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To: Fin Dooley  
Re: NDIC Whistle Blowers

Fin:

With such little information to go on, I think the only thing I can do is to review some very general propositions:

1. NDIC exists because of the police power of the State to regulate in public interests.
2. NDIC then acts in two respects:
  - a) Regulations: which require due process in adoption, i.e., notice and opportunity (of the people) to be heard;
  - b) Rules: Things which carry out the Regulations, and do not need due process.

For example: NDIC creates Drilling and Spacing Units to guarantee all mineral owners get paid, leased or not; that is a Regulation. In the process, it will do such things as make "casing rules" on cementing processes, and issue Permits to Drill which are Rules.

3. A producer applies for a Permit, specifying location, depth, and "targeted location". They report the drilling process, etc, and those records are "public", but often "privileged" for a period of time to protect investment. Over this, Lessors and Public (other than environmentalist) have no concern, and NDIC activities are normally unassailable as "activities of the experts".

4. We then enter the Implied Covenant stage of development. Here, the standard is the reasonable prudent operator, timely and reasonable, under all the circumstances. There is a 5-step series of covenants: (1) drill, (2) test for productivity, (3) put into production, (4) market, and (5) continue to develop the leasehold (horizontal and vertical) as necessary to get out the harvestable product. NDIC is not involved in these things, as they are "of the Lease Contract".

5. Once drilled, the producer may plug and abandon for lack of productivity, which is a reported activity, done in a way specified by NDIC.

6. Or the producer may test and determine that it is capable of commercial production – but not put it into production for economic reasons. "Profitability" should be the standard, but it often comes out to be the level of profit the producer says they need to overcome risk and need to continue to develop. For this sort of thing, you will need an expert to counter their testimony.

7. NDIC comes back in on matters such as (1) reporting production (gas and oil), (2) reporting water used and harvested, (3) reporting gas flared or sold, (4) etc.

So, you need to query them fully on what they are seeing that concerns them, and what prompted them to speak. Then we have to try to fit it into one or more of these categories:

- a) violation of Regulation
- b) violation of Rule
- c) violation of Lease (and it can violation of Lease as well as Rule/Regulation, which raises a possible “exhaust administrative remedies” problem
- d) unregulated issue which should be regulated (ugh; politics)

Then we try to figure out how to make use of the issue.

Bill Bontrager