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October 7, 2014

Lisa Ivshin, Executive Director
Mississippi Oil and Gas Board
500 Greymont Avenue – Suite E
Jackson, Mississippi 39202

Re: Comments to Board on "SUGGESTED TMS POLICIES"– October 15, 2015 Board Meeting

Executive Director Ivshin:

As per email from Board Attorney, Howard Leach, it is my understanding this letter will allow me to offer input to the members of the Mississippi Oil and Gas Board for their consideration at the October 15, 2014 meeting upon the above referenced proposed policy changes relative to the Tuscaloosa Marine Shale.

First, a brief introduction. I am a mineral owner in permitted and non-permitted properties in both Amite and Wilkinson counties. I am a participant in 4 producing wells in the TMS. I am a full and partial owner of multiple businesses servicing the TMS area. I am moderator for Tuscaloosa Marine Shale Facebook Community (11,000 active members) and 50% owner and primary poster of information for TMSHorizons.com webpage (13,000 active readers) and writer of columns that appear in the McComb Enterprise-Journal and Woodville Republican, newspapers with circulation in the heart of the TMS play.

I am very interested in the success of the Tuscaloosa Marine Shale play.

If I may state the obvious, the Tuscaloosa Marine Shale play is the first Mississippi attempt to commercially drill a shale. It appears to me that you and this board have recognized the challenge of drilling and producing the Tuscaloosa Marine Shale and have been understandably lenient toward and trusting of these oil exploration companies spending hundreds of millions of dollars to attempt to tap into this rich reservoir of oil in our state. I commend your patience with these companies.

Though it is far from clear whether this play will become commercial, you are now wisely considering revising polices that, frankly, were not designed to deal with a shale play. The policies on your books were designed to deal with vertical exploration for oil and gas.

Please accept my accompanying comments on the proposed changes in light of a respect for the need to balance the challenges of this play not only with a long-term view toward the reasonable and timely production of oil and gas in the TMS, but toward setting a precedent for possible future shale plays.

Sincerely,

Bernell McGehee

Comments upon "SUGGESTED TMS POLICIES"
Bernell McGehee

Suggested - POLICY #1:

"In all 100% or "simple" integration dockets filed under Miss. Code Anno. Section 53-3-7(1), both the Petition and the Landman's Affidavit shall contain an affirmative statement that the petitioner has made a good-faith effort to examine the public land records for the purpose of identifying all owners of drilling rights and rights to share in production in the proposed drilling unit (whose identity can reasonably be determined) not more than ninety days (90) days prior to the filing of the docket."

As I understand the current applicable law, I fully agree with this proposed policy change.

However, I would propose that a penalty be added for falsifying the affidavit.

It is one thing to require someone to sign an Affidavit and another to penalize that person for falsifying the filing of an Affidavit.

IF a law or rule already exists that provides for a penalty for filing an affidavit falsely, then I encourage the Mississippi Oil and Gas Board to demonstrate its intent to make use of that law by taking whatever steps are allowed up to and including filing of criminal charges against those filing such false affidavits.

Frankly, it is meaningless to create a policy that requires an affidavit without having any penalty associated with it or without demonstrating the willingness to make use of existing penalties for falsifying the affidavit.

Comments upon "SUGGESTED TMS POLICIES"
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Suggested – POLICY #2:

"In all 100% of "simple" integration dockets filed with the Mississippi State Oil & Gas Board under Section 53-3-7(1), both the Petition and the Landman's Affidavit shall contain an affirmative statement that the petitioner has made a good-faith effort to negotiate Oil, Gas & Mineral Leases or other appropriate agreements with those owners of drilling rights and rights to share in production in the proposed drilling unit whose identity and addresses are known or can reasonably be determined."

I fully agree with this proposal.

However, I ask you to consider placing teeth in the Affidavit requirement. Absent a penalty and absent the will to enforce the penalty, the Affidavit requirement is meaningless.

Furthermore, the Affidavit requirement, along with the penalty and willingness to enforce the penalty for filing a false Affidavit, should be extended to the 300% or Alternative Risk integration dockets.

I want to support the drilling done by these operating companies in the TMS and hope they are very successful, but the fact is these 300% force integration letters were sent out from almost the beginning and continue to be today without the process of making a reasonable effort to contact and negotiate with mineral owners.

I submit a penalty for falsifying ALL Affidavits and the willingness to enforce the penalty by this board is a reasonable addition to this proposed rule.

Comments upon "SUGGESTED TMS POLICIES"
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Suggested - POLICY #3:

In all TMS dockets filed with the Mississippi State Oil & Gas Board, the petitioner shall state in both the Petition and the Landman's Affidavit the following information:

1. The approximate percentage of interests in the drilling rights and rights to share in production in the proposed drilling unit which the petitioner owns or controls (through leases, farmuts or other agreements) as of the date of the filing of the docket;
2. The total number of drilling permits for TMS wells which the petitioner has previously obtained from the Mississippi State Oil & Gas Board;
3. The total number of TMS wells in the state o Mississippi which the petitioner has actually spudded and drilled to completion pursuant to those drilling permits;
4. The total number of TMS permits in the State of Mississippi which the petitioner currently holds under which no well(s) are presently being drilled;
5. The total number of TMS permits which the Mississippi State Oil and Gas Board has previously issued to the petitioner which have expired without a well being spudded pursuant to said permits;
6. The total number of TMS permits in the State of Mississippi which the petitioner has been forced to renew due to the fact that no well(s) were spudded during the term of such permits

The above information shall be furnished to the Mississippi State Oil & Gas Board in all TMS dockets (whether those dockets are filed pursuant to the 100% or "simple" integration statute [Section 53-3-7(1)] or the alternate risk charges statute [Section 53-3-7(2)].

I fully agree with the proposal.

However, I am concerned about the wells per unit size, also. The original allowance for 3 section units was, as I understood it, with the intent of drilling 2 wells and that is not being done by some of these operators.

It appears to me that in consideration of new and renewed permits, negative consideration should be weighted toward those operators abusing the intent of the 2,000 acre units.

In other words, I believe operators who have shown an operational intent to drill only 1 well per 2,000 acre unit should be limited to 1,000 acre size units once the intent of their plans are made known and that 2,000 acre permits should not be renewed for these companies.

The argument has been made that by leaving "virgin" portions undrilled future areas could be better developed as technology improves. That could be true, but it is clear the real reason these companies want to do this is to hold more acreage with minimal cost. And, what precedent allows for holding such large acreage with one well?

This is a give and inch and take a mile situation, folks.

Comments upon "SUGGESTED TMS POLICIES"
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Suggested - POLICY #4:

In those instances in which competing dockets are filed by different prospective operators involving the same or substantially the same unit acreage, the Mississippi State Oil and Gas Board shall consider all relevant facts and information in determining which of the competing dockets should be approved.

In making this determination, the Board will be guided by its findings as to which of the competing dockets, if approved, will best promote the orderly development of the oil and gas resources of the State of Mississippi, without unnecessary waste, and which of the competing dockets will best safeguard, protect and enforce the co-equal and correlative rights of all owners in the pool.

In addition to considering which of two (2) or more competing dockets was first filed, the Mississippi state Oil a & Gas Board will consider other relevant factors, including but not limited to the following:

1. What percentage of the leasehold or drilling rights each of the competing petitioners owns or controls in the proposed drilling unit (through leases, farmouts or other agreements);
2. The technical and financial ability of each of the competing petitioners to timely drill, complete and operate the well;
3. The past experience of the competing petitioners in drilling, completing and operating similar wells;
4. The total number of wells in the area actually drilled, completed and operated by each of the competing petitioners;
5. The respective records of each of the competing petitioners in complying with the regulatory requirements of the Mississippi state Oil & Gas Board;
6. The commitment (financial and otherwise) of each of the competing petitioners to commence the timely drilling and completion of the proposed unit well during the term of the drilling permit;
7. How many, if any, drilling permits have previously been issued by the Mississippi State Oil &Gas Board to each of the respective petitioners under which wells (although permitted) were not drilled;
8. How many, if any, drilling permits each of the respective petitioners currently hold from the Mississippi State Oil & Gas Board under which the drilling of the wells has not commenced.

I am in agreement with what I believe is the intent of this policy, which is not to approve a large number of permits to a company who has neither the ability nor the intent to drill the permitted wells.

(Comment Continued on Next Page)

(Comment on Suggested TMS Policy Change #4 Continued from Previous Page)

That said, with the general exception of Goodrich (though there are some very old permits for Goodrich, also), none of the five companies operating in the play have demonstrated the ability or intent to drill the permitted wells they already possess.

Further, issuing additional 3 section/2,000 acres (and more) unit permits to companies demonstrating the intention to only drill 1 well per unit should be ceased. These companies should be requested to either demonstrate a willingness to drill at least 2 wells per unit or to only submit section and a half unit sizes for approval.

I object to the Mississippi Oil and Gas Board continuing to approve of units for companies without either the ability or the financial wherewithal coupled with a demonstrated plan of action to drill at least 1 well per 1,000 acres.

I believe by continuing to do so, you are in violation of your stated intent, as hereby reprinted:

§ 53-1-1. DECLARATION OF POLICY.
It is hereby declared to be in the public interests to foster, encourage, and promote the development, production, and utilization of the natural resources of oil and gas in the State of Mississippi; and to protect the public and private interests against the evils of waste in the production and utilization of oil and gas by prohibiting waste as herein defined; to safeguard, protect and enforce the co equal and correlative rights of owners in a common source or pool of oil and gas to the end that each such owner in a common pool or source of supply of oil and gas may obtain his just and equitable share of production therefrom; and to obtain, as soon as practicable, consistent with the prohibition of waste, the full development by progressive drilling of other wells in all producing pools of oil and gas or of all pools which may hereafter be brought into production of such, within the state, until such pool is fully defined.

It is not the intent nor the purpose of this law to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Mississippi on the basis of market demand. It is the intent and purpose of this law to permit each and every oil and gas pool in Mississippi to be produced up to its maximum efficient rate of production, subject to the prohibition of waste as herein defined, and subject further to the enforcement and protection of the coequal and correlative rights of the owners of a common source of oil and gas, so that each common owner may obtain his just and equitable share of production therefrom.

Comments upon "SUGGESTED TMS POLICIES"
Bernell McGehee

Suggested - POLICY #5:

No incomplete TMS permit application or docket shall be filed with the Mississippi state Oil & Gas Board. Each TMS permit appliction shall consist of the following:

1. A duly executed FORM 2 (Allication to Drill);
2. All applicable permit application and docket filing fees;
3. A duly certified unit location plat:
4. Reserve Pit Information (including pit schematic) and
5. Proof of Financial Responsibility pursuant to Statewide Rule 4(c)

The following requirements shall apply to all unit location plats filed with the Mississippi State Oil & Gas Board.

1. Unit location plats shall be prepared by a Professional Land Surveyor and certified by the surveyor preparing the plat. Plats shall bear the word "Certified" and shall have affixed thereto both the signature and stamp and/or seal of the surveyor.
2. Plats must depict the exterior drilling unit boundaries as well as the proposed well location on the unit, including the estimated distance of the well from the two (2) nearest exterior drilling unit boundaries.
3. In the case of directionally drilled or intentionally deviated wellbores, the plat must depict both the surface location and the bottomhole location of the well.
4. In the case of horizontally drilled wells, the plat must depict the surface location, the point of entry or penetration point and the terminus point of the well.
5. If the proposed well location has been surveyed and staked, the plat shall reflect that fact by additionally containing the words, "Surveyed location." If the well location has not been surveyed, the plat shall reflect that fact by additionally containing the words "Plat only (location not surveyed").
6. Unit location plats shall also depict all other wells located on the proposed drilling unit, as well as all adjoining units and the wells located thereon.

(vii) In those instances in which a unit location plat has been submitted to the Mississippi State Oil and Gas Board as a play only (no surveyed well location), the operator within thirty (30) days after spudding of the well shall have prepared and filed with the Board a revised unit location plat depicting the actual surveyed well location.

Certainly TMS permit applications need to be filed with complete plats.

I had the occasion to request a plat of a filed permit as appeared in the preliminary docket a few months ago only to learn I could not obtain the plat, since it wasn't yet available. The issue was that the wrong township and range was used in the preliminary docket and I could not understand where the unit was located.

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(Comment on Suggested TMS Policy Change #5 Continued from Previous Page)

It would seem to be unfair to require mineral owners in a unit to comment upon filed applications within a certain time frame when, in fact, the location of the units are not made available to the public.

Let me preface the remainder of my comments with the fact that I have no technical expertise to call into question the details of this proposal. So, allow me to state what I think I understand and pose some thoughts based on my vague grasp of the subject.

First, it is my understanding that this "certified" plat is for the unit as a whole.

So, I am wondering about the next step.

What about the survey requirements for mineral owners subsequent to the production of the well? I am aware of disagreements over ownership decimals occurring and it is my understanding that the survey requirements are lower for these type surveys such that details on the surveys aren't of much help in resolving the differences.

I have no desire to cause unnecessary expense on operating companies, but if a mineral owner disagrees with the results from this lower standard of surveying, what remedy does this board have in place to allow for an amiable reconciliation of the differences?

Are these ownership plats/maps required to be filed with the Mississippi Oil & Gas Board and when?

Are they a matter of public record?

Is the only remedy for the landowner to sue the operator after obtaining a legitimate survey using a higher standard of surveying (You know, someone actually on the ground viewing the buggy axles in place, for example.)

With 2,000 acre units in mind, it is tempting to make shortcuts, but in so doing it is likely to cause less than accurate allocations of income and no reasonable way to resolve those differences without expensive steps taken by land and mineral owners.

I encourage this Board to have the vision and wisdom to help avoid unnecessary conflicts and expense going forward.

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Suggested - POLICY #6:

Each petitioner/applicant for a TMS drilling permit shall submit to the Mississippi State Oil & Gas Board (concurrent with the filing of the permit application) a written Plan of Development which shall state in precise terms the applicant's future plans for the drilling and development of the proposed drilling and production unit being permitted. Such Plan of Development shall, at a minimum, include the following:

(1) The petitioner's commitment (if any) that an initial unit well will be drilled and completed on the proposed drilling and production unit during the twelve (12) months term of the drilling permit;

(2) The estimated spud date of the initial unit well;

(3) The total number of increased density wells sought to be authorized for drilling on the proposed drilling unit; and

(4) The estimated time expected to elapse between the drilling and completion of the intial unit well and the complement of other increased density wells proposed to be drilled on the drilling unit.

Insofar as I understand the intent of this policy, I am in full agreement.

It doesn't make sense to allow operators to continue to drill one well on a 2,000 acre unit and then head off to drill and hold another 2,000 acre unit.

It also doesn't make sense to allow an operator to obtain drilling permits on dozens of units while announced plans for the foreseeable future are to only have 1 rig in the area.

That said, I am wondering about what will be done in the future if operators decide to abandon undeveloped units after only 1 well has been drilled?

With a unit established by the drilling of a well does an operator hold that acreage in perpetuity even though no intent to drill a well is demonstrated going forward?

Can the board adopt a policy to allow a new operator to drill additional wells should no activity occur in a unit after a "reasonable" period of time? (5 years, perhaps?)

I understand there is a balance between encouragement of development of the oil and gas resources of the state and protecting the rights of the mineral owners in the state.

I pray this Board can find that balance.

Comments upon "SUGGESTED TMS POLICIES"
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Suggested - POLICY #7:

TMS drilling and production units in most instances are significantly oversized and generally are described utilizing complicated metes and bounds legal descriptions. In most instances, these TMS drilling units also consist of lands located in multiple sections. When describing these TMS drilling units(whether in the Petition, the Public Notice or the Affidavits), the Mississippi State Oil & Gas Board requests that the metes and bounds legal descriptions of the drilling units conclude with a separate paragraph reading substantially as follows:

The hereinabove described tract contains _____ acres situated in Sections _____, _____, and

____, Township 1 North, Range 5 East, Wilkinson County, Mississippi.

Other than the obvious replacements of blanks where the number "1" appears after Township; where the number "5" appears after Range; where "East" appears after 5; and where "Wilkinson" appears, I agree with this proposal as a good first step.

However, while I agree with the idea that people really need to understand where their property is located, the fact is that most people don't know or understand the Section/Township/Range references used to locate land.

With these very large unit sizes and with these oil operating companies utilizing the forced pooling rules to their full advantage while local mineral owners become overwhelmed with the legalese of these notices, perhaps a further requirement of placing a plat overlaid with a road map would be in order.

I realize this may seem burdensome, but if an operating company must furnish a plat with the application, what difference would a published plat make? $50 or so extra cost?

Certainly this requirement would be less onerous than the Louisiana rule, which require plats to be furnished to all mineral owners inside the unit and within a certain distance around the unit as a part of the application and hearing notification process.

If we're going to fully inform the public, why stop with a mere legal summary description that, frankly, most people in the public won't understand?

I encourage you to change the rule such that it fully communicates with the public.

There is no need to do this half way.