A Pictorial Overview
Why the Service’s 9B Regulations Need Revision
March 2011
Introduction

The National Park Service (NPS) controls nonfederal oil and gas development in parks under regulations at 36 CFR, Part 9, Subpart B (“9B regulations”). At present, 668 nonfederal oil and gas operations exist in a total of 11 park units.

Nonfederal oil and gas rights exist in units of the National Park System for the following 3 reasons: 1) the rights predate the creation of the units, 2) they are encumbrances on lands added to parks through boundary expansions, and 3) in Alaska, they are part of land interests conveyed to Native corporations under the Alaska Native Claims Settlement Act, or held by the State of Alaska and other private landowners.

The regulations require a prospective operator to demonstrate its right to the oil and gas, submit and obtain NPS approval of a plan of operations, and post a performance bond. The plan of operations is an operator’s blueprint covering the scope of activities inside park boundaries including measures to protect park resources and values.

As a result of regulatory exemptions, 50% of the wells are not required to operate in a manner that protects park resources and values to the fullest extent practical.

In addition, the existing regulations do not provide a workable means of enforcement for minor violations at an operation site. The NPS has also recognized that it has been providing privileged access across federally owned lands to operators to get to their leaseholds without requiring compensation, which is inconsistent with practices of other federal agencies and private landowners. Finally, the existing regulations limit the NPS’s ability to request reasonable and adequate financial assurance to protect the taxpayer from an operator’s failure to comply with the regulations, including complete reclamation of its operation site.

For these and other reasons, the NPS is working on a revision to the 9B regulations.
## Regulatory Status of Nonfederal Oil and Gas Wells In Units of the National Park System
### March 2011

<table>
<thead>
<tr>
<th>Park</th>
<th>State</th>
<th>Regulatory Status</th>
<th>Grandfathered</th>
<th>No Federal Access</th>
<th>Subject to 9B Regulation</th>
<th>Total Number of Operations</th>
<th>Total Number of Operators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alibates Flint Quarries NM</td>
<td>TX</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Aztec Ruins NM</td>
<td>NM</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Big Cypress NPres</td>
<td>FL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Big Thicket NPres</td>
<td>TX</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td>41</td>
<td>19</td>
</tr>
<tr>
<td>Big South Fork NRRA</td>
<td>TN, KY</td>
<td></td>
<td>151</td>
<td>69</td>
<td>64</td>
<td>284</td>
<td>72</td>
</tr>
<tr>
<td>Cuyahoga Valley NP</td>
<td>OH</td>
<td></td>
<td>14</td>
<td>37</td>
<td>45</td>
<td>96</td>
<td>21</td>
</tr>
<tr>
<td>Gauley River NRA</td>
<td>WV</td>
<td></td>
<td>28</td>
<td></td>
<td></td>
<td>28</td>
<td>3</td>
</tr>
<tr>
<td>Lake Meredith NRA</td>
<td>TX</td>
<td></td>
<td>34</td>
<td></td>
<td>140</td>
<td>174</td>
<td>17</td>
</tr>
<tr>
<td>New River Gorge NR</td>
<td>WV</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Obed WSR</td>
<td>TN</td>
<td></td>
<td>1</td>
<td></td>
<td>4</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Padre Island NS</td>
<td>TX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td><strong>11 Parks</strong></td>
<td><strong>7 States</strong></td>
<td><strong>Regulatory Status</strong></td>
<td><strong>Grandfathered</strong></td>
<td><strong>No Federal Access</strong></td>
<td><strong>Subject to 9B Regulation</strong></td>
<td><strong>Total Number of Operations</strong></td>
<td><strong>Total Number of Operators</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>230</strong></td>
<td><strong>108</strong></td>
<td><strong>330</strong></td>
<td><strong>668</strong></td>
<td><strong>142</strong></td>
</tr>
<tr>
<td>% of TOTAL</td>
<td>N/A</td>
<td></td>
<td>34%</td>
<td>16%</td>
<td>50%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

Geologic Resources Division

National Park Service
A. Regulation of Exempt Operations

The 9B regulations exempt 1) operations that were in existence at the time that the regulations were promulgated and had a valid state permit (i.e., 34% of the wells know as “grandfathered wells”), and 2) operations that can be reached inside a park without crossing federally owned land or waters (i.e., 16% of the wells).

These exemptions are not required by law, and have resulted in unnecessary and avoidable impacts to park resources.

Because of the exemptions, the NPS has had to rely on state regulatory programs, other federal regulatory handles, and the willingness of operators to voluntarily use practices protective of park resources and values. While helpful, this approach often has not achieved the desired level of protection needed to carry out park mandates.

The NPS is planning on eliminating these exemptions.
This inactive, grandfathered gas well has not produced in nearly 10 years and should have been closed out and the surface reclaimed long ago. There are over 50 wells in park units in a similar state as this. The NPS suspension authority under the current rule carries little weight when a well is not generating revenue.

The NPS is considering having operators demonstrate the future utility of a well and meet maintenance standards or plug and reclaim the site. The NPS is also considering using administrative assessments (i.e., monetary charges) to help secure compliance with the regulations.
This poorly operated tank battery in Big Thicket National Preserve is entirely exempt from the 9B regulations because the operator does not use access on or across federal property. Runoff of contaminants to federal property just beyond the tree line (bottom photo) is the primary NPS concern for this site.

Many of the 108 wells in parks operating under this exemption are well run or located far from federal lands and waters. Those may see little change from a rulemaking that removes the exemption. However, the operation in the photographs, and others like it, would need to implement strong spill control equipment and procedures to ensure protection of the federal property.
B. Directional Drilling

Directional drilling from surface locations outside the park has provided for development of the private oil and gas resource while sparing Big Thicket National Preserve well over 100 acres of direct impacts. The sensitive coastal marsh in Jean Lafitte’s Barataria Preserve Unit and cultural resources in Lake Meredith National Recreation Area have also benefited from use of directional drilling from surface locations beyond park boundaries.

The NPS recognizes that regulatory incentives for operators to drill from outside park units are an important facet of oil and gas management in parks, and is looking for ways to enhance the benefits for both the NPS and operators. For example, directional drilling may play an important role in maintaining the waters and rural setting of the Upper Delaware Scenic and Recreational River as widespread development of the Marcellus Shale proceeds in the vicinity of this park.
C. Operating Standards

Effective and enforceable operating standards, applied to all operations, are key to a successful regulatory oil and gas management program. These photographs contrast tank batteries – one meeting NPS standards of adequate spill control, site security (fencing), equipment maintenance, vegetation management, and the other battery exempt from those standards.

Through a rulemaking, the NPS would look to improve overall protection of resources and visitor values by applying standards to all operations.
D. Financial Assurance

Limits on bonding leave the taxpayer exposed in the event of a company default on reclamation and cleanup responsibilities. The existing regulations place a bonding cap of up to $200,000 per operator, per park unit. In many cases, the limit is not a factor, but in other cases, an operator default could present a substantial financial burden on the NPS.

For example, the estimated cost of reclamation for this single pad, multi-well drilling operation exceeded $350,000. In this case, the operator proposed additional drilling at a new location, and was not subject to additional bonding due to the regulatory limit.

Through a rulemaking, the NPS would remove the bonding caps. The NPS would also seek public input for additional ways, besides surety bonds, to secure financial protection for the United States against default by an operator.
E. Access Fees

The NPS has not been charging operators a fee to cross federal surface in order to access their leases. Both the BLM and USFS charge fees for such access as do private landowners. The NPS would seek the same type of compensation through a new rule.

One of the more extreme examples of uncompensated access occurs at Big Cypress National Preserve where an 11-mile long private oil and gas road was constructed across federal land to reach the operator’s private oil and gas lease.
F. Assessments for Non-Compliance

Under the existing regulations, the NPS does not have a practical means for dealing with minor regulatory infractions when an operator fails to remedy the problem. The NPS options for dealing with a recalcitrant operator are suspension of operations, revocation of an approved plan, and possibly filing a civil action against the operator in Federal court. The NPS seeks less drastic measures to correct minor violations.

Below are examples of the problem.

**Unapproved Substandard Practices** – Here, the tanker truck operator saves walking over the steps a few times, but defeats the approved oil loading design and procedures by running an extension hose (yellow) from the covered loading box to the truck’s loading hose (black). However, by making and breaking the hose connection without the benefits of secondary containment, this minor act of non-compliance has an obvious cumulative effect.
**Road Maintenance** – The approved plan of operations for this short access road calls for restricted vehicle use during saturated conditions. While not raising to a suspension order, not complying here can lead to erosion/sedimentation and increased heavy equipment use for repair near the primary visitor use area in the park.

**Collection of Equipment and Debris** – Well locations can become unsightly collection points for materials no longer needed for operations. This example seems innocuous, but may be just the start.

**Slow or Inadequate Response to Small Contained Spills** – For an uncooperative operator, the NPS may decide not to take on the heavy administrative burden of going through a suspension process and in effect accepts substandard practices. Administrative assessments under a new rule would likely solve the problem.

Through a rulemaking, the NPS would examine ways to address minor regulatory infractions such as described above and encourage compliance though out the life of an operations.