolerated. All authorized representatives shall observe the standards of ethical conduct prescribed for their professions or for attorneys at law. A violator of this rule may be excluded from the proceeding by the Examiner for such period as is just and may be subject to such other just, reasonable, and lawful disciplinary action as the Agency may prescribe. Broadcasting, televising,

recording, or photographing of a proceeding may be allowed when such action will not unduly distract participants or impair the dignity of the proceeding

**1 6 Ex Parte Communications**

Ex parte communications are prohibited in contested cases as provided in the Administrative Procedure and Register Act of the Republic of Neftestan

**1 7 Testimony under Oath or Affirmation**

Testimony in all contested cases shall be presented under oath or affirmation administered by an Examiner, Director, or Court Reporter

**1 8 Computation and Extensions of Time**

- (a) In computing any period of time prescribed or permitted by a Director, the Examiner, a rule or an order of the Agency, or any applicable statute, the day of the act, event, or default from which the period of time begins to run shall not be included, but the last day of the period being computed shall be included, unless it is a Saturday, Sunday, or an official state holiday, in which event the period shall continue to run until 5 00 p m on the next day that is not a Saturday, Sunday, or an official state holiday except as otherwise provided by statute Saturdays Sundays and official state holidays shall not be counted for any purpose in any time period of five days or less in these rules
- (b) Unless otherwise provided by statute or special rule, the time for filing any pleading or other document may be extended upon the granting of a motion for extension of time Except for good cause shown, the motion shall be filed with the examiner or the Agency prior to the applicable deadline The motion shall show that there is good cause for an extension of time and that the need for the extension is not caused by the negligence, indifference, or lack of diligence of the person, party or representative filing the motion A copy of any such motion shall be served upon all parties of record contemporaneously with its filing

**1 9 Exceptions**

The Agency, the appropriate Deputy Director, or the Examiner may grant exceptions to the provisions of this part upon a showing of good cause and if necessary in the interest of justice

## **SUBCHAPTER B: PLEADINGS**

### **1 21 Petition for Adoption of Rules**

- a) Any interested person or agency may petition the Agency requesting adoption of a rule. Petitions shall be in writing, should be filed with the appropriate division Deputy Director, and shall comply with the following requirements
  - (1) Each petition must state the name and address of the petitioner
  - (2) Each petition shall include
    - (A) a brief explanation of the proposed rule,
    - (B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any,
    - (C) a statement of the statutory or other authority, under which the rule is proposed to be promulgated, and
    - (D) a justification for adoption of the rule
- (b) The appropriate Deputy Director shall review all petitions for compliance with this section. The petitioner shall have the right to file a corrected petition which complies with the requirements of this section.
- (c) Upon receipt of a petition which complies with the requirements of this section, the appropriate Deputy Director shall present the petition to the Agency with a recommendation on whether a rulemaking proceeding should be initiated.
- (d) The Agency shall deny the petition or initiate rulemaking proceedings in accordance with the Administrative Procedure and Register Act of the Republic of Nefestan, and these rules. The Agency may modify any proposed rule to ensure that it conforms to the format of Agency rules, adequately addresses the perceived problem or other subject matter, and conforms to the filing requirements of the Register.

### **1 22 Classification of Pleadings**

- (a) Pleadings filed in proceedings before the Agency should be designated as one of the following: application, petition, complaint, notice of protest, answer, motion, exception, or, if authorized by this title, response or reply to one of the preceding.

pleadings If there is an error in the designation of a pleading, the Examiner or the appropriate Deputy Director may determine its appropriate status in the proceeding and treat it accordingly Requests for discovery and responses thereto shall not be classified as pleadings and shall become a part of the administrative record in a contested case only when offered as evidence, or when part of a request for an order compelling a discovery response, or a reply thereto

- (b) Pleadings shall be liberally construed The Agency may construe a document as a pleading if the intent of the filing or document is evident

### **1 23 Institution of Non-rulemaking Proceedings**

All applications, petitions, complaints, and other documents relating to any proceeding to be initiated before the Agency shall be filed with the appropriate division Deputy Director Such pleadings and other documents, including notices of protest and answers, shall be deemed filed only when they are actually received and are accompanied by any required filing fee

### **1 24 Filings with the Legal Division**

- (a) After transfer to the Legal Division, pleadings and other documents shall be filed with the Docket Services Section of the Legal Division
- (b) Pleadings and other documents filed with the Legal Division shall be deemed filed only when they are actually received by the Docket Services Section of the Legal Division The time and date of filing shall be determined by the file-stamp affixed thereon Pleadings (other than exceptions, replies, motions for rehearing, and replies to motions for rehearing) containing 10 or fewer pages including exhibits may be filed by telephonic document transfer to the Docket Services Section Pleadings filed after 5 00 p m local time of the Agency shall be deemed filed the first day following that is not a Saturday, Sunday, or official state holiday Pleadings filed by telephonic document transfer shall be considered filed after 5 00 p m local time if the last page of the pleading is received after 5 00 p m local time
- (c) Pleadings and other documents shall be timely filed if received and stamped by the Docket Services Section of the Legal Division on or before 5 00 p m of the filing deadline

**1 25 Form and Content of Pleadings**

- (a) Unless otherwise permitted or required by Agency rules or by statute, a pleading shall contain a statement of the pleading's objectives, a concise statement of supporting facts, and a specific request for any relief requested
- (b) A pleading shall be typewritten or printed on white paper that is 8 1/2 inches wide and 11 inches long, with at least one-inch margins, or on the appropriate Agency form Exhibits attached to a pleading shall be the same size as pleadings or folded to that size The impression shall only be on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single-spaced
- (c) The signed original or a copy of said original shall be filed When a copy of the signed original is filed, the party or the party's authorized representative shall maintain the signed original for examination by the Agency, the Examiner, the Deputy Director, or any party to the proceedings, should a question arise as to its authenticity
- (d) Each pleading shall be signed by the party or the party's authorized representative A pleading shall contain the filing party's business address, telephone number, and, if applicable, telecopier number or, if filed by an authorized representative, the business address, telephone number, and telecopier number of the authorized representative

**1 26 Correction of Pleadings**

- (a) If the appropriate Deputy Director or Examiner finds that a pleading does not substantially comply in all material respects with the Agency's rules, the Deputy Director or Examiner may notify the filing party as to the nature of the deficiency or deficiencies Unless precluded by operation of law, the party who filed the pleading shall thereafter have the right to file a corrected pleading The filing of a corrected pleading shall not be permitted to delay any proceeding unless the appropriate Deputy Director or the Examiner determines that such delay is necessary to prevent an injustice or to protect the public interest
- (b) With respect to an application for a permit issued through the Surface Mining and Reclamation Division, within 120 days of receipt of a permit application, the appropriate division Deputy Director will issue a written notice to the applicant which states that the application is complete and accepted for filing, or that the application is deficient, setting forth the specific additional information that is

required. When an application is determined to be deficient, in the absence of a written agreement between the applicant and the Agency extending the time for the initial review, the time period set out in this subsection will apply to any resubmission.

- (c) Disputes arising from noncompliance with the time periods established in subsections (b) and (c) of this section shall be reviewed as provided in paragraph 1 148 of this title (relating to Permit Decision Time Period Reviews)

**1 27 Motions**

- (a) A motion shall be in writing, unless dictated into the record, and shall state the relief sought and the specific reasons therefor. If the motion is based upon alleged facts that are not a matter of record, it may, in the Examiner's discretion, be supported by an affidavit. Notice of action on any motion shall be served promptly on all parties of record. Motions shall be served on all parties in accordance with paragraph 1 48 of this title relating to Service in Protested Contested Cases.
- (b) A motion filed prior to presentation of a contested case to the Agency shall generally be acted on by the appropriate Deputy Director or the Examiner.

**1 28 Responsive Pleadings and Emergency Action**

- (a) Unless otherwise specified, a responsive pleading, if filed, shall be filed by a party within 10 days after filing of the pleading to which the response is made. Unless otherwise precluded by law or these rules, the Agency, the Deputy Director, or the Examiner may take action on a pleading before the deadline for filing responsive pleadings. Such action will only be taken in an emergency that presents a risk of imminent pollution, waste, or injury to persons or real or personal property. Action taken under such conditions is subject to modification based on a timely responsive pleading.
- (b) A responsive pleading to a complaint filed to institute a proceeding shall be filed by the respondent within 20 days after service of the complaint.

**1 29 Amended or Supplemental Pleadings**

- (a) Pleadings may be amended or supplemented when permitted by statute or when justice so requires
- (b) Unless the Agency, the Legal Division Deputy Director, or the Examiner approves and issues additional notice as required by law, an application, petition, or complaint, upon which original notice of hearing has been issued, may not be amended so as to broaden or enlarge the scope thereof

**1 30 Interim Rulings and Appeals of Interim Rulings**

**(a) Relief through interim ruling**

Prior to presentation of a contested case to the Agency, a party may seek through an Examiner, or Legal Division Deputy Director, as appropriate, relief through interim ruling, but that ruling shall not be considered as the same nature as a final decision. Such an interim ruling shall not be subject to exceptions or motions for rehearing. For purposes of this section, the term interim ruling includes orders issued pursuant to paragraph 1 85 of this title (relating to Discovery Orders)

**(b) Evidentiary rulings**

An evidentiary ruling by an Examiner is not an interim ruling and is not appealable to the Agency pending the issuance by the Examiner of a Proposal for Decision

**(c) Appeal of interim ruling**

- (1) In all proceedings brought or conducted under the Republic of Nefestan Civil Statutes, any party aggrieved by an interim ruling may appeal that ruling to the Agency by filing a written appeal within five days of the date the interim ruling is signed or stated in the record, such appeal may seek a stay of the interim ruling. The appealing party shall make in-hand service of the appeal on all other parties on the same day the appeal is filed at the Agency. Pending action on the appeal of the interim ruling, the Deputy Director of the Legal Division may grant a stay of the interim ruling. Any response to an appeal must be filed within ten days of the date the interim ruling is signed or stated in the record. If, by the 20th day after the date the interim ruling is signed or stated in the record, the Agency has not signed a written order ruling on the appeal, then on the 21st day after the date the interim ruling is signed or stated in the record, the appeal is deemed denied and any granted stay is lifted.

- (2) In all proceedings other than those brought or conducted under the Republic of Neftestan Civil Statutes, any party aggrieved by an interim ruling may appeal that ruling to the Agency by filing a written appeal within ten days of the date the interim ruling is signed or stated in the record, such appeal may seek a stay of the interim ruling. Any response to an appeal must be filed within ten days of the date the appeal is filed. Pending action on the appeal of the interim ruling, the Deputy Director of the Legal Division may grant a stay of the interim ruling. If, by the 46th day after the date the appeal was filed the Agency has not signed a written order ruling on the appeal, then the appeal is deemed denied and any granted stay is lifted.

**(d) Procedure on appeal**

The Agency may, in its discretion, consider and rule on an appeal on or after the day following the day the response to the appeal is due. An Agency order on an appeal from an interim ruling shall not be subject to motions for rehearing pending issuance of the Proposal for Decision and signing of the Agency's Order. Any issue in an appeal that has been deemed denied by operation of law may be raised again in exceptions to the Proposal for Decision. Appeals and replies to appeals shall be filed as all other pleadings in proceedings, with the Examiner through Docket Services-Legal Division. When an appeal is filed, the Examiner shall

- (1) upon the request of any one Director, immediately schedule the appeal for consideration by the Agency at an open meeting, and shall cause proper notice to be given,
- (2) forward to each Director a copy of the appeal along with a cover memorandum which shall show the date the appeal was filed, the date replies are due, and the date on which the appeal will be deemed denied if no Agency action is taken and
- (3) forward to each Director a copy of all replies to appeals of interim rulings which may be filed, and of any stay of the interim ruling granted by the Deputy Director of the Legal Division

## **SUBCHAPTER C: DOCKETING, NOTICE AND SERVICE**

### **1 41 Docketing**

The appropriate Deputy Director shall docket all cases. The Legal Division shall docket a proceeding initiated in the Surface Mining and Reclamation Division after the application has been transferred as administratively complete.

### **1 42 Notice of Rulemaking Proceedings**

- (a) Prior to the final adoption of any rule, the Agency shall give at least 30 days notice of the proposed rulemaking. Notice of the proposed rule shall be filed with the State Registry and published in the Republic of Nefestan Register. This section shall not limit the Agency's power to adopt emergency rules.
- (b) In all rulemaking proceedings, the Agency shall give notice according to the procedures set forth in APTRA.

### **1 43 Notice of Application in Non-rulemaking Proceedings**

Notice of application for non-rulemaking proceedings shall be given in accordance with applicable law, or new or existing order of the Agency.

### **1 44 Transportation Docketing and Transportation Notice of Hearing for Non-rulemaking Proceedings**

#### **(a) Notice of publication**

At least twice a month, the Transportation/Gas Utilities Division Deputy Director shall issue publications that contain a Transportation Notice of Hearing for non-rulemaking transportation proceedings. The Notice of Hearing shall give notice of all applications or other pleadings by which transportation contested cases have been instituted in the Transportation/Gas Utilities Division since the last Notice of Hearing. The Notice of Hearing shall contain the following:

- (1) the name and address of the applicant or other party filing the pleading and the name and address of that party's authorized representative, if any,

- (2) a concise statement of the action sought in the proceeding with reference to the Agency's source of jurisdiction and authority to take the action sought and
- (3) a statement of the procedure to be followed, including the requirements for filing a notice of protest

**(b) Docket Assignment**

Transportation and Gas Utilities applications to which one or more notices of protest have been filed shall be assigned to the protested docket and transferred to the Legal Division. Applications to which notices of protest have not been filed shall be assigned to the unprotested docket upon expiration of the protest period. An applicant whose application is placed on the unprotested docket shall not be relieved of sustaining the burden of proof imposed by law.

**1 45 Notice of Hearing in Non-rulemaking Proceedings**

- (a) The Agency shall issue notice not less than 10 days prior to hearings in contested cases or other non-rulemaking proceedings
- (b) All notices shall include the following
  - (1) a statement of the time, place, and nature of the hearings,
  - (2) a statement of the legal authority and jurisdiction under which the hearing is to be held,
  - (3) a reference to the particular sections of the statutes and rules involved,
  - (4) a short and plain statement of the matters asserted, and
  - (5) any other statements required by law or directed by the Agency
- (c) If the Agency or a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

**1 46 Notice by Publication in Oil and Gas and Surface Mining and Reclamation Non-rulemaking Proceedings**

When an applicant in an Oil and Gas or Surface Mining and Reclamation non-rulemaking proceeding is unable, after due diligence, to locate the whereabouts of any person who is required to be notified of an application, complaint, or hearing, the applicant must publish notice of the application, complaint, or hearing. The applicant shall publish the Agency's Notice of Application or Notice of Hearing in a newspaper of general circulation in the province or provinces where the land or facility, that is the subject of the application or hearing is located, or as directed by the appropriate Deputy Director to give adequate notice to affected persons. The applicant shall publish such notice once a week for four consecutive weeks. The first publication shall be published at least 28 days before the protest deadline in a Notice of Application or the hearing date in a Notice of Hearing. The applicant must file proof of publication in the form of a publisher's affidavit or present at a hearing a copy of the newspaper notice along with testimony by someone with personal knowledge of where and what dates the notice was published.

**1 47 Show Cause Proceedings**

In response to a written complaint or on the Agency's own motion, the Agency or the appropriate Deputy Director may issue a notice commanding a person or agency subject to the Agency's jurisdiction to appear at a public hearing and show cause why the person or agency should not be compelled to do the act required, or refrain from doing an act, or why the Agency should not take the action proposed.

**1 48 Service in Protested Contested Cases**

- (a) A copy of any pleading or document filed in a protested contested case shall be served on every other party of record at the time of filing. If a party, is represented by an attorney or other authorized representative, service shall be made on that representative.
- (b) All pleadings shall include a certification that copies have been served on all parties of record. The certification shall reflect the date and manner of service and the names and addresses of all parties served. The certification shall constitute *prima facie* evidence of the fact of service.
- (c) A pleading or motion may be served by delivering a copy to the party to be served, or to the party's duly authorized representative, either in person, by agent, by courier receipted delivery, by first class mail to the party's last known address,

by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the Agency may direct

- (d) Service by mail shall be complete upon deposit of the paper, enclosed in a post-paid, properly addressed wrapper, in a post office or official depository under the care of the Nefestan Postal Service. Service by telephonic document transfer after 5 00 PM local time, or of the receipt shall be deemed served on the first day following that is not a Saturday, Sunday, or official holiday
- (e) When a party is required to do some act within a prescribed time period following service of a pleading, motion, or discovery document described in paragraph 1 81 of this title (relating to Forms and Scope of Discovery in Contested Cases) and the pleading, motion, or discovery, document is served by mail, three days shall be added to the prescribed period
- (f) The failure of any party to serve a pleading on other parties as required by this section may be sufficient grounds for the Legal Division Deputy Director or the Examiner to strike the pleading or to take other appropriate action
- (g) The Agency shall serve documents by mail or by personal delivery. The date of service by the Agency is the date of mailing or the date of personal delivery. When personal service is required, service by first class mail to the person's last known address shall be deemed sufficient, unless otherwise required by law. The fact of service shall be presumed if the wrapper containing the document is not returned to the Agency

**1 49 Service of Process, Notice of Hearing, Default, and Motions for Rehearing in Oil and Gas Contested Cases Brought by the Legal Enforcement Section**

- (a) Commencement of a contested case
  - (1) Enforcement contested cases are commenced by sending the original complaint to the respondent via certified and regular first-class mail. In cases against foreign or non-resident respondents, the complaint will also be sent to the resident agent listed on the respondent's most recently filed Organization Report (Form P-5). The complaint will be accompanied by a letter stating that the Agency believes the respondent has violated Agency rules or statutes, as set forth in the original complaint, that the respondent may, within 30 days of the date of service, file an answer or request a hearing to contest the allegations of the original complaint, and that the respondent may wish to hire an attorney or other representative or choose to appear on its own behalf. The Agency may offer to settle the case via an

agreed order. The letter will state that if, on 31st day after the date of service, the respondent has not entered into an agreed order, filed an answer to the original complaint, or requested a hearing, a default final order may thereafter be issued against respondent without further notice.

- (2) When there is actual pollution or injury to the public health and safety, or an imminent threat thereof, a hearing may be set and notice of the hearing sent with the original complaint. The notice will state that if the respondent fails to appear at the hearing, a default final order may be issued against respondent without further notice.
- (b) Filing of an answer or request for hearing, shall serve as a general denial of the allegations in the original complaint. An answer or request for hearing is timely if filed with the Docket Services Section of the Office of General Counsel before a default final order is issued by the Agency. Except in cases brought under subsection (a)(2) of this section, the Legal Enforcement Section will set a hearing on a date at least 30 days after receipt of a timely answer or hearing request.
- (c) Notice of hearing will be sent along with the original complaint to respondents or their representatives in all cases brought under subsection (a) (2) of this section. In other cases, notices of hearing will be sent, along with a current Legal Enforcement Section pleading, only after the respondent or its representative has timely filed a request for hearing or an answer. The notice will be sent to the address from which the request or answer was received, and will state that if the respondent fails to appear at the hearing, a default final order may be issued against respondent without further notice.
- (d) A default order upon failure to answer, request hearing, or appear at hearing.
  - (1) If the respondent fails to answer the original complaint, request a hearing, or appear at a scheduled hearing, a default final order may be issued by the Agency without further notice,
  - (2) Default final orders will contain findings of fact and conclusions of law sufficient to support the relief ordered,
  - (3) No default final order shall be issued until the returned certified mail receipt (green card) attached to the original complaint, or the notice of hearing, or the returned certified mail containing the complaint or the notice, has been on file with the Agency for 15 days exclusive of the day of receipt and day of issuance. Default final orders need not be

individually signed in each case by the Directors, if the case is listed by number and summarized on a Master Default Order

- (e) Motions for rehearing in Oil and Gas enforcement default cases Motions for rehearing in oil and gas enforcement default cases may be made on equitable grounds or on grounds that there is error in the final order
- (f) Non-applicability of this section to emergency situations The existing power of the Agency to remedy and seek reimbursement for remediation of any condition which threatens the public health and safety, or to order an operator to remedy said condition, shall not be affected by this section

## SUBCHAPTER D. PARTIES AND INTERVENTION

### 1 61 Classification and Alignment of Parties

- (a) Parties to contested cases before the Agency are applicants, protestants, petitioners, complainants, respondents, and intervenors. If there is an error in a party's designation in its pleadings, the Examiner may assign a party an appropriate designation.
- (b) The Examiner may align parties according to the nature of the proceeding.

### 1 62 Parties Defined

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

***Applicant or petitioner*** — A person or agency, including the Agency staff, who by written application or petition, including appeals, seeks a remedy from the Agency.

***Complainant*** — A person or agency, including the Agency staff, who complains to the Agency of any act or omission committed by the Agency or any person or agency subject to the Agency's jurisdiction.

***Intervenor*** — A person or agency (including the Agency staff), other than an applicant, complainant, protestant, or respondent, who is permitted to become a party to a proceeding.

***Protestant*** — A person or agency, including the Agency staff, opposing an application or petition submitted to the Agency.

***Respondent*** — A person or agency against whom any complaint has been filed or who is under formal investigation by the Agency.

### 1 63 Notice of Protest in Nonrulemaking Proceedings

A notice of protest may be filed when the notice of application, notice of hearing, or a Agency rule sets forth the requirements for filing such notice, or as provided by order of the Agency instituting the proceeding.

**1 64 Intervention**

- (a) Except for Transportation and Gas Utilities cases, any person or agency who has a justifiable or administratively cognizable interest, and who is not an applicant, petitioner, complainant, respondent, or protestant and who desires to be designated as a party in any contested case before the Agency may file a petition for leave to intervene no later than five days prior to the hearing date
- (b) The Examiner, the Legal Division Deputy Director, or the Agency shall act on all petitions for leave to intervene. All interventions shall be subject to a motion to strike for having been improperly admitted

**1 65 Representative Appearances**

Any party may appear individually or may appear through any person properly authorized by that party to make an appearance

## **SUBCHAPTER E: DISCOVERY**

### **1 81 Forms and Scope of Discovery in Protested Contested Cases**

- (a) Permissible forms of discovery, by parties are
- (1) oral depositions of a party or a nonparty,
  - (2) written interrogatories to a party,
  - (3) requests of a party for admission of facts or the genuineness or identity of documents or things,
  - (4) requests of a party for production, examination, and copying of documents or other tangible materials, and
  - (5) requests of a party for entry and examination of real or personal property,
- (b) The scope of discovery shall be the same as provided by the Neftestan Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders, and duty to supplement as well as the constraints provided in the Administrative Procedure and Register Act of the Republic of Neftestan

### **1 82 Service and Filing of Discovery Requests and Responses**

Requests for discovery and responses thereto shall be served in the manner provided by paragraph 1 48 of this title (relating to Service in Protested Contested Cases) and should also be filed with the Agency Requests for issuance of an Agency order to take a deposition shall be filed with the Examiner or the Legal Division Deputy Director with a proposed Agency order to take a deposition only if the parties disagree on the scheduling or scope of the deposition Depositions shall be returned in the manner provided in the Administrative Procedure and Register Act of the Republic of Neftestan Except for good cause shown, all requests for discovery shall be timely made prior to the hearing

### **1 83 Deadlines for Responses to Discovery Requests**

Responses to discovery requests shall be made within a reasonable time period of not less than 14 days after service as directed by the party seeking discovery The Examiner or the Legal

Division Deputy Director may shorten or lengthen such time periods as the interest of justice requires

**1 84      Requests for Admission**

Except as otherwise provided, requests for admission shall be governed by the applicable provisions of the Neftestan Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. The matter shall be deemed to be admitted without necessity of an Agency order unless, within the prescribed time for responding, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. The Requests for Admission document must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location calculated to fairly inform the opposing party, of the consequences of a failure to respond within the prescribed time. The Examiner or the Agency may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause, if necessary, in the interest of justice.

**1 85      Discovery Orders**

**(a) Order to take Deposition**

The Legal Division Deputy Director or the Examiner is authorized to issue an order to take deposition, which shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding.

**(b) Other Discovery Orders**

The Examiner may issue protective orders and orders compelling discovery responses. Requests for discovery orders shall contain a statement under oath or affirmation that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The Legal Division Deputy Director, the appropriate division Deputy Director, or the Examiner may conduct in-camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders. The request for a discovery order may be denied if the request is untimely or unduly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for other good cause in the interest of justice.

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**(c) Sanctions**

After notice and opportunity for hearing, an order imposing sanctions as are just, may be issued by the Agency, the Legal Division Deputy Director, or the Examiner for failure to comply with a discovery order or subpoena issued pursuant to an Agency order for deposition or production of books, records, papers, or other objects. The order imposing sanctions may

- (1) disallow any further discovery of any kind or of a particular kind by the disobedient party,
- (2) require the party, the party's representative, or both to obey the discovery order,
- (3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees incurred by reason of the party's noncompliance,
- (4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order,
- (5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence,
- (6) strike pleadings or abate further proceedings until the order is obeyed or, if entered by the Agency,
- (7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party

**(d) Agency Review**

Any discovery order or subpoena, and any order imposing sanctions issued by the Examiner or the Legal Division Deputy Director is subject to review by an appeal to the Agency. The appeal shall be filed with the staff or the Agency. The staff will forward the pleading filed with it to the Agency. The appeal may be carried with the underlying case if the Agency fails to act.

**(e) Compliance**

The Agency may enforce compliance with any discovery order or subpoena issued by the Examiner, the Legal Division Deputy Director, or by the Agency by exercising its contempt powers as authorized by Neftestan Civil Statutes, and the Neftestan Natural Resources Code

## **SUBCHAPTER F: EVIDENCE IN CONTESTED CASES**

### **1 101 Rules of Evidence**

The rules of evidence as applied in nonjury civil cases in the district courts of Neftestan shall be followed in contested cases. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under said rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply in Agency proceedings. Objections to evidentiary offers may be made and shall be noted in the record. If no objections are made, the evidence may be admitted.

### **1 102 Official Notice**

#### **(a) Facts Noticeable**

Official notice may be taken of judicially cognizable facts, and notice may be taken of generally recognized facts within the area of the Agency's specialized knowledge.

#### **(b) Motions for Official Notice and Opportunity to Respond**

A party's motion for official notice must be made or filed prior to the conclusion of the evidentiary hearing. The motion must state with specificity the facts, material, records, or documents encompassed in the motion. A party who opposes the motion shall have the opportunity to contest the requested action.

#### **(c) Notification of Materials Noticed**

The Examiner on his or her own motion, or the Agency on its own motion, may propose to take official notice of facts, material, records or documents authorized by the Administrative Procedure and Register Act of the Republic of Neftestan. The parties will be given the opportunity to contest the proposed action and shall be notified of the facts, material, records, or documents officially noticed before, during, or after the hearing by the Agency.

### **1 103 Witnesses to Be Sworn and Qualified**

(a) Oral testimony in contested cases shall be presented under oath or affirmation administered by the Examiner, a Director, or Official Reporter.

(b) The Directors, their designated representatives, or contesting parties shall have the right to challenge the credentials of an expert witness by cross-examination in the

technical field of their intended testimony. The Directors shall have the right to give such weight to an expert witnesses' testimony as is warranted by such witnesses established credentials.

**1 104 Documentary Evidence**

A copy or excerpt of a document may be admitted as evidence if the original is not readily available and if authenticity is established by competent evidence. When numerous documents are offered, the Examiner may limit those admitted to a number of documents which are typical and representative. The Examiner may require the abstracting or summarizing of relevant data from documents and the presentation of abstracts or summaries in exhibit form. All parties shall have the right to examine the documents so abstracted or summarized.

**1 105 Written Testimony**

**(a) Admissibility**

When a proceeding will be expedited and the interests of the parties will not be substantially prejudiced, direct testimony may be received in written form. The written testimony of a witness on direct examination, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read. A witness who is offering written testimony shall be sworn and shall identify the written testimony as a true and accurate representation of what the testimony would be if the witness were to testify orally, after which the witness shall submit to voir dire and cross-examination. Written testimony shall be subject to the same evidentiary objections as oral testimony.

**(b) Pre-filing**

The Agency, the Legal Division Deputy Director or an Examiner may require or permit written testimony and exhibits to be filed and served on all parties at a specified date prior to the hearing. Failure to pre-file written testimony and exhibits, if required under this section, shall be sufficient cause for the evidence, which was to be included in the testimony and exhibits, to be ruled inadmissible or for other appropriate action to be taken as may be just and reasonable.

**1 106 Exhibits**

**(a) Form**

Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size

requirements established by paragraph 1 25 of this title (relating to Form and Content of Pleadings) The pages of each exhibit shall be numbered consecutively

**(b) Tender and Service**

The original or a true and correct copy of each exhibit offered in evidence shall be identified and tendered for inclusion in the record Copies of the exhibit shall be furnished to the Examiner and to each party at or prior to the time the exhibit is offered in evidence

**(c) Excluded Exhibits**

If an exhibit is identified, objected to, and excluded, the Examiner may determine whether or nor the party offering the exhibit wishes to withdraw the offer, if so, the Examiner shall permit the return of the exhibit to the party If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Examiner with the ruling, and shall be included in the record for the purpose of preserving an exception

**(d) Late Exhibits**

Unless specifically requested and permitted by the Agency, the Legal Division Deputy Director, or the Examiner, no exhibit shall be filed in any proceeding after the hearing has been completed If the filing of a late-filed exhibit is permitted, copies shall be served on all parties of record, who will have the opportunity to respond and submit additional relevant responsive evidence

**1 107 Formal Exceptions Not Required**

Formal exceptions to rulings made by the Examiner during a hearing are not required It shall be sufficient that the party shall have made known to the Examiner the desired ruling and the grounds therefor

**1 108 Offers of Proof**

When the Examiner excludes testimony, the party offering the evidence shall be permitted to make an offer of proof prior to the close of the hearing The party may make the offer by dictating or submitting in writing the substance of the proposed testimony or by perfecting a bill of exceptions as in civil trials The Examiner may direct the manner in which the offer is made and may ask questions if necessary to conclude that the evidence would be as represented The Examiner and opposing parties shall be entitled to cross-examine any witness testifying on a bill of exceptions and to develop evidence on the bill The Examiner may direct that bills of

exception be transcribed separately and that reporter's costs be assessed against the proponent of the bill, subject to Agency review of the Examiner's ruling

## SUBCHAPTER G HEARINGS

### 1 121 Presiding Officer

#### (a) Examiner or Presiding Examiner

Hearings may be conducted by Directors, Deputy Directors, or employees designated as Examiners, all of whom are referred to in this section as the Presiding Examiner

#### (b) Powers

Subject to any limitations imposed by law or by Agency rule, the Presiding Examiner shall have broad discretion in regulating the course and conduct of the hearing. The Presiding Examiner shall have, but shall not be limited to, the following authority

- (1) to administer oaths and affirmations,
- (2) to issue subpoenas to compel the attendance of witnesses and the production of papers and documents,
- (3) to authorize the taking of depositions and issue discovery orders as authorized by law,
- (4) to call and examine witnesses,
- (5) to receive evidence,
- (6) to rule upon the admissibility of evidence and amendments to pleadings,
- (7) to limit the number of witnesses whose testimony would be merely cumulative,
- (8) to set reasonable times within which a party may testify, cross-examine witnesses, or present evidence,
- (9) to impose sanctions,
- (10) to recess any hearing,
- (11) to issue a proposal for decision, including proposed findings of fact and conclusions of law and a recommended order,

- (12) to amend the proposal for decision or recommended order, or both, based upon exceptions and replies filed by the parties,
- (13) to issue a supplemental or amended proposal for decision and proposed order, and
- (14) to take other permissive action which is necessary for a fair, just, and proper hearing

**(c) Replacement**

If prior to a final decision by the Agency the Presiding Examiner is unable to continue to serve, the Director may appoint another Examiner to perform any remaining functions without the necessity of repeating previous proceedings

**(d) Interlocutory Appeals**

Interlocutory appeals to the Agency of an Examiner's rulings may be permitted by the Agency

**1 122 Prehearing Conferences**

- (a) The Legal Division Deputy Director or Examiner may direct the parties, the parties authorized representatives, or both to appear at a prehearing conference to consider
  - (1) motions and other preliminary matters relating to the proceeding,
  - (2) settlement of the case or simplification of the issues,
  - (3) amendment of pleadings,
  - (4) admissions or stipulations which will avoid the unnecessary introduction of evidence,
  - (5) limitations on the number of witnesses,
  - (6) time to be allotted to each party for presentation of its direct case or for cross-examination at the hearing,
  - (7) procedures to be followed at the hearing, and
  - (8) other matters that may aid in the disposition of the proceeding

- (b) The examiner may notify, the parties in writing of the disposition of and rulings made on all matters considered at prehearing conference

**1 123 Stipulations**

No stipulation or agreement shall be considered unless it is in writing and Signed by the parties or their authorized representatives, or dictated into the record during the course of the proceeding This section does not limit a party's ability, to waive or modify by stipulation any right or privilege afforded by these rules, unless otherwise precluded by law

**1 124 Continuances**

Motions for continuance shall be in writing and filed not less than five days prior to the hearing, except for good cause shown Motions shall set forth the specific grounds for which the moving party seeks continuance, and shall state whether all parties agree with the relief requested Continuances will not be granted based on the need for discovery if discovery requests have not previously been served upon the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence previously undisclosed despite the diligence of the moving party Motions for continuances shall be acted upon by the appropriate Deputy Director, subject to Agency review If the motion is filed less than five days prior to the hearing, the moving party shall notify all parties of record and the official reporter of the disposition of the motion

**1 125 Consolidation and Joint Hearings**

When two or more applications, petitions, or other proceedings involve common questions of law or fact, the Agency or the Legal Division Deputy Director may consolidate the proceedings or direct that there be a joint hearing without formal consolidation and may take other action to avoid unnecessary costs or delay and to ensure due process

**1 126 Dismissal**

The Agency or the appropriate Deputy Director may dismiss, with or without prejudice, any proceeding under such conditions and for such reasons as are found to be just and reasonable, including the following

- (a) failure to prosecute,
- (b) unnecessary duplication of proceedings or res judicata,

- (c) withdrawal,
- (d) moot questions or obsolete petitions,
- (e) lack of jurisdiction, or
- (f) if necessary in the interest of justice

**1 127 Place and Nature of Hearings**

All hearings shall be open to the public and, except as otherwise required by law, shall be held in Nefestan City, unless for good cause and in the public interest another place of hearing is designated by the Agency

**1 128 Hearing Procedures**

**(a) Opening the Hearing**

The Examiner shall open the hearing and make a concise statement of its scope and purposes. Appearances shall then be entered by all parties. Thereafter, parties may make motions or opening statements.

**(b) Order of Procedure**

In protested cases, parties shall be permitted to make opening statements, offer direct evidence, cross-examine witnesses, and present supporting arguments. The petitioner, applicant, or complainant shall be entitled to open and close. When several proceedings are heard on a consolidated record or when the proceeding has been initiated by the Agency, the Examiner shall designate who may open and close. The Examiner will determine at what stage intervenors shall be permitted to offer evidence. The Examiner may direct that closing argument be made in writing. The Examiner may alter the order of procedure if necessary for efficient conduct of the hearing.

**(c) Voir dire**

Voir dire examination to evaluate the qualifications of a witness to testify may be permitted but will not be substituted for cross-examination.

**(d) Rebuttal**

The petitioner, applicant, or complainant may rebut evidence and argument presented by protestants or intervenors. The Examiner may allow additional rebuttal from other parties.

**(e) Additional Evidence**

The Agency, Legal Division Deputy Director, or Examiner may subpoena records or may call upon or subpoena any party, persons, or employees of the Agency who are

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not assigned to render a decision or to make findings of fact and conclusions of law for additional evidence on any issue. Additional evidence shall not be admitted without an opportunity for examination, objection, and rebuttal by all parties.

**1 129 Reporters and Transcripts**

**(a) Request for Transcript**

When requested by the Agency, the Examiner or a party, a certified shorthand reporter shall make a record and transcript of the hearing. For proceedings before the Surface Mining and Reclamation Division a verbatim record of each public hearing shall be made.

**(b) Assessment of Costs**

The cost of the original transcripts shall be assessed in the following manner:

- (1) to all parties equally,
- (2) to the applicant in cases where the Agency determines that the transcript costs should be so assessed,
- (3) to the requesting party in surface mining and reclamation proceedings,
- (4) equally to the party or parties that request a transcript in Agency-called hearings, or
- (5) as otherwise directed by the Examiner.

**(c) Charges**

The Agency shall approve rates to be charged by reporters for appearances, original transcripts, and copies. The rates shall not exceed rates authorized by law to be paid to district court reporters.

## **SUBCHAPTER H :DECISION**

### **1 141 Proposals for Decision**

- (a) In a contested case, if a majority of the Directors have not heard the case or read the record, the decision, if adverse to a party other than the Agency, may not be made until a proposal for decision is served on the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the Agency. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing. The parties may waive the requirements of this subsection by written stipulation.
- (b) When a proposal for decision is issued, a copy of the proposal shall be served promptly on each party, or its authorized representative.
- (c) The Examiner may direct a party to draft and submit proposed findings of fact and conclusions of law. The Examiner may limit the request for proposed findings to any particular issue or issues of fact. The party's proposed findings of fact shall be supported by concise and explicit statements of underlying facts developed from the record with specific record references. If the Examiner requires the filing of proposed findings of fact, the Agency shall rule on each proposed finding. If the Examiner permits but does not require a party, to submit proposed findings of fact, the Agency shall not be required to rule on the party's proposed findings.
- (d) A proposal for decision or proposed order may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. Unless the amended proposal for decision is served on all parties, amendments adopted by the Agency shall be noted and embodied with specificity in the Agency's final order.

### **1 142 Filing of Exceptions and Replies**

- (a) Any party of record may, within 15 days after the date of service of a proposal for decision, file exceptions to the proposal for decision. Replies to such exceptions may be filed within 10 days after the deadline for filing such exceptions. Exceptions and replies may not be filed by telephonic document transfer. Unless otherwise directed by the Examiner, nine copies of exceptions and replies shall be filed with the original. The Examiner, or the parties by agreement with the Examiner's approval may lengthen or shorten the time periods set out in this

paragraph if good cause is shown. Copies of exceptions and replies shall be served on all parties of record.

- (b) A request for extension of time within which to file exceptions or replies shall be filed with the Examiner and a copy thereof shall be served on all other parties of record by the party making such a request. The Examiner shall promptly notify the parties of any action taken and shall allow additional time only if good cause is shown.
- (c) The Agency may consider the case upon the expiration of the time for filing exceptions and replies, or after the exceptions and replies are filed (if filed before the filing deadline).

### **1.143 Agency Action**

The Agency may adopt or decline to adopt the Examiner's proposed findings of fact and conclusions of law in whole or in part. The Agency may remand the proceeding for further consideration by the same Examiner or a different Examiner. The Agency may direct the Examiner to further consider the case with or without reopening the hearing. If, on remand by the Agency, additional evidence is received which results in a substantial change of the Examiner's recommendation for final action, an amended proposal for decision shall be prepared and circulated to the parties, unless a majority of the Agency has held the hearing or read the record. If an amended proposal for decision is prepared, all parties of record shall have the right to file exceptions, replies, and briefs. The Agency is not limited to the specific types of actions outlined in this section and may take any other action it deems to be just and reasonable, as permitted by law.

### **1 144 Oral Argument Before the Agency**

Any party may request oral argument before the Agency prior to the final disposition of any proceeding. Oral argument may be allowed at the discretion of the Agency. Any motion for oral argument may be made by separate pleading or may be included in a party's exceptions, replies, or motion for rehearing. Failure of the Agency to grant oral argument shall be deemed denial of motion for oral argument. If granted, the order of oral argument shall be determined by the Agency.

**1 145 Interim Orders**

- (a) When an interim order is provided for by law, a request for an interim order will be presented to the Agency for consideration. An interim order shall not be considered a final Agency decision. Interim orders are not appealable and shall not be subject to exceptions or motions for rehearing.
- (b) A party may file a written motion to set aside, modify, or reconsider an interim order. The motion shall be filed with the staff or the Agency. The staff will forward the pleading filed with it to the Agency.

**1 146 Final Decisions and Orders**

- (a) A final decision or final order adverse to a party in a contested case shall be in writing and shall be signed by two or more Directors. Final decisions or final orders shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in accordance with paragraph 1 141 of this title (relating to Proposals for Decision) a party submits proposed findings of fact as required by the Examiner, the decision shall include a ruling on each proposed finding. Representatives of parties and unrepresented parties shall be notified by first class mail (or as otherwise required by the Administrative Procedure and Register Act of the Republic of Nefestan) of any decision or order. A party or an attorney of record notified by mail of a final decision or order shall be presumed to have been notified on the date the notice is mailed.
- (b) The final decision or order must be rendered within 60 days of the date on which the hearing is closed, except that in a contested case heard by other than a majority of the Directors, the Agency may prescribe a longer period of time within which the final order or decision shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing. The parties may, by agreement and approval of the Agency, provide for a modification of this time period.
- (c) With respect to an application for a new pipeline, the final order must be rendered pursuant to the provisions of this title (relating to Rendering of Final Decision or Order).
- (d) With respect to applications for permits issued through the Surface Mining and Reclamation Division, the Agency will make a decision regarding the sufficiency

of the permit application within 220 days of the filing of a complete application, if a hearing has been held. If no hearing has been held, the Agency will make a decision regarding the sufficiency of the permit application within 160 days.

- (e) Disputes arising from a violation of the time periods established in subsections (c) and (d) of this section shall be reviewed as provided in paragraph 1 148 of this title relating to Permit Decision Time Period Reviews)

**1 147 Effective Date**

The effective date of an order, unless otherwise stated, is the date of Agency final decision or action, and the effective date shall be incorporated into the body of the decision.

**1 148 Permit Decision Time Period Reviews**

- (a) If a dispute arises from an alleged violation of the time periods established in paragraph 1 26(c) of this title (relating to Correction of Pleadings) or paragraph 1 146(d) of this title (relating to Final Decisions and Orders), the applicant may file a written appeal in the offices of the Directors. Copies of the appeal are to be filed with the Legal Division Deputy Director and with the Surface Mining and Reclamation Division Deputy Director.
- (b) The appeal shall be made by filing a motion with the Agency with service to all parties pursuant to paragraph 1 48 of this title (relating to Service in Protested Contested Cases). The appeal shall identify the application and docket number, if assigned, and the facts of the alleged violation of the time periods.
- (c) Either the Legal Division Deputy Director or the Surface Mining and Reclamation Division Deputy Director, or both, may file a response within 15 days of receipt of the appeal which identifies the reasons for exceeding the time period.
- (d) If the Agency determines that good cause, as specified in the Nefestan Civil Statutes exists for exceeding the time period, or that the time period has not been exceeded, the Agency does not need to take action.
- (e) If the Agency determines that the specified time periods have been exceeded and that good cause, as specified in Nefestan Civil Statutes, does not exist, or that no other conditions exist giving the agency good cause for exceeding the time period, the permit filing fee shall be reimbursed in full to the applicant, or the applicant shall have the option of having its permit application expedited by the Agency.

- (f) Permit decision time period reviews in transportation and utilities cases shall be conducted in accordance with this title (relating to Rendering of Final Decision or Order)

**1 149 Rehearing**

- (a) Motions for rehearing, if filed, must be filed by a party within 20 days after the date the party or its attorney of record is notified of the final decision or order as required by paragraph 1 146 of this title (relating to Final Decisions and Orders) Replies to motions for rehearing must be filed within 30 days after notification of the final decision or order Motions for rehearing and replies to motions for rehearing may not be filed by telephonic document transfer Copies shall be served on all parties in accordance with paragraph 1 48 of this title (relating to Service in Protested Contested Cases)
- (b) Agency action on the motion shall be taken within 45 days after the notification date of the final decision or order If Agency action is not taken within this 45-day period, the motion for rehearing shall be overruled by operation of law 45 days after the notification of the final decision or order
- (c) The Agency may, by written order, extend the period of time for filing these motions and replies and for taking Agency action, except that any extension shall not extend the period for Agency action beyond 90 days after the notification date of the final decision or order In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the notification date of the final decision or order, if agency action is not taken
- (d) The parties may, by agreement and with the approval of the Agency, provide for a modification of the time periods provided in this section

**1 150 Effect of Order Granting Rehearing**

An order granting a motion for rehearing vacates the preceding final order. When the Agency renders a new final decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

**1 151 Administrative Finality**

In the absence of a timely motion for rehearing, a decision is final on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of an order overruling a motion for rehearing or on the date the motion is overruled by operation of law. If the Agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, it shall recite that finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

**1 152 Administrative Record**

The party appealing the Agency's order shall pay to the Agency the cost of preparing the original or a certified copy of the record that is to be transmitted to the reviewing court at rates approved by the State Purchasing and General Services Agency. When more than one party appeals the Agency's order, the cost of the preparation of the record shall be divided equally among the appealing parties or as agreed by the parties.

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## GENERAL DEFINITIONS

*The following words and terms shall have the assigned meaning when used in any Oil & Gas Regulatory Agency documents, including transcripts of hearings and established Rules & Regulations, unless the specific word usage and context indicates otherwise*

**“Agency”** means the Oil & Gas Regulatory Agency of the Republic of Neftestan

**“Agent”** means any person authorized by another person to act for him

**“Aquifer”** means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring

**“Area of exposure”** means an area within a circle constructed with the point of escape of poisonous gas (hydrogen sulfide) as its center and the radius of exposure as its radius

**“Associated gas”** means any gas produced from an Agency defined combination oil and gas reservoir

**“BS&W”** means basic sediment and water which is that portion of fluids and/or solids that settle in the bottom of storage tanks and/or treating vessels and is generally unsaleable BS&W usually consists of water, paraffin, sand, scale, rust, and other sediments

**“Barrel”** means 42 (U S ) gallons, or 159 liters, at 60 F (15 5 C) at atmospheric pressure

**“Basic sediment pit”** means a pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank

**“Block”** means any territory on land or on water situated within the territorial jurisdiction of the Republic of Neftestan and defined by geographical coordinates on a map prepared or approved by the Oil & Gas Regulatory Agency,

**“Blowout”** means the uncontrolled escape of oil or gas, or both, from any formation

**“Blowout preventer”** means a heavy casinghead control fitted with special gates and/or rams which can be closed around the drill pipe (or tubing used as a work string) or which completely closes the top of the casing

**“Blowout preventer stack”** means the assembly of well control equipment including preventers, spools, valves, and nipples connected to the top of the casinghead

**“Carrier,” or “transporter,” or “taker”** means any person moving or transporting oil or gas away from a field or from any common source of supply

**“Casing pressure”** means the pressure within the casing or between the casing and tubing at the wellhead

**“Choke manifold”** means an assembly of valves, chokes, gauges, and lines used to control the rate of flow from the well when the blowout preventers are closed

**“Closure”** means the practice of dewatering, trenching, filling, leveling, terracing, and/or vegetating a pit site after its useful life is reached in order to restore or reclaim the site to near its original condition

**“Commercial disposal well”** means a disposal well which

- (A) Is operated for profit from the disposal of salt water and/or other deleterious substances for a fee, and
- (B) Disposes of salt water and/or other deleterious substances transported to the facilities used in conjunction with said disposal well or is a disposal well for which none of its owners is an owner in any of the oil and gas wells which produce the salt water and/or other deleterious substances which will be disposed into said disposal well

**“Commercial pit”** is a disposal facility which is authorized by Agency order and used for the disposal, storage, and handling substances or soils contaminated by deleterious substances produced, obtained, or used in connection with drilling and/or production operations

**“Collection/fracture/workover pit”** means a pit used for temporary storage of spent completion fluids, frac fluids, workover fluids, drilling fluids, silt, debris, water, brine, oil scum, paraffin, or other deleterious substances which have been cleaned out of the wellbore of a well being completed, fractured, recompleted, or worked over

**“Condensate”** means a liquid hydrocarbon which existed as gas in the reservoir, but was recovered as a liquid at the surface, and has an API gravity greater than or equal to fifty degrees, unless otherwise proven

**“Conductor casing”** means a casing string which is often set and cemented at a shallow depth to support and protect the top of the borehole from erosion while circulating and drilling the surface casing hole

**“Confidential Information”** means proprietary intelligence, knowledge, or data relating to or concerning Oil & Gas Operations (whether actual or prospective), including, but not limited to geological and geophysical data, maps, models and interpretations, scientific, engineering, and technical specifications, expertise, drawings and other data, and commercial, contractual, industrial, and financial data (regardless of the medium in which such intelligence, knowledge, or data exists or in which the same is transmitted) which is required to be treated as confidential by the Oil & Gas Regulatory Agency or any other State body. The term Confidential Information shall not include information which is already in the possession of the public or which becomes available to the public other than through the act or omission of the person receiving such information

**“Contingency plan”** is a written document which provides for an organized plan of action for alerting and protecting the public within an area of exposure following the accidental release of a potentially hazardous volume of poisonous gas such as hydrogen sulfide

**“Contractor”** means any person who contracts with another person for the performance of prescribed work

**“Cubic meter of gas”** means the volume of gas contained in one cubic meter of space at an absolute pressure of 1 Atmosphere, and at a temperature of 60 F (15.5 C). Conversion of volumes to conform to standard conditions shall be made in accordance with Ideal Gas Laws corrected for deviation from Boyle’s Law when the pressure at point of measurement is in excess of 14 Atmospheres gauge

**“Date of completion”** means

- (A) For an oil well, the date the well first produces oil into a storage tank through permanent wellhead equipment
- (B) For a gas well, the date the gas is capable of being delivered to a pipeline purchaser

**“Day”** means a period of 24 consecutive hours. For reporting purposes, it shall be from 7:00 a.m. to 7:00 a.m. the following day

**“Deleterious substances”** means any chemical, salt water, oil field brine, waste oil, waste emulsified oil, basic sediment, mud, or injurious substance produced or used in the drilling, development, production, transportation, refining, and processing of oil, gas and/or brine mining

**“Design mud weight”** means the planned drilling mud weight to be used

**“Design wellhead pressure”** means the maximum anticipated wellhead pressure which is expected to be experienced on the inside of the casing string and on wellhead equipment. This pressure is used to design the casing string and to select wellhead equipment with sufficient working pressure rating

**“Development”** means any work which actively looks toward bringing in production, such as erecting rigs, building tankage, drilling wells, etc

**“Directional drilling”** means intentional changing of the direction of the well from the vertical

**“Discharge”** means the release or setting free by any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of substances

**“Distressed well”** means a well defined by the Agency to be a hazard to public safety due to technical difficulties which temporarily cannot be controlled

**“Drilling” (“Construction”)** in relation to a well, includes the fitting of well heads, boring, logging, and any operations carried out for purposes of preventing the sides of the well from collapsing or the well from being filled by an extraneous substance,

**“Emergency pit”** means a pit used for the storage of excessive or unanticipated amounts of fluids during an immediate emergency situation in the drilling or operation of a well, such as a well blowout or a pipeline rupture. This does not include a spill prevention structure required by local, state, or federal regulations

**“Enhanced recovery operation”** means the introduction of fluid or energy into a pool for the purpose of increasing the recovery of oil therefrom according to a plan which has been approved by the Agency after notice and hearing

**“Enhanced recovery well”** means a well producing in an enhanced recovery operation

**“Exempted aquifer”** means an aquifer or its portion that meets the criteria in the definition of “underground source of drinking water” or “treatable water,” but which by Agency order is not subject to those procedures

**“Exploration Operations”** means operations in connection with the prospecting for oil or gas including, but not limited to, geophysical, geological, geochemical, paleontological, aerial, magnetic, gravity or seismic surveys and the appraisal of such surveys, drilling of exploratory wells, and the preparation of feasibility studies utilizing the collected data

**“Fair Market Value”** means the price which a willing buyer would pay to a willing seller under a term contract for the sale of a given product at a given time, taking into account all other terms of the sale and market conditions for such product and assuming that such buyer and seller are acting independently, each in his own interest, without being influenced by reciprocal dealings or special relations between them,

**“Field”** means the general area underlain by one or more common sources of supply

**“Flare pit”** means a pit which contains flare equipment and which is used for temporary storage of liquid hydrocarbons which are sent to the flare but are not burned due to equipment malfunction Flare pits may be used in conjunction with tank batteries or wells

**“Flowing well” (“Fountain”)** means any well from which oil or gas is produced naturally and without artificial lifting equipment

**“Fresh Water strata”** means a strata from which fresh water may be produced in economical quantities

**“Gas”** means any petroleum hydrocarbon existing in the gaseous phase

- (A) Casinghead gas means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil
- (B) Dry gas or dry natural gas means any gas produced in which there are no appreciable hydrocarbon liquids recoverable by separation at the wellhead

**“Gas lift”** means any method of lifting liquid to the surface by injecting gas into the well bore from which production is obtained

**“Gas Liquids”** means hydrocarbon gases that have been liquefied by variation in temperature and pressure and includes the common terms Liquefied Petroleum Gas (LPG), and Liquefied Natural Gas (LNG)

**“Gas repressuring”** means the injection of gas into a common source of supply to restore or increase the gas energy of a reservoir

**“GOR (Gas/Oil Ratio)”** means the ratio of the gas produced to oil produced during any stated period

**“Hydrogen sulfide gas (H<sub>2</sub>S)”** means a toxic poisonous gas with a chemical composition of H<sub>2</sub>S which is sometimes found mixed with and produced with fluids from oil and gas wells

**“Hydrostatic head” or “hydrostatic pressure”** means the pressure which exists at any point in the wellbore due to the weight of the column of fluid or gas above that point

**“Illegal oil/gas”** means oil or gas which has been produced within the State from any well or wells in violation of any rule, regulation, or order of the Agency, as distinguished from oil or gas produced within the State not in violation of any such rule, regulation, or order which is “legal oil/gas ”

**“Intermediate casing”** means the casing string or strings run after setting the surface casing and prior to setting the production string or liner

**“Kick”** means the intrusion of formation liquids or gas that results in an increase in circulation pit volume Without corrective measures, this condition can result in a blowout

**“Liner”** means a length of casing used downhole as an extension to a previously installed casing string to case the hole for further drilling operations and/or for producing operations

**“Meter”** means an instrument for measuring and indicating or recording the volumes of gases or liquids, or an accepted unit of measure of length

**“Mud”** means any mixture of water and clay or other material as the term is commonly used in the industry

**“Multiple zone completion”** means the completion of any well so as to permit the production from more than one pool, with such pools completely segregated

**“Noncommercial pit”** means an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of deleterious substances or soils contaminated by deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste

**“Normal pressure”** means a formation pore pressure, proportional to depth, which is roughly equal to the hydrostatic pressure gradient of a column of salt water ( 465 psi/ft) or (0 1066 atmospheres/m)

**“Off-site reserve pit”** means a pit located off-site which is used for the handling, storage, or disposal of drilling fluids and/or cuttings

**“Oil” or “crude oil”** means, for purposes of these regulations, any petroleum hydrocarbon, except condensate, produced from a well in liquid form by ordinary production methods

**“Operator”** means the person who is duly authorized and in charge of the development of a producing property

**“Owner”** means the person or persons who have the right to drill into and to produce from any pool, and to appropriate the production either for himself, or for himself and others

**“Person”** means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, and shall include the plural

**“Plug”** means the closing off, in a manner prescribed by the Agency, of all oil, gas, and waterbearing formations in any producing or nonproducing wellbore before such well is abandoned

**“Pollution”** means the contamination of fresh water or soil, either surface or subsurface, by salt water, mineral brines, waste oil, oil, gas, and/or other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining, transporting, or processing of oil or gas within the Republic of Neftestan

**“Pool”** means “that area which is underlain or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlain by a common accumulation of oil and/or gas, provided that, if any such area is underlain, or appears from geological or other scientific data or from drilling operations, or other evidence, to be underlain by more than one common accumulation of oil or gas or both, separated from each other by strata of earth and not connected with each other, then such area shall, as to each said common accumulation of oil or gas or both, shall be deemed a separate pool ”

**“Potential”** means the properly determined capacity of a well to produce oil or gas, or both, under conditions prescribed by the Agency

**“Producer”** See “Operator” or “Owner ”

**“Production casing”** means the casing string set above or through the producing zone of a well which serves the purpose of confining and/or producing the well production fluids

**“Productivity index”** means the daily production of oil per unit pressure differential between the static reservoir pressure and the stabilized flowing pressure during flow at a stated rate

**“Public area”** means a dwelling place, a business, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can be expected to be populated

**“Public street” or “road”** means any government street or road owned or maintained for public access or use

**“Purchaser” or “transporter”** means any person who acting alone or jointly with any person or persons, via his own, affiliated or designated carrier, transporter, or taker, shall directly or indirectly purchase, take, or transport by any means whatsoever or otherwise remove from any lease, oil or gas, and/or other hydrocarbons produced from any common source of supply in this State, excepting royalty portions from leases owned by that person

**“Radius of exposure”** means that radius constructed with the point of escape of poisonous (hydrogen sulfide) gas as its starting point and its length calculated by use of the Pasquill-Gifford equations

**“Reclaimer” or “reclamation plant”** includes any person licensed by the Agency who reclaims or salvages or in any way removes or extracts oil from waste products associated with the production, storage, or transportation of oil including, but not limited to BS&W, tank bottoms, pit and waste oil, and/or waste oil residue

**“Recomplete” or “recompletion”** means any operation to

- (A) Convert an existing well from an injection well or disposal well, to a producing well, or
- (B) Add or change pools in an existing well

**“Recycling”** is the reuse, processing, reclaiming, treating, neutralizing, or refining of materials and by-products into a product of beneficial use which, if discarded, would be deleterious substances

**“Recycling/reuse pit”** means a pit which is used for the recycling or reuse of deleterious substances, is located off-site, and is operated by the generator of the waste

**“Re-enter” or “re-entry”** is the act of entering a plugged well for the purpose of utilizing said well for the production of oil or gas, for the disposal of fluids therein, for a service well, or for the salvaging of tubing or casing therefrom

**“Remediation pit”** means a pit which is used for the handling, storage, or disposal of deleterious substances and/or soils contaminated by deleterious substances which are relocated to the pit for the purpose of remediating a site which is known to be or suspected to be causing pollution

**“Reserve pit” or “circulation pit”** means a pit located either on-site or off-site which is used in conjunction with a drilling rig for the handling, storage, or disposal of drilling fluids and/or cuttings

**“Reservoir”** See “Pool ”

**“Reservoir pressure”** means the static or stabilized pressure existing at the face of the formation of an oil or gas well

**“Rotating head”** means a rotating, pressure sealing device used in drilling operations utilizing air, gas, foam, or any other drilling fluid whose hydrostatic pressure is less than the formation pressure

**“Separator”** means any apparatus for separating oil, gas, and water as they are produced from a well at the surface

**“Sodium Adsorption Ratio (SAR)”** means the index which indicates the relative abundance of sodium ions in solution as compared to the combined concentration of calcium and magnesium ions It is calculated as follows

$$\text{SAR} = \frac{(\text{Na ppm}/23.0)}{\text{sq root of } [ \{ (\text{Ca ppm}/20.02) + (\text{Mg ppm}/12.16) \} / 2]}$$

where Na=Sodium Ca=Calcium Mg=Magnesium

**“State”** means the Republic of Nefestan and its citizens

**“Spill containment pit”** means a permanent pit which is used for the emergency storage of oil and/or saltwater spilled as a result of any equipment malfunction

**“Subnormal pressure”** means the formation pore pressure, proportional to depth, which is less than a hydrostatic pressure gradient of 465 psi/ft or 0.107 atmospheres/m

**“Sulfide stress cracking”** means the cracking phenomenon which is the result of corrosive action of hydrogen sulfide on susceptible metals under stress

**“Surface casing”** means the first casing string designed and run to protect the treatable water formations and/or control fluid or gas flow from the well

**“Tank bottoms”** means the liquids and/or solids in that portion of a storage facility below the sales line or connection that are unsaleable to the crude oil first purchaser in its present form

Tank bottoms may consist of a combination of several elements including, but not limited to, oil, BS&W, and treating fluids

**“Tonne – Metric”** means 1 000 kilograms

**“Treatable water”** means, for purposes of setting surface casing and other casing strings, subsurface water in its natural state, useful or potentially useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal, and recreational purposes, and which will support aquatic life, and contains less than 10,000 mg/liter total dissolved solids or less than 5,000 ppm chlorides Treatable water includes, but is not limited to, fresh water

**“Trenching”** means the practice of constructing trenches in or adjacent to a pit for the purpose of relocating all or a portion of the solids so as to facilitate closure

**“Ultimate destruction”** means the treatment of a deleterious substance such that both its weight and volume remaining for disposal have been substantially reduced, and there is no demonstrated process or technology commercially available to further reduce its weight and volume and remove or reduce its harmful properties, if any For the purposes of demonstrating a substantial reduction in weight and volume, any aqueous portion separated from the balance of a waste that meets drinking water standards or is evaporated into the ambient air shall count toward the weight and volume reduction

**“Underground source of drinking water (USDW)”** means an aquifer or its portion which

- (A) Supplies any public water system, or
- (B) Contains a sufficient quantity of ground water to supply a public water system, and
  - (i) Currently supplies drinking water for human consumption, or
  - (ii) Contains fewer than 10,000 mg/1 total dissolved solids, and
- (C) Is not an exempted aquifer

**“Vacuum”** means pressure below the prevailing pressure of the atmosphere

**“Waste”** means

- (A) As applied to the production of oil, in addition to its ordinary meaning, “shall include economic waste, underground waste, including water encroachment in the oil or gas bearing strata, the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil, surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands ”

- (B) As applied to gas, in addition to its ordinary meaning, shall include economic waste, “the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply, the inefficient or wasteful utilization of gas in the operation of gas wells drilled to and producing from a common source of supply, the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply, the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof, waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand, the escape, blowing, or releasing, directly or indirectly, into the open air, of gas from well productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof, and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply ”
- (C) The use of gas for the manufacture of carbon black or similar products predominately carbon, except as specifically authorized by the Agency, shall constitute waste
- (D) The flaring of tail gas at gasoline, pressure maintenance, or recycling plants where a market is available

“**Waste oil**” shall include, but not be limited to, crude oil or other hydrocarbons used or produced in the process of drilling for, developing, producing, or processing oil or gas from wells, oil retained on cuttings as a result of the use of oil-based drilling muds, or any residue from any oil storage facility on a producing lease or on a commercial disposal operation or pit. The term “waste oil” shall not include any refined hydrocarbons to which lead has been added.

“**Waste oil residue**” means that portion of waste oil remaining after treatment and after the saleable liquids and water have been extracted. Waste oil residue is a type of waste oil.

“**Well log**” or “**Well record**” means a systematic, detailed and correct record of formations encountered in the drilling of a well.

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## PRESCRIBED FORMS

*Required Agency forms may be submitted to the Agency on forms supplied by the Agency or on xerographic copies of Agency forms in prescribed color or by computer generated forms in prescribed color. Computer generated forms will be printed from Agency designed files made available via the electronic Bulletin Board Service (BBS), Internet (World Wide Web) or magnetic disk. Computer generated forms must contain the exact language and wording of Agency forms. Any alteration of Agency forms language and wording may subject the signature party and/or operator to perjury charges.*

The following Agency forms are prescribed for filing purposes

**Form 1000 Notice of Intention to Drill** Form shall be filed before any oil, gas, injection, disposal, or service well is drilled, recompleted, or re-entered. Such notice shall include the name(s) and address(es) of the surface owner(s) of the land upon which the well is to be located. The Agency shall process the application and, if approved, return a computer-generated permit to the operator. The Agency shall mail a copy of the permit to drill or re-enter to the land owner(s). Upon approval, the operator will have six months to commence the permitted operations. A copy of the approved permit shall be posted at the well site.

**Form 1000A — Request for Reserve Pit Requirements** Form may be filed in duplicate for information before any noncommercial pit is constructed. The Agency shall indicate the necessary liner requirements, if any, and return to the operator.

**Form 1001 — Notification of Intention to Plug** Form shall be filed in duplicate, five days prior to plugging operations and shall notify the appropriate Agency District Office before work is started. If the Intent to Plug is cancelled, the Agency shall be notified by letter. The operator of each offset producing well shall be notified prior to the plugging of any well other than a dry hole.

**Form 1001A — Notification of Spudding of New Well** Form mailed with the intent to drill permit. Form shall be filed with the Agency within 14 days of spudding a new well or reentering a previously plugged well.

**Form 1002A — Well completion report** A complete well record shall be furnished on this Form within 30 days after completion of operations to drill, recomplete, re-enter, or convert to injection or disposal well. Effective for both dry hole and/or

producer If well is an oil or gas producer, list assigned designation Gas-oil ratio must be shown when Form 1002A is filed List on a 24-hour basis both oil and gas

(A) Oil well GOR less than 15,000 Cubic Feet/Barrel or 3,000 Cubic Meters/Tonne

(B) Gas well GOR more than 15,000 Cubic Feet/Barrel or 3,000 Cubic Meters/Tonne

**Form 1002B — Confidential Filing of Electric Logs** Form shall be filed within 60 days of the running of the last formation evaluation type wire line log to hold logs confidential for one year period Optional extension for six months may be requested in writing to the Technical Department of the Agency

**Form 1002C Cementing Report to accompany Well Completion Report** Form shall be filed with the Well Completion Report (Form 1002A) describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs The form shall be completed and signed by employees of both the operator and the cementing company

**Form 1003 — Plugging Record** Form shall be filed in duplicate, within 30 days after plugging operations are completed Both copies are to be mailed to the applicable Agency District Office

**Form 1003A — Notice of Temporary Exemption from Well Plugging** Form shall be filed with the appropriate District Office

**Form 1003C — Cementing Report to accompany Plugging Record** Form 1003/1003C shall be filed when well has been plugged Form 1003/1003C shall be completed and signed by employees of both the operator and the cementing company

**Form 1006A — Financial Statement for oil, gas, injection or disposal wells** Prior to drilling and/or operating a well, the licensee shall furnish the Conservation Division a verifiable financial statement or other present alternate surety,

**Form 1006B — Agreement to plug oil, gas, and service wells** Operator shall agree to plug well(s) in compliance with the Agency rules This agreement must accompany the operator's elective choice of surety This Form is required to be file with the Agency every twelve (12) months

**Form 1006C — Irrevocable commercial letter of credit** Prior to drilling and/or operating a well, an irrevocable commercial letter of credit (\$25,000 00) shall be furnished to the Agency or other present alternate surety The original copy must have the bank seal affixed A letter of credit must be valid for at least a one-year period

**Form 1006SB — Surety bond for seismic shot hole plugging** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field must secure a bond in the amount of \$50,000 00 Seismic companies must file the original Form 1006B only with a copy of the power of attorney from the bonding company The name and address of the Neftestan resident service agent shall be endorsed on the bond form Form 1006S shall be filed with the bond

**Form 1007A — Annual unallocated natural gas wells survey** Annual Survey Form will be furnished by the Agency at the end of each calendar year in duplicate The form shall be updated as of December 31 notifying the Agency of any new wells, wells sold (to whom and address), or abandoned since the last 1007A was filed Original only shall be forwarded to the Agency by February 15th for the previous year's activity

**Form 1008A — Annual oil block survey** Annual Survey Form will be forwarded by the Agency at the close of each calendar year, in duplicate, listing all oil wells, and projects Forms will be updated and corrected on this form as of December 31 adding any new wells or notifying the Agency of any wells sold, and to whom (with addresses), or indicating abandoned wells since the last 100SA was filed The original only shall be furnished to the Agency within 60 days receipt, for the previous year's activity

**Form 1008B — IBM Purchaser Annual Oil Summary** The Agency will tabulate and print all data filed by the operator upon return of the 1008A and mail one copy of Annual Summary Form 1008B to each purchaser, listing his connected wells as reported by the operator

**Form 1008S — Operators agreement to plug seismic shot holes** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field shall be duly registered with the Agency on Form 1006SB

**Form 1011 — Multizone Well Runs Report** Operators having wells producing oil from two or more zones which are dually completed shall file Form 1011 with the Agency on or before the last day of the succeeding month

**Form 1012 — Annual Fluid Injection Report** Operators shall file Form 1012 by April 1 of each year covering the previous calendar year (January 1 through December 31) on all enhanced recovery projects, pressure maintenance projects, and salt water disposal wells (commercial disposal wells will report twice per year on January 31 and July 31 for the previous six months) for each well The completed form will list well

identification including the Agency order number, injection volume and pressure, etc , as required on the form No well is to be operated for injection or disposal unless the Form 1012 is filed by the above dates

**Form 1014 — Application for Permit to Use Earthen Pit** The operator of a proposed off-site reserve pit, recycling/reuse pit, spill containment pit, or remediation pit must submit Form 1014 in duplicate to the appropriate District Office for approval before constructing or using the pit

**Form 1014D Application for Surface Discharge** Each application for surface discharge of produced water must be submitted to a Field Operations office on Form 1014D in quadruplicate Applications will be processed within five working days

**Form 1014HD Application for Disposal of Hydrostatic Test Water** Company wishing to discharge water used to test a pipeline or tank, must submit a Form 1014HD to the Pollution Abatement Department for prior approval

**Form 1014N Application for Commercial Pit Construction** After a Agency order is obtained, Form 1014N must be submitted for approval by the Manager of Pollution Abatement prior to the construction of each commercial pit authorized by the order

**Form 1015 — Application for Administrative Approval to Dispose of or Inject Water into Well(s)** Applicant shall file an original and six copies of application and one complete set of attachments to the Agency on Form 1015 Applicant will also furnish one copy of the application on Form 1015 to the landowner and a copy of the application to each operator of a producing well within one-half (1/2) mile of the well location Applicant will submit an affidavit of delivery or mailing not later than five days after the application is filed and shall file proof of publication in the Republic of Neftestan

**Form 1015SI Application for Permit for Simultaneous Injection Well** Operator shall file original and three copies with the Agency on Form 1015SI A copy of the form will also be supplied to the operator of any producing well within 1/2 mile of the proposed injection well

**Form 1015T — Application for Injection of Reserve Pit Fluids** Each application for the on-site injection of reserve pit fluids (i e , drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed with the Agency by the well operator on Form 1015T The original and three copies of the application and one complete set of attachments shall be furnished to the Agency A copy of the application will also be supplied to the land owner and the operator of any producing well within 1/2 mile of the proposed well

**Form 1016 — Back Pressure Test for Natural Gas Wells** Operators and/or purchasers, on the Form 1016, will report all single-point and four-point potential tests as required by general rules. List well numbers and special allocated pool numbers, first date of sales, and complete flow data.

**Form 1017 — Field Gas Well Deliverability Tests** Operators and/or purchasers of gas shall take deliverability - tests during each year, and on the test sheet.

**Form 1020 — Application for Tax Credit Cost Certification for the Recycling, Reuse, or Ultimate Destruction of Deleterious Substances** Applicant shall file an original Form 1020 with necessary attachments with the Agency. Form 1020 is usually filed prior to construction of facility, and final approval of tax credit is granted after facility is constructed and in use.

**Form 1021 — Application for Priority Hardship Classification** The applicant shall file Form 1021 and the necessary attachments with the Agency for review prior to any hearing for priority one hardship classification. In addition, a formal application for hearing must be filed with the Agency.

**Form 1021A Application for limited deviation from the priority gas rules** The applicant shall file Form 1021A and the necessary attachments with the Agency for review prior to any hearing for deviation from the priority gas rules. In addition, a formal application for hearing must be filed with the Agency.

**Form 1022 — Application to flare or vent gas** Operator shall file one copy of Form 1022 to the Agency listing assigned well number.

**Form 1022A — Application to operate vacuum pump** Operator shall file one copy of Form 1022A with the required attachments to the Agency.

**Form 1023 — Application for multiple completion, multichoke assembly or commingle completion** Operator will file the original and three copies of Form 1023 with the required attachments. List assigned number.

**Form 1024 — Packer setting affidavit** Operator will submit Form 1024 as required.

**Form 1025 — Packer leakage test** Operator will submit Form 1025 as required.

**Form 1027 — Bottom hole pressure test** Operator, on the pink sheet of Form 1027, shall take BHP tests in the manner and during periods prescribed by field rules. List assigned well numbers.

**Form 1029A — Production or potential test oil only** Operator of each newly completed oil well shall file a potential test Form 1029A not later than 30 days after completion of the well. All tests, if required, shall be witnessed by a representative of the Agency. Each well not subject to a GOR test will be tested annually during July and results filed with the Agency on computer-generated Form 100SA. Test results will be effective on September 1 of each year. List assigned well number.

**Form 1070 Inventory of authorized existing enhanced recovery wells** Operators shall file reporting Form 1070 before injecting into any enhanced recovery well.

**Form 1071 — Inventory of authorized existing disposal wells** operators shall file the reporting Form 1071 before disposing into any disposal well.

**Form 1072 — Notice of (commencement) (termination) of injection** Within 30 days of either the commencement or termination of injection Form 1072 must be filed. Failure to file Form 1072 within 18 months from the date of authorization results in termination of the Agency order.

**Form 1073 Notice of transfer of well operatorship** The new operator shall file Form 1073 to notify the Agency of any change of operation or purchaser of any oil, gas injection, disposal, or enhanced recovery injection well within 30 days after transfer of the well.

**Form 1073I — Notice of transfer of well operatorship** The new operator shall file Form 1073I to notify the Agency of any change of operation of any injection, disposal, or enhanced recovery injection well within 30 days after transfer of the well.

**Form 1075 — Mechanical integrity pressure test** A pressure or monitoring test must be performed on new and existing enhanced recovery injection wells and disposal wells. Information must be submitted on Form 1075 and witnessed by a Field Inspector. Forms shall be submitted to the Agency.

**Form 1085 — Complaint report** Form 1085 is used by Agency personnel to report violations of General Rules of the Agency to report progress on ongoing remedial actions. Copies are sent to all parties concerned with investigation. Form 1085 combines and replaces old Forms 1034 and 1062.

**Form 1534 — Application for tax rebate for horizontal wells** Operators shall file one original of Form 1534 with the required attachments to the Agency. To obtain the tax exemption of the gross production tax, the operator shall forward a copy of the Agency order to the State Tax Agency, together with any other data required by that agency.

**Form 1535 – Application to Construct Pipeline** Form is required to be filed for any pipeline to be construed as a Common Carrier, and will serve to initiate hearing and Agency order process

**Form 1536 – Application to Construct Above-Ground Storage Facility** Form is required to be filed and will serve to initiate hearing and Agency order process

**Form 1537 – Application to Construct Oil and/or Gas Processing Facility** Form is required to be filed, and will serve to initiate hearing and Agency order process