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September 20, 2013

Armand Southall, Regulatory Specialist
Office of Natural Resource Revenue (ONRR)
PO Box 25165, MS 61030A
Denver, CO 80225

RE: RIN – 1012-AA14
Docket No: ONRR-2013-0001
Amendment to ONRR's Service
of Official Correspondence
ADVERSE COMMENT

Dear Armand:

Synergy Operating, LLC (Synergy) respectfully submits this adverse comment opposing the requested regulatory change dealing with this matter and most substantively 30 CFR § 1218.540(a).

Synergy believes it to be inappropriate and a violation of Constitutional due process provisions for ONRR to be allowed to implement this regulatory change without a full hearing. Synergy currently has a dispute with ONRR before Administrative Law Judge Harvey Sweitzer, in part dealing with reasonable due process responsibilities of ONRR in relation to the reasonable due process responsibilities of Synergy. That case is CP12-057, coincidentally also identified as ONRR 2013-01.

Synergy believes full Congressional review before the appropriate Energy and Natural Resource subcommittees, along with full public due process procedural requirements are required before ONRR can materially and substantively change the due process provisions related to assessment of civil penalties against oil and gas operators.

A regulation carrying penal sanctions must give fair warning of the conduct it prohibits or requires. *United States v. Chrysler Corp.*, 158 F.3d 1350 (D.C. Cir. 1998). Possibly denying a party notice, which effectively could foreclosure

additional due process defensive postures is a serious matter warranting a complete review of ONRR's reasoning behind this regulatory change.

Further, this regulatory change is believed to have a "substantial impact" upon oil and gas producers and should have exhaustive discussion of the authority of the agency and how it interprets its authority. See *Phillips Petroleum Co. v. Johnson*, 22 F.3d 616 opinion modified on reh'g, 36 F.3d 89 (5th Cir. 1994) for text, see 93-1377, 1994 WL 484506 (5th Cir. Sept. 7, 1994)

Substantively, Synergy offers the following commentary based upon the information available in the CFR at this point in time and our current review of the available information on the "Message Way" portal:

30 CFR Part 1218 – Amendments to ONRR's Service of Official Correspondence

Action: Direct final rule.

II. Explanation of Amendments:

"This direct final rule adds a new paragraph (4) to 30 CFR 1218.540(a) updating the Service of Official Correspondence regulations to allow ONRR to serve official correspondence using any electronic method of delivery **that provides for a receipt of delivery, or, if there is no receipt, the date of delivery otherwise documented. ONRR will use electronic methods, such as "MessageWay,"** that assure the information transmitted is encrypted and secure. ONRR also will make a necessary corresponding change to 30 CFR 1218.540(d) regarding constructive service."

A reporter to the ONRR must enter the MessageWay system in order to retrieve a message or Service of Official correspondence. On a regular basis the employee at our company who communicates most regularly with the ONRR does NOT use MessageWay except when informed by an ONRR representative that there is a communication for the company on MessageWay.

Since MessageWay is not normally monitored by reporters, a notification from ONRR that has a substantive civil penalty or due process deadline associated with it could end up not being received by the reporter until after the deadline has transpired. Significant financial penalties could accrue in addition to possible "knowingly or willful" punitive penalties.

"ONRR already has the email addresses of the employees and agents designated as points of contact by each company and reporting entity from Forms ONRR-4444. "

This change will put the onus on the reporter to keep current its form ONRR-4444 with the agency. After reviewing this direct final rule, our company attempted to review its ONRR-4444 form to verify addresses and emails for company contacts to ensure that they are current. We were unable to get this information from the ONRR to ensure that the company contacts are current.

Following our inability to confirm our contact information, Synergy attempted to download form ONRR-4444 from the ONRR's web page and received the following error, "500-Internal server error" (See attachment #1). If a reporter was attempting to amend their form ONRR-4444 and could not retrieve the form due to errors on the ONRR's website, and a message had been sent to an email that was no longer active, according to the new rule, after 7-days it would have been deemed to have been received.

Employees permanently leave their employment with companies every day, employees also have illnesses and vacations. These insignificant events could lead to significant financial penalties on a Reporter. A postal address change for a company is a rare event for which arrangements are made with the USPS to forward mail. IT people at larger companies could easily miss forwarding a departed employee's emails and at smaller companies there is no IT department to handle such process. This regulatory proposal is ripe for misapplication and significant dispute.

"We believe that 30-days is sufficient time for comments because this rulemaking is noncontroversial."

The rule may be noncontroversial to the ONRR and possibly to larger reporters, however to small reporters/operators and independent oil and gas producers, the rulemaking is controversial. Additionally, the impact of these potential penalties and fines has a much greater impact upon the smaller reporters/operators. Synergy finds this proposed regulatory change controversial to say the least.

"Executive Order 13563 emphasizes further that agencies must base regulations on the best available science..."

We believe the best science in this instance would be for ONRR to materially and exhaustively solicit reporters for their comments, rather than use the arcane administrative process to make this material regulatory change. Reporters are the parties most interested in this rule change because of the potential for fines and penalties should proper notification not reach them. ONRR's opinion and

alleged desire for administrative efficiency should not be rewarded at the present time without full process hearing as required under applicable law.

Regulatory Flexibility Act

“This direct final rule will impact large and small entities but will not have a significant economic effect on either because this is a technical rule...”

Small reporters will be impacted more significantly by this rule making, since their personnel tend to multi-task, and a task such as filing an updated ONRR-4444 form could potentially slip through the cracks, by the notification being sent to an inoperable email address.

ONRR’s desire to reduce paperwork is commendable, however, should electronic notification be deemed acceptable, there should remain a requirement for ONRR to send a written notification by mail, return receipt requested for legal due process notice purposes.

Small Business Regulatory Enforcement Fairness Act

“This direct final rule: b. Will not cause a major increase in costs or prices for consumers, individual industries...”

Unfunded Mandates Reform Act

“This direct final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector.”

Giving ONRR the ability to levy penalties and fines against reporters who have never received legally sufficient notification from the agency does not fit with the Constitutional definition of notification due process, nor the intent of Congress.

ONRR is arguably the IRS of the oil and gas industry. The IRS is currently experiencing a higher level of scrutiny for its decisions and administrative interpretation of authority of recent date, especially regarding its communications to those whom it regulates and enforces. (See attachment # 2)

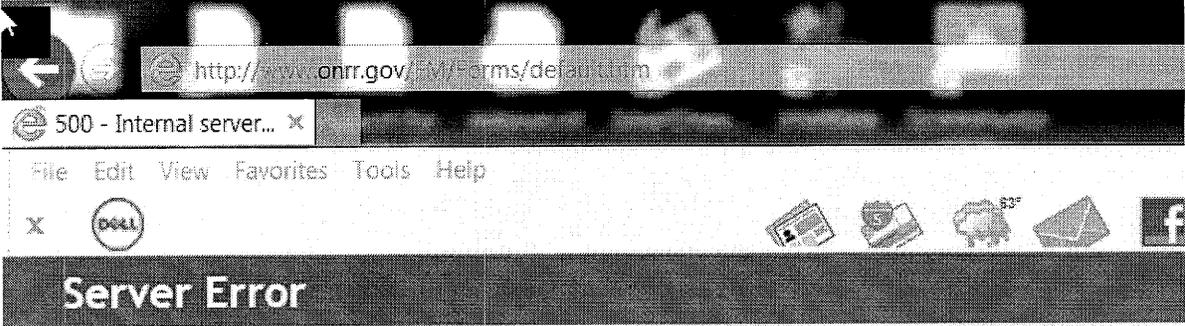
Synergy believes that this action sought by ONRR to be material, adverse to Synergy and the oil and gas industry at large and should be denied at the present time. Full due regulatory process must be followed to change notification requirements, especially where this agency seeks substantial civil penalties against oil and gas operators for alleged violations.

Please ensure that Synergy remains an interested party to this action, with notice and communications to be supplied to Synergy under all applicable law. I can be reached by phone at 505.599.4905, e-mail at: tom.mullins@synergyoperating.com, or by regular mail at the above address.

Best regards,

A handwritten signature in black ink, appearing to read 'T. Mullins', written in a cursive style.

Thomas E. Mullins
Engineering Manager



500 - Internal server error.

There is a problem with the resource you are looking for, and it cannot be displayed.

ATTACHMENT # 1

Signed letter rekindles debate on IRS official's status

Gregory Korte, USA TODAY 11:18 a.m. EDT September 19, 2013



(Photo: KAREN BLEIER AFP/Getty Images)

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WASHINGTON — Lois Lerner has been on paid leave from the Internal Revenue Service in May, ever since she invoked her Fifth Amendment rights in refusing to answer questions from Congress about her handling of Tea Party cases.

So why was she still sending letters to groups applying for tax exemptions (<https://www.documentcloud.org/documents/797697-lerner-letter.html>) as recently as August?

That's what members of a House Ways and Means subcommittee wanted to know Wednesday. Now, the IRS has an answer.

"In August, we discovered the auto-signature was still in use on a subset of notices automatically generated by our systems," said Terry Lemons, the IRS's director of communications. He said signature was updated about Aug. 21.

That explanation is unlikely to satisfy Republican members of Congress, who are demanding to know why Lerner is still being paid. Lerner's base salary was \$177,000 in 2011, according to records obtained by USA TODAY under the Freedom of Information Act.

Lerner's name came up 47 times at Wednesday's hearing, mostly as congressmen asked whether the agency had asked her to resign and why her name was still appearing on IRS documents.

"Now, this letter I have here is dated August the 7th, 2013. That's why I asked, when was she put on administrative leave? When did she plead the Fifth? And if that's the case, why is she still sending out information? Respond. Respond!" demanded Rep. Mike Kelly, R-Pa. "Who has been held accountable for anything that's happened so far in the IRS?"

Acting IRS commissioner Daniel Werfel said he couldn't publicly discuss Lerner's employment without violating privacy laws. Shortly after being tapped by President Obama to temporarily run the IRS, Werfel appointed career IRS official Ken Corbin to replace Lerner as the acting head of the Exempt Organizations office as part of a shake-up at the top levels of the agency.

Lerner's attorney, William Taylor III, did not return a call seeking comment.

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<https://twitter.com/intent/tweet?url=http://usat.ly/1a73bJV&text=Signed%20letter%20rekindles%20debate%20on%20IRS%20official%27s%20status>

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Attachment # 2

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