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GOVERNOR

State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF CONSERVATION

STEPHEN CHUSTZ
SECRETARY

JAMES H. WELSH
COMMISSIONER OF CONSERVATION

October 8, 2015

Senator John A. Alario, Jr., President
Senator Gerald Long, Natural Resource Committee Chairman
Representative Chuck Kleckley, Speaker
Representative Gordon E. Dove, Sr., Natural Resources and Environment Committee Chairman

Via Statutorily Prescribed E-mail

Re: Post Hearing Report of Proposed Amendment to Office of Conservation Rules and Regulations LAC 43:XIX. Chapter 7 (Statewide Order No. 29-R-15/16 – Fee Schedule for FY15/16)

Dear Oversight Authorities:

The Commissioner of Conservation proposes to amend LAC 43:XIX. Chapter 7 in accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment is made to bring Conservation rules into compliance with Act 362 of the 2015 Legislative Session and will adopt Statewide Order No. 29-R-15/16 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation fee schedule for the collection of application, production, and regulatory fees, and will replace the existing Statewide Order No. 29-R-14/15.

In accordance with La R.S. 49:968.B and C. the Commissioner forwarded a report (dated August 10, 2015) of proposed amendments to the appropriate legislative committees, presiding officers of the House and Senate, and other state offices.

A public hearing held September 29, 2015, under Docket Number 15-0455, afforded interested parties an opportunity to comment on the proposed rule amendments. The public comment period was held open until 4:30 PM October 2, 2015. Pursuant to La R.S. 49:968.D(1)(b), the Commissioner of Conservation submits the following summary report of the public hearing.

I. La R.S. 49:968.D(1)(b)(i) – A summary of public hearing testimony:

The agency introduced the proposed rule and filed the state exhibits into the record. Ten to twenty members of the public attended the hearing. Approximately five people placed verbal comments into the record at the hearing and approximately four letters were received after the hearing during the public comment period. As all testimony received was in the form of a comment which is addressed in the next section of this report.

II. La R.S. 49:968.D(1)(b)(ii) – A summary of all comments received, a copy of the agency’s responses, and a statement of the agency’s action resulting from comments received:

Comment Number 1: The Administrative Procedures Act (APA) has not been complied with. Conservation began collecting these fees on August 1, 2015 before the public hearing for this rule amendment was held on September 29, 2015.

Response: Conservation is collecting the new application fees pursuant to law, not regulation. Act 362 of the 2015 Legislative Session which passed by a vote of 99 yeas and 0 nays in the House and by 35 yeas and 2 nays in the Senate and was supported by representatives of the regulated industry, among other things, established certain application fees for which Conservation has previously provided a particular service, but for which there was no compensation from the particular applicant. The law became effective as of August 1, 2015 and as such, Conservation began collecting the enumerated application fees at that time. The current rulemaking is merely intended to publish the fees adopted by law in Conservation’s comprehensive fee list in Title 43.

Comment Number 2: The fees are disproportional for stripper well operators (operators who produce less than ten barrels of oil per well per day).

Response: The application fees were calculated by dividing the current cost of each program by the number of applications received by each program. As such, the application fees represent the most accurate estimate of actual costs obtainable. Conservation has no data to demonstrate that stripper well operators submit a disproportional number of applications.

Comment Number 3: If Conservation collects more revenues from the new application fees than the amount it has estimated, the overage will constitute a tax on the regulated industry.

Response: The proposed and adopted fees were primarily based on the resource requirements to review and rule on the associated applications. The new application fees were not intended and will not render the agency self-sufficient in revenue. Thus, funding from additional sources will continue to be required. The application fees were not adopted with a cap.

Comment Number 4: Will Conservation send a copy of Conservation’s Response to Comments to all operators of record?

Response: Copies of this report containing Conservation’s Response to Comments will be sent via email to all operators of record.

Comment Number 5: If the fees collected pursuant to this rule are not approved through the BA-7 process, what happens to the funds already collected.

Response: Conservation is collecting the new application fees pursuant to law, not regulation. By law, all funds collected shall be deposited into the Oil and Gas Regulatory Fund.

Comment Number 6: The new \$75 application fee for a work permit will encourage operators to ignore the law and conduct work without applying for a permit.

Response: In discussions with operators, including numerous telephone conversations and three public meetings held in Tullos, Monroe and Oil City, Conservation has learned that many operators are currently under the misimpression that notifications of maintenance and repair type work which they regularly file under a work permit with Conservation will require the \$75 fee. This is not the case. Conservation will continue to encourage operators to provide notice of maintenance type items and there will be no work permit charge associated with notifications. Work permit applications involving the following will however be required to pay the associated fee: Plug and Abandon,

Deepen, Perforate, Squeeze, Plugback, Pull Casing, Change Zone of Selective Completion, Sidetrack New Bottom Hole Location (Existing Well), Acidize/Stimulate, or perform Hydraulic Fracture Stimulation. We will continue to work with the operators to help them gain a better understanding of the required fees.

Comment Number 7: The new \$250 application fee for a witness verification of a salt water disposal well mechanical integrity test is over burdensome and unnecessary as the state employees who serve as witnesses are already paid by the state.

Response: In discussions with operators, including numerous telephone conversations and three public meetings held in Tullos, Monroe and Oil City, Conservation has learned that many operators are currently under the misimpression that an annual test is required, however, for a properly constructed well, only one test is required every five years. Wells which have been permitted with a variance from the regulatory construction requirements afford a lesser level of protection to the underground sources of drinking water and as such, more frequent testing is required. The \$250 fee was calculated by dividing the current cost of the program by the number of applications received by the program annually. The bill resulting in ACT 362 was intended to make Conservation whole by providing a means of funding directly related to services provided and fill an unfunded gap in the 2015/16 budget.

Comment Number 8: If Conservation begins collecting these new application fees, many operators will be forced out of business leaving orphan wells for which the state will spend millions of dollars to address.

Response: Conservation began collecting the new application fees on August 1, 2015 as mandated by law. As the new application fees are directly related to services provided, only operators requesting a particular service by submitting the corresponding application will be subject to the application fee. Conservation recognizes that operators are periodically orphaned regardless of the oil economy, leaving orphan wells. The Oilfield Site Restoration Program was established to address orphaned wells and is funded not by the state, but through oil and gas production fees. Regardless of the number of wells orphaned in any given year, oil and gas production fees through the OSR program, not the State, will bear the cost to address them.

III. La R.S. 49:968.D(1)(b)(iii) – A revision of the proposed rule since submitting the report of La R.S. 49:968.B, or a statement that no changes were made:

No changes were made since submitting the previous report.

IV. La R.S. 49:968.D(1)(b)(iv) – A concise statement of the principal reasons for and against adoption of any amendments or changes suggested:

In light of the response to comments above, no changes or amendments are intended to be implemented.

The Office of Conservation expects to publish the final rule in the Louisiana Register as soon as permissible under the Administrative Procedures Act. Please inform us of your decision on whether or not you intend to hold a hearing as permitted by La R.S. 49:968.D(2)(a).

Please contact me at 225-342-5560 if there are any questions or if any clarification of the above is needed.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Gary P. Ross".

Gary P. Ross
Assistant Commissioner of Conservation

GPR:ko

Attachment