

**GOVERNING BOARD MEETING
OREGON DEPARTMENT OF GEOLOGY & MINERAL INDUSTRIES**

Friday February 15, 2013
Teleconference Meeting
Portland, Oregon

1) Call to Order:

Chair Larry Givens called the meeting to order at 11:05 am.

2) Introductions:

Board Chair Larry Givens and Board Members Steve Macnab, Charles Vars, and Lisa Phipps were present via teleconference. Lisa Phipps left the teleconference at 11:50 am.

DOGAMI Staff in attendance:

Vicki McConnell, State Geologist

Bob Houston, Energy Resources Geologist

Carol DuVernois, Executive Assistant

Larry Knudsen, Assistant Attorney General, ODOJ

Gary Lynch, DOGAMI Assistant Director, via teleconference

1 **3) Public Comment on Agenda Item 4:** (three minutes limit per person unless
2 otherwise specified at the meeting by the Chair)

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There was no public comment.

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6 **4) Staff requests adoption of revisions to Oregon Administrative Rules 632:** (Board
7 and staff)

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a. Division 10 – Adoption of revisions to Oil & Gas rules: Action Item

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AAG Knudsen explained to the Board that any motion to adopt the draft rules would be based on three things: The proposed rules that appear in the Board packet; additional changes recommended in the February 14, 2013 memo that the Director sent to the Board the previous day; and any additional changes that

19 may be made during the current meeting. So any decision would wrap all three
20 of those together for the final adoption of the rules.

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22 Houston detailed each comment received by the public and Board members and
23 the discussion regarding each comment, some of which were grammatical, some
24 of which were more substantive. Grammatical comments were briefly discussed
25 and corrected as suggested. The more substantive comments were discussed
26 and either revised, if warranted, or left as written in the proposed draft rules.

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28 Vars asked for clarification of “operator” vs. “permittee” vs. “owner”. Knudsen
29 explained that the terms are used to determine who is being directed by the
30 rule. He said we typically do not like to use the term “owner” because the
31 persons that are operating the wells are not the owners of the property. So for
32 the most part “owner” was struck out, except for the notable exception when
33 the rules discuss the unitization of the fields because unitization is owner driven.

34
35 “Permittee” and “operator” are a little more complicated. If you specify only
36 “permittee” you could end up in a situation where you could have someone
37 violating the substantive provisions of the rules that has not bothered to get a
38 permit. So in the common sense of the word, they are not a “permittee”, and we
39 would only be able to take enforcement action against them for failing to get a
40 permit, as opposed to failing to get a permit and also failing to comply with the
41 substantive requirements of the rule. One way to address the issue is to strike
42 “permittee” in all the rules or re-define the term “permittee” to include an
43 operator, as opposed to someone who has an actual written permit. What we
44 have proposed is the latter, in which we conflate the two definitions. It may not
45 be optimal in terms of people reading the rules, because it requires the
46 understanding of the definitions. However, it is not a big problem for Oil & Gas
47 and Geothermal because we have a very few sophisticated companies, as
48 opposed to something like aggregate where you might have a lot more people of
49 differing sophistication.

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51 Knudsen stated that he believes the rules as proposed with the errata will be
52 enforceable and should not propose any particular hardship on the public
53 because we are dealing mostly with Northwest Natural (NWN) and a few
54 geothermal companies. The Board agreed.

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56 Knudsen also discussed delegation and the fact that in general in these rules
57 we’ve removed the reference to the “State Geologist” and replaced that with
58 the “Department” as a style and consistency proposal that brings us in line with
59 the general drafting recommendations that the Department of Justice and the
60 Secretary of State’s office puts out. The responsibility still lies with the State
61 Geologist because the State Geologist is the Director of the Department and
62 assigns responsibilities and makes decisions for the Department. Sub-delegation

63 to assistants is legally okay, but if the rules say "State Geologist" it could mean
64 there is intent to preclude the State Geologist from sub-delegation of
65 responsibilities.

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67 A related issue to the extent that in these rules the Governing Board is
68 delegating responsibility to the Department that the statute otherwise gives to
69 the Board. Knudsen believes that it is legal to sub-delegate those responsibilities
70 to the Department and if it is done in a rule, you don't need to record it in a
71 Delegation Log.

72
73 Knudsen also explained the compulsory integration order. The Board essentially
74 has to decide how the profits from the well are divided between the
75 participating owners and operators and the non-participating owners and
76 operators. The existing language provided for the participating
77 owners/operators to be able to recover the well drilling and production costs
78 from the non-participating owners/operators right off the top. It also included a
79 300% multiplier for the costs, which the participating owners/operators claim
80 represent the risks of drilling wells that may be dry. In the course of the rule
81 making process, concerns about the provision were raised and it was dropped
82 out. NWN asked for the provision to be reinstated in the rules. We proposed
83 new language to allow the participating owners to get their money off the top.
84 However, it is very speculative as to whether or not a 300% multiplier is an
85 appropriate amount in all cases without any evidence, so it was recommended it
86 be placed in the integration order. New proposed language for (6)(c) included in
87 the errata will need to be included in the motion.

88
89 Houston and Knudsen explained a bond exemption clause, in that any well that
90 has produced, in the prior annual year, a dollar amount in excess of the bonding
91 requirement is excluded from the bonding requirement. Storage wells and
92 service wells are not exempt and are now subject to the bonding requirement.

93
94 The definition of "Department" will be added to 632-010-0008 as subsection (13)
95 and the other definitions will be renumbered. The definition is as follows: The
96 "Department" means the Oregon Department of Geology and Mineral
97 Industries.

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99 The term "State Geologist" is only used one time in the OAR in lines 910 and 911.
100 Suggest the term "State Geologist" is removed from rule 632-010-0157(3) and is
101 deleted as a defined term.

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103 The definitions for "Operator" and "Permittee" have been rewritten as follows:
104 632-010-0008(4637) "Operator" means any person ~~who has the right to drill a~~
105 ~~well~~, or who is in charge of the development of a lease or the construction,
106 development or operation of a producing well subject to the division.

107 632-010-0008 (42) “Permittee” means any person who has the right to drill a
108 well and has received a permit or is an operator.

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110 All other comments relating to Division 10 were grammatical in nature.

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112 The Board discussed the proposed revisions outlined by staff and Larry Knudsen
113 proposed the following motion to be incorporated by reference:

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115 **Proposed Motion:**
116 **To adopt the proposed amendments to Division 10 as they appear in the**
117 **attachment to the staff report, with the following additions and changes: The**
118 **adoption of a definition of “Department” in 632-010-0008, and that definition**
119 **of “Department” means the Oregon Department of Geology and Mineral**
120 **Industries. Also amended would be to strike the definition of “State Geologist”**
121 **and delete the reference to “State Geologist” in rule 632-010-0157(3) as**
122 **proposed in the errata. Change the definition of “operator” in 632-010-0008,**
123 **as proposed in the errata. Add new language to 632-010-0161(6)(c) as**
124 **provided in the errata and would be making the additional change suggested in**
125 **the errata to 632-010-0170. Furthermore, we have the addition of the**
126 **definition of “permittee” in 632-010-0008, which can be incorporated by**
127 **reference into the motion.**

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129 **Motion:**
130 **Vars moved approval the motion drafted by AAG Knudsen on the Division 10**
131 **rules. Macnab seconded. Motion carried.**

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133 **b. Division 15 – Adoption of revisions to Information & Seismic Test Holes**
134 **for Oil & Gas rules: Action Item**

135 The Board had no questions about the staff report or the errata on Division 15.

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137 AAG Larry Knudsen proposed the following motion to be incorporated by
138 reference:

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140 **Proposed Motion:**
141 **To adopt the proposed amendments to Division 15 as they appear in the**
142 **attachment to the staff report, with the addition of the changes to the**
143 **definitions in 632-010 that are set out on page 3 of the errata, which are**
144 **changes to the definitions of “operator” and “permittee” and the new**
145 **language is provided in the errata.**

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147 **Motion:**
148 **Vars moved approval the motion drafted by AAG Knudsen on the Division 15**
149 **rules. Macnab seconded. Motion carried.**

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c. Division 20 – Adoption of revisions to Geothermal rules: Action Item
The Board had no questions about the staff report or the errata on Division 20.

AAG Larry Knudsen proposed the following motion to be incorporated by reference:

Proposed Motion:
To adopt the proposed amendments to Division 20 as they appear in the attachment to the staff report, with the three additional changes that appear on page 4 of the errata, those being the elimination of the term “State Geologist” from the definition in 632-010, the grammatical corrections in 632-020-0005(5) and the grammatical correction in 632-020-0170.

Motion:
Vars moved approval the motion drafted by AAG Knudsen on the Division 20 rules. Macnab seconded. Motion carried.

5) Adjourn

The meeting was adjourned at 12:25 pm

APPROVED:

Larry Givens, Chair

Douglas MacDougal, Vice Chair

Charles Vars

Lisa Phipps

Steve Macnab