

# Chapter 3 – Permitting and Approval of Lease Operations



This chapter identifies the process for ensuring the efficient review and approval of environmentally responsible oil and gas lease development. The information provided will acquaint the operator with the basic procedures required for approval of lease operations.

The operator has two procedural options for securing approval to drill: The Notice of Staking (NOS) option and the Application for Permit to

Drill (APD) option. Although the time frames in the regulations are the same for both options, each option has specific advantages. The NOS option, if properly coordinated early in the process, may expedite final permit approval because it allows the operator the opportunity to gather information and better address site-specific resource concerns while preparing the APD package. The APD option may be more efficient for use with in-fill wells in developed fields where the operator and surface management agency have developed a close working relationship or have agreed on a Master Development Plan and standard operating practices for the field.

## Initiating the Process

The process for obtaining approval to drill is generally initiated by filing either an NOS followed by an APD, or by filing just an APD. With either option, a complete and acceptable APD must be filed with the BLM. Planning and coordination with the BLM or other surface management agency can be critical to meeting the operator's needs for a smooth and timely permitting process. It is highly recommended that operators consult with the surface management agency **prior** to filing

either an NOS or an APD to discuss the operator's general plans for development. At this initial planning meeting, the surface management agency will inform the operator of surface management agency procedures and requirements, sensitive areas or seasons that have to be avoided, as well as recommendations to aid in timely permit processing.

## Drilling Application Options

### Application for Permit to Drill

No drilling operations or related surface disturbing activities may be initiated without an approved APD. The APD must be approved by an authorized officer of the BLM, in consultation with the surface management agency as appropriate. On National Forest System lands, the FS must approve the Surface Use Plan of Operations portion of the APD before the BLM can approve the APD. Operators are strongly encouraged to consult with the appropriate surface management agency as early as possible before filing an APD to identify local requirements and potential concerns.

To help ensure timely processing, the APD should be complete and include all necessary supporting information, such as information on

the well and associated rights-of-way, roads, pipelines, and production facilities. Onshore Order No. 1, Section III, D, describes specific information requirements for filing a complete APD, including the Drilling Plan and Surface Use Plan of Operations. For operations proposed on National Forest System lands, also refer to Subpart E of 36 CFR 228. In addition to these requirements, the onsite inspection must be held before the APD package can be judged complete. Within 10 days of receiving an APD, the BLM (in consultation with the FS if the application is on National Forest System lands) will notify the operator whether or not the application is complete. The APD package consists of:

- Form 3160-3, Application for Permit to Drill or Reenter
- Surface Use Plan of Operations
- Drilling Plan
- A well plat certified by a registered surveyor
- Evidence of bond coverage
- Operator certification
- Original or electronic signature
- Other information required by order, notice, or regulation

In order to facilitate processing multiple APDs, plan for orderly development, and better analyze cumulative effects and appropriate mitigation, an operator may elect or be asked to submit a Master Development Plan for all or a portion of the wells proposed in a developing field. All wells within a Master Development Plan share a common Drilling Plan, Surface Use Plan of Operations, and plans for future development and production. APD Form 3160-3 and survey plats must be submitted for each proposed well either with the Master Development Plan or following its approval, but each APD must reference the common Drilling Plan and Surface Use Plan of Operations.

Posting a NOS or APD in the local BLM office (and FS office for operations on National Forest System lands) initiates the BLM/FS 30-day public notification period that is required before a Federal APD can be approved. The onsite inspection is held

after the filing of the APD, if the onsite inspection was not held previously under the NOS option.

Approved APDs are valid for 2 years from the date of approval as long as the lease does not expire during that time. An APD may be extended for up to 2 years at the discretion of the BLM and the surface management agency if a written request is filed before the 2 year expiration date. The terms of an APD may require the operator to contact the BLM and surface management agency before beginning construction activities.

### Notice of Staking

By filing a NOS with the BLM, the operator is formally requesting an onsite inspection prior to filing an APD. During or within 7 days of the onsite inspection, all parties will jointly develop and provide a list of resource concerns for the operator to address in the APD. This will help the operator in filing a complete APD. If an APD is not filed with the BLM within 60 days of the onsite inspection, the NOS will be returned to the operator. Posting a NOS in the local BLM and FS offices also initiates the mandatory BLM/FS 30-day public notification requirement. There is no specific form available for this information, but a sample format is provided in Appendix 2 with the necessary information requirements. When the lands involved are managed by a Federal agency other than the BLM, the BLM will provide a copy of the NOS to the appropriate agency.

### Surveying and Staking

Regardless of the option selected (NOS or APD), the center stake for the proposed well and two reference markers must be staked and the access roads flagged along the centerline **prior** to the onsite inspection. Surveying and staking are considered casual use unless the activity is expected to cause more than negligible disturbance or damage. Surveying and staking may be initiated without advance approval from the BLM or the surface management agency, except for lands administered by the Department of Defense or used for military purposes, Indian lands, lands where motorized access is prohibited, or where more than negligible disturbance is likely to occur.

Operators are advised to notify the surface management agency and are required to make a good faith effort to notify the private surface owner prior to entry. This will allow the surface management agency or private surface owner to inform the operator of sensitive resources or areas that need to be avoided and any difficult or problem conditions.

When an APD is submitted, staking must include the center stake for the proposed well, two 200-foot directional reference stakes, the exterior dimensions of the drill pad, reserve pit, cuts and fills, and the outer limits of the area to be disturbed, unless a variance is granted. Because the well, road location, and other associated off-location facilities may change as a result of the onsite inspection, the operator may request a variance to the full staking requirements for purposes of conducting the initial onsite inspection. However, the full staking requirements found in Oil and Gas Onshore Order No. 1 must be met before the APD can be approved. Off-location facilities must also be staked, as well as the centerlines of new roads and routes for flowlines and power lines, with stakes being visible from one to the next (intervisible). In steep terrain or environmentally sensitive areas, cut and fill staking or slope staking may be required for roads and any ancillary facilities.

The well location plat must describe the location of the surface disturbances and their proximity to the nearest section lines, lease lines, ownership, or special use area boundaries in geographical coordinates referenced to the National Spatial Reference System (NSRS), North American Datum 1983 (NAD83), and in feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines. The authorized officer has the option of approving the use of the BLM's Geographic Coordinate Data Base (GCDB) to describe the boundaries, when the GCDB coordinates reliability ensures that operations will be within the intended boundaries. In unsurveyed townships, the latest protraction or amended protraction diagram will be used to describe the boundaries. The registered surveyor should coordinate with the cadastral survey section of the appropriate BLM State Office, particularly where the boundaries are uncertain or unsurveyed.

## Onsite Inspection, Environmental Review, and Permit Approval

Within 10 days of receiving the NOS or APD package, the BLM, in coordination with the operator and surface management agency or private surface owner, will schedule a date for the onsite inspection. The onsite inspection will be held as soon as practicable based on schedules and weather conditions. For operations on National Forest System lands, the FS will schedule the onsite inspection with BLM involvement.

The onsite inspection team will include a BLM/surface management agency representative, the operator or permitting agent, and other parties associated with planning work on the project, such as the operator's principal dirtwork contractor, agency resource specialists, surveyors, and pipeline or utility company representatives. When the onsite inspection is on private surface, the surface owner will be invited by the BLM.

The purpose of the onsite inspection is to discuss the proposal; determine the best location for the well, road, and facilities; identify site-specific concerns and potential environmental impacts associated with the proposal; and discuss the conditions of approval (COAs) or possible environmental Best Management Practices for mitigating these impacts. Before conducting the onsite inspection, the BLM or surface management agency will determine whether any of the following requirements or features would affect the operational proposal:

- Land management plan
- Lease stipulations
- Level of National Environmental Policy Act (NEPA) analysis required
- Well spacing
- Cultural survey needs
- Wildlife survey needs
- Riparian and wetland areas
- Excessive slopes and erosive soils
- Landowner consultation

- Road, pipeline, or utility right-of-way or FS Special Use Authorization

Cultural resources, sensitive or threatened and endangered species, or other resource survey information may be needed in order to comply with the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), or to complete a staff review or an environmental analysis under NEPA.

If the operator is completing cultural or other survey reports, the early submission of those reports to the surface management agency, at or prior to the onsite inspection, will help ensure timely and efficient consultation, environmental review, and processing of APDs. Cultural resource “block” surveys are an option that can provide the operator with increased flexibility to locate or relocate wells, roads, and utilities at the onsite inspection and reduce the need to conduct additional surveys that could delay the project.

The BLM, surface management agency, or private contractor will complete the environmental review process in accordance with the requirements of the BLM and the surface management agency. The BLM will issue the decision document, except in the case of National Forest System lands where the environmental review is conducted jointly and each agency issues its own decision. APDs on Federal leases will not be approved by the BLM until after completion of the environmental review and the public posting/notification process.

Approved permits will be subject to the operator’s permit application as modified by the existing lease stipulations, rights-of-way terms and conditions, and APD or Sundry Notice conditions of approval developed during the permit review process. The operator must have a copy of the approved APD and any Conditions of Approval available for review at the drill site, including during the construction and reclamation phases. Operators are responsible for their contractor’s and subcontractor’s compliance with the approved APD.

## Variations

The operator may make a written request to the agency with jurisdiction to request a variance from the requirements of Onshore Order No. 1.

The request must explain the reason the variance is needed and demonstrate how the operator will satisfy the intent of the Order.

## Lease Stipulation Exceptions, Waivers, and Modifications

Many leases contain stipulations developed during the land use planning process. The land use plan also serves as the primary vehicle for explaining to industry, other agencies, and to the public the circumstances and procedures under which exceptions, waivers, and modifications of lease stipulations may be granted.

An operator may request that the authorized officer grant an exception, waiver, or modification to a lease stipulation as explained in the Code of Federal Regulations at 43 CFR 3101.1-4 (BLM) and 36 CFR 228.104 (FS). Operator requests should be submitted in writing and include information demonstrating that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts.

When the drilling operation is proposed on land managed by another surface management agency, the BLM will forward operator requests to that surface management agency and obtain their concurrence or recommendation. All final decisions will be processed through the BLM. After drilling has commenced, the BLM (and FS for operations on National Forest System lands) may consider verbal requests for an exception, waiver, or modification; however, the verbal request must be followed up by a written request within 7 days. The BLM and FS will confirm, in writing, any verbal approval.

## BLM Rights-of-Way and FS Special Use Authorizations

On BLM-administered lands and National Forest Systems lands, pipelines (upstream from the custody transfer point), access roads, and utilities located on a lease (or within a unitized area), which are to be constructed and managed by the leaseholder/

operator, can be authorized under an APD or Sundry Notice. On or off lease/unit, pipelines, roads, and utilities constructed and managed by someone other than the leaseholder/operator require a BLM right-of-way or an FS Special Use Authorization.

On BLM-administered lands, pipelines, access roads, and utilities located off the lease or the unitized area require a right-of-way. A pipeline on BLM-administered lands (or on lands administered by two or more Federal agencies), located downstream of the custody transfer point either on or off a lease, also requires a right-of-way from the BLM. (Refer to 43 CFR 2800, April 22, 2005). On National Forest System lands, certain access roads and utilities, including pipelines downstream of the custody transfer point, may require a Special Use Authorization (36 CFR 252 Subpart B).

A detailed APD can be accepted as an application for a BLM right-of-way off lease or FS Special Use Authorization for facilities owned by the leaseholder/operator in lieu of the *Application for Transportation and Utility Systems and Facilities on Federal Lands* (Standard Form 299). If the leaseholder/operator plans to use the APD as the application, it should provide sufficient detail for the entire proposal, including all facilities located off the lease. At the NOS or the APD onsite inspection involving rights-of-way on BLM-administered lands, the BLM will review items on the pre-application checklist with the operator, if a pre-application meeting has not already taken place, and will provide the operator with a blank SF-299.

Right-of-way project information may be included in the APD or Sundry Notice rather than being submitted on the SF-299. To use this option, the operator must complete and submit an APD or Sundry Notice to the BLM with a Surface Use Plan of Operations, which references the requested rights-of-way; maps; a plan of development containing information specific to the right-of-way and construction; and other required details. The BLM will evaluate the application, determine the cost recovery processing fee category, and request the non-refundable processing fee and any additional information that may be required. After the processing fee and any additional information have been received, BLM will process the right-of-way application.

Following the completion of NEPA analysis for the entire project, a decision will be issued concerning approval of the right-of-way. Upon a decision to grant the right-of-way, BLM will request that the applicant sign the right-of-way grant and return it with payment of the rent and cost recovery monitoring fees. After the rent, fees, and a signed right-of-way grant are returned to the BLM, the grant will be executed by the authorized officer and a copy returned to the applicant/leaseholder with the approved APD and Surface Use Plan of Operations.

The FS uses a similar process to approve the APD Surface Use Plan of Operations and associated Special Use Authorization when needed for pipelines, access roads, and utilities located entirely on National Forest System lands. The Special Use Authorization may include the APD conditions of approval and any special stipulations resulting from the NEPA analysis.

## Other Authorizations

All proposed drilling operations and related surface disturbance activities, as well as any change from an approved APD, must be approved before such activities are conducted. Approval will be in accordance with lease terms, conditions of approval; 43 CFR 3160; Onshore Oil and Gas Orders; and Notices to Lessees.

For operations on National Forest System lands, approval of the Surface Use Plan of Operations must also be in accordance with 36 CFR 228 Subpart E before BLM final approval of the APD. Approval must be obtained from the BLM prior to drilling from private surface into Federal minerals.

The BLM's approval of an APD does not relieve the operator from obtaining any other authorizations or approvals required for conducting drilling or related subsequent operations. This includes requirements of other Federal, Tribal, State, or local authorities.

## Exploration and Development on Split Estates

### Non-Federally Owned Surface/ Federally Owned Minerals

The operator must make a good faith effort to notify the private surface owner before entering

private surface to stake a well location and access road or to conduct cultural or biological surveys. Each APD, NOS, or Sundry Notice permitting new surface disturbing activities must contain the name, address, telephone number, and e-mail address (if available), of the private surface owner.

The BLM will invite the surface owner to participate in the onsite and final reclamation inspections and will take into consideration the needs of the surface owner when reviewing the APD and reclamation plans and when approving final abandonment and reclamation. The BLM will offer the surface owner the same level of surface protection that the BLM provides on Federal surface. The BLM will not apply standards or conditions that exceed those that would normally be applied to Federal surface, even when requested by the surface owner.

Prior to approval of the APD (or Sundry Notice to conduct new surface disturbing activities), the operator must certify as part of the complete application that a good faith effort had been made to reach a surface use agreement with the private surface owner and that an agreement was reached or that it failed. If the surface owner and operator fail to reach an agreement, the operator must file a bond with the BLM (\$1,000 minimum) for the benefit of the surface owner to cover compensation, such as for reasonable and foreseeable loss of crops and damages to tangible improvements. Prior to approving the APD, the BLM will advise the surface owner of the right to object to the sufficiency of the bond and will review the value of the bond if the surface owner objects. The BLM will either confirm the current bond amount or establish a new amount. Once the operator has filed an adequate bond, the BLM may approve the APD. Following APD approval, the operator and the surface owner may appeal the BLM's final decision on the bond amount.

The operator must negotiate in good faith with the surface owner. Negotiating in good faith provides a forum through which the operator and surface owner can discuss the preferences and needs of both the surface owner and the operator. In addressing those needs, the operator may be able to modify the development proposal to both minimize damage to the surface owner's property while

reducing reclamation and surface damage costs. For example, operator costs can be minimized by placing roads and facilities in locations that meet the surface owner's long-term development plans for the property, thereby lessening the future reclamation obligations of the operator.

The surface use agreement between the surface owner and the operator is confidential. However, the APD Surface Use Plan of Operations must contain sufficient detail about any aspects of the agreement necessary for NEPA documentation and to determine that the operations will be in compliance with laws, regulations, Onshore Orders, and agency policies.

When the operator submits its Surface Use Plan of Operations to the BLM, the operator must make a good faith effort to provide a copy to the surface owner. Following APD approval, the operator must also provide a copy of the Conditions of Approval to the surface owner. In addition, the operator must make a good faith effort to provide a copy of any proposal involving new surface disturbance to the private surface owner.

## Indian Lands

The BLM will process APDs, Master Development Plans, and Sundry Notices on Tribal and allotted oil and gas leases and Indian Mineral Development Act mineral agreements in a manner similar to Federal leases. However, the approval procedures, including cultural resource and other environmental requirements, may vary between reservations depending on Tribal ordinances and whether tribes have assumed the functions of a State Historic Preservation Office. Both the Bureau of Indian Affairs (BIA) and the Tribe have the opportunity to recommend conditions of approval to the APD. For processing such applications, the BLM considers the BIA to be the surface management agency for all Indian lands unless a Tribe has contracted the BIA realty function for its lands. The BIA is the lead Federal agency for complying with Section 106 of the National Historic Preservation Act on Indian lands, although this may vary in some States. Operators are responsible for obtaining any special use or access permits from appropriate BIA and/or

tribal offices. BLM is not required to post APDs for minerals subject to Indian leases or agreements for public inspection.

## Bonding

Bonding is required (43 CFR 3104 and 36 CFR 228 Subpart E) for oil and gas lease operations in order to ensure that the operator performs all obligations of the lease contract, including but not limited to: royalty obligations, plugging leasehold wells, surface reclamation, and cleanup of abandoned operations. Operators may post the bond in their own name, or obtain consent of the surety under an existing lessee's bond or operating rights owner's bond, extending coverage under that existing bond to include such operations.

The bond may be a surety bond or pledge backed by cash, negotiable securities, Certificate of Deposit, or Letter of Credit in the minimum amount of \$10,000. In lieu of a \$10,000 lease bond, a bond of not less than \$25,000 for statewide operations or \$150,000 for nationwide operations may be furnished. The operator must identify the type of bond and the bond number on the APD form.

The authorized officer may require an increase in the amount of any bond for factors, including but not limited to, a history of previous violations; a notice from the Minerals Management Service (MMS) that there are uncollected royalties due;

the total number, location, and depth of wells; the age and production capability of the field; unique environmental issues; or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount by an unacceptable amount.

A bonded principal (operator or lessee) may request a partial release of a lease bond when portions of the abandonment or final reclamation process are deemed complete by the authorized officer. Statewide and nationwide bonds cannot be partially released. The operator must notify the authorized officer prior to and upon the completion of all leasehold abandonment and final reclamation activities.

A separate bond may be required for rights-of-way or Special Use Authorizations to cover losses, damages, or injury to human health, the environment, or property in connection with the use, occupancy, and termination of the right-of-way (43 CFR 2800 and 36 CFR 251 Subpart B).

The BLM will require a separate bond to protect the surface owner in split-estate situations if the operator and surface owner fail to reach an agreement regarding terms of use, compensation for loss or damages, or a waiver.

For operations on National Forest System lands, the authorized FS officer may require additional bonding prior to or during the conduct of operations (36 CFR 228.109).

