The COPAS Exhibit: An Operational Perspective

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§ 12.01. Introduction.

Virtually every expenditure or action taken under an oil and gas joint venture agreement results in the need for the Operator to account for such expenditures and actions to the Non-Operators. The Council of Petroleum Accountants Societies (COPAS) has established uniform practices and procedures which have become widely accepted by the domestic oil and gas exploration and development industry as the benchmark for standardized financial accounting to Non-Operators.

Model, or standardized, forms are the product of committee deliberations utilizing the important tools of compromise and consensus. This process frequently results in issues being addressed at various points along a scale between the ideal and the practical. Industry users may develop practices which ignore specific provisions within standardized forms because such provisions are either impractical or projects do not normally progress as the form's originators contemplated. Because of the extraordinary efforts required to revise a standardized form, the sponsoring organization rarely responds to these situations by updating the form, until deficiencies are widely recognized.

This Chapter will examine how many of the provisions of the COPAS accounting procedure may not adequately address some of the practical considerations of current joint venture operations.¹

COPAS, through its bulletins and interpretations, has written extensively about the subject matter covered by Sections III, IV, and V of their procedures. A list and brief description of the COPAS bulletins and interpretations is included on Attachment No. 1. This is excellent material which provides detailed discussion of the specific subject matter; due to this material being available, this paper will concentrate on a discussion of Sections I and II of the 1984 onshore procedure and will conclude with a few general comments dealing with the accounting procedure.²


Overview.

In the early stages of a developing oil and gas industry the use of joint venture agreements proliferated. The main objective of the increased use of such agreements was the desire of the individual or company to share the risks and costs of exploration. During this development, several standard form joint operating
agreements were developed by various industry-related organizations. An important exhibit in most of these standard form agreements was an accounting procedure.\(^{(4)}\)


[a] Regional Standard Forms.

Initially, standardized accounting exhibits, like the joint operating agreements, were formulated by regional groups motivated by a need to ease agreement negotiations by recognizing generally accepted principals. Organizations such as the Mid-Continent Oil and Gas Association, Petroleum Accountants Society of Oklahoma, and The Petroleum Accountants Society of Western Canada achieved wide regional acceptance of their respective versions of a standard accounting exhibit.

[b] Nationally Recognized Standard.

As the oil and gas industry became more complex and the differences in the various regional forms became more troublesome, the need for a national organization with a broader view became apparent: thus, the Council of Petroleum Accountants Society (COPAS) was organized in 1961. COPAS responded immediately to the need for a nationally recognized standard form by the publication of their 1962 model form accounting procedure. Subsequently, several updated versions of this original form have been published by COPAS, the latest being their 1984 exhibit.

§ 12.03. Survey of Difficulties Commonly Encountered with Provisions of the Printed Form Accounting Exhibit.


[a] Advance Payment Provisions Ð Conflict Between the Joint Operating Agreement and COPAS Exhibit.

There is a substantial difference between the COPAS exhibit and the joint operating agreement (JOA) concerning advances.\(^{(5)}\)

COPAS interprets its Section I, Paragraph 3A to be limited to cases of major, unusual or extraordinary capital outlays.\(^{(6)}\)

In contrast, the JOA provision\(^{(7)}\)

covers all expenses expected to be incurred during the next succeeding month.\(^{(8)}\)

However, one complication is evident in the JOA provision: it requires a detailed itemized statement of the estimated expenses. This requirement is equivalent to the operator providing monthly Authorizations for Expenditures (AFEs) and the information is often difficult to generate, particularly when considering the unpredictable nature of drilling costs. Consequently, many operators do not generate the required itemized statement and the non-operators avoid compliance with the more comprehensive JOA provision by claiming that the prerequisite for requirement of an advance payment has not been met.

[b] Receipt of Invoices and Payments.
The COPAS provision requires payment by the non-operator within fifteen (15) days after receipt of an invoice. This time frame is generally recognized as unreasonable and is commonly changed to at least thirty (30) days. Additionally, the author knows of no operator which tenders invoices via certified mail or some other method by which receipt by the non-operator can be verified. Courts have held that actual receipt of a statement is necessary for the presumption of correctness under Section I, Paragraph 4 (Adjustments) to attach; therefore, this practice has the potential of causing difficulty.

[c]Electronic Funds Transfer.

Electronic funds transfer by the non-operator has become commonplace; however, the COPAS exhibit does not address the issues which such method of payment may bring to light. By way of example, the COPAS exhibit does little to address the complications or liabilities for penalties on unpaid balances if a financial institution is solely responsible for mishandling such transfers.

[d]Statements After Termination of a Contract.

The COPAS exhibit does not specifically address the obligation of the operator to provide statements once the contract terminates. This should be of particular concern where the COPAS exhibit is used as an attachment to an agreement such as a farmout.


It is common practice for non-operators to omit payment for single items on an operator's invoice based on the non-operator's belief that the item is inappropriate. Many non-operators omit such payments without notice to the operator and do so at their peril.

It is believed that this practice has developed because of the operators' reluctance or inability to respond and reconcile questionable items in a timely manner. However, many non-operators have also developed the practice of delaying payment of an entire invoice based on the questions associated with only a few of the specific items on an operator's invoice.

Non-operators have attempted to broadly interpret the meaning of the language "... written exception ..." which appears in Section I, Paragraph 4.

It might prove beneficial for the party drafting a joint venture agreement to narrow this loophole by providing a definition of this term, such as "written exception" shall mean a notification in writing and delivered in person or by United States mail courier service, telegram, telex, telecopier, or any other form of facsimile, postage or charges prepaid, and addressed to the operator. The notification will sufficiently detail the objection to a specific charge on the bill, invoice, or statement and identify the number and date of the bill, invoice or statement. Alleged general patterns of inappropriate charges without specific detail will not qualify as written exception and will not suffice as a claim for adjustment.


Many non-operators are reluctant to incur the time and manpower expense associated with an audit of operator's accounts and records. It has become commonplace for non-operators to attempt "desk audits" whereby specific and detailed records are requested for individual invoices. This practice puts a tremendous burden on the operator. It is suggested that specific language prohibiting such practices be added to this paragraph.
Additionally, while this paragraph specifically addresses the requirement that the operator reply to an audit report within 180 days after receipt of a report, there is no guidance concerning required time frames for subsequent rebuttals by the auditor or responses to rebuttals by the operator. It is suggested that practical and innovative contractual remedies for resolving outstanding audit exceptions, short of litigation, should be fashioned (i.e. arbitration clauses, formation of a COPAS hearing board).

Finally, the COPAS audit protocol (see COPAS Bulletin No. 3) should specifically address the situation of non-operators not participating in the costs of a joint interest audit, yet benefiting from credits resulting from such an audit.

**Section I, Paragraph 6: Approval By Non-operators.**

Although this provision is rarely utilized, it may be inequitable where the interests in the joint property are disproportionately weighted or there is a single non-operator.\(^{(13)}\)

Additionally, the provision should be refined to establish a time frame for responsive notices to proposals and to deal with non-responses by non-operators.

**Section II, Paragraph 1: Direct Charges Ñ Ecological and Environmental.**

In drafting this provision, COPAS seems to have concentrated on routine preparational activities such as environmental impact surveys and archaeological surveys.\(^{(14)}\)

Due to explosive developments in environmental law, the joint property may also be faced with a need to minimize potential major environmental liabilities, costs, delays, or restrictions throughout the life of a property. Statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)\(^{(15)}\) have the very real potential to create major liabilities for any joint property.

Paragraph 1 of Section II should be expanded to clearly include environmental liabilities or costs resulting from any governmental or third party action, lawsuit, claim or proceeding and all direct or indirect costs, expenses and losses related thereto, including without limitation, voluntary cleanup, investigation, monitoring and study assessment. Additionally, the non-operators may desire to specifically stipulate that the operator is liable for acts of gross negligence or willful misconduct which result in environmental cleanup costs.\(^{(16)}\)

**Section II, Paragraph 3: Direct Charges Ñ Labor.**

This provision, in conjunction with Section II, Paragraph 7 (Services) and Section III, Paragraph 1 (Overhead), frequently provides fertile ground for debate.\(^{(17)}\)

Central to these debates are three issues: (1) how the time and expenses of the operator's field employees is allocated if such employees are servicing many properties; (2) under the operator's organizational structure which job classifications are to be considered as first level supervisors; and (3) the different opinions as to what technical employees or personnel are benefiting the joint property and whether such assistance is directly engaged on or off of the joint property.

In order to more effectively deal with the first issue outlined above, the exhibit should be amended to specifically address how the operator is proposing to allocate the expense of field personnel.
The second issue could be addressed by the inclusion of a simple organizational chart which clearly indicates the title and location of the operator's "First Level Supervisors" and how these individuals relate to field personnel.\(^{(18)}\)

The third issue is harder to deal with.\(^{(19)}\)

COPAS recognizes that Paragraph 3(4) allows a charge to the joint account for a technical employee of the operator who is physically located \(\text{off}\) the joint property; however, under Paragraph 7 (Services), professional consulting services or contract technical personnel performing the identical job duties requires the prior specific approval of the non-operators. As the oil and gas industry continues to increase the utilization of independent contractors, these provisions of the exhibit will continue to be the subject of many audit exceptions.


In addition to the discussions under the previous paragraph, it should be noted that at least one authority\(^{(20)}\) has suggested that agreement of the parties (to a direct charge for costs associated with professional consulting services which are \textit{not} directly engaged \textit{on} the joint property) is \textit{not} gained by the inclusion of such costs on an Authorization for Expenditure (AFE).\(^{(21)}\)


[a] Types of Incidents and Standard of Care.

Since Section III, Paragraph 3: Catastrophe Overhead, lists several incidents which will trigger the collection of catastrophe overhead,\(^{(22)}\) it is suggested that damages resulting from "blowout or explosion" be added to the causes specifically listed in this provision.

In order to avoid having to resolve apparent conflicts in provisions between the base agreement and the COPAS exhibit, those negotiating the base agreement to which the COPAS exhibit is attached should insure that the standard of care in the base agreement corresponds to that enunciated in this provision of the COPAS exhibit. For example, the base agreement may have a bad faith standard while the COPAS exhibit has a gross negligence or willful misconduct standard. Which standard would then apply?

[b] Notification Requirements.

\textit{Paragraph 9, Section II by necessity gives the operator broad power to incur all costs necessary to repair or replace joint property. Due to the fact that these incidents may have insurance claim ramifications, it is believed that the provision should be amended to stipulate that the non-operators should be notified by telephone, courier service, or facsimile as soon as practical after an occurrence under Section II, Paragraph 9. Written notification to the non-operators can then be prepared once the cause, extent of damage or loss, and impact to the joint account is known. From the operator's perspective, it might also prove beneficial to limit the requirement for notification to those damages or losses estimated to be in excess of a nominal dollar amount (i.e. +$20,000).}

[c] Loss of Production as Repair or Replacement.

Where the loss to the joint property is in the nature of volumes of production it should be noted that numerous state and federal jurisdictions are charged by regulation with determining whether or not such loss...
was avoidable. These determinations have specific implications as to royalty or other payments due on "lost" production. This type of cost may not be viewed by the non-operators as "repair or replacement;" therefore, operators conducting projects in hostile or high-pressure environments may need to consider clarification of this paragraph to include these costs.


This provision should be reviewed closely in conjunction with Article X of the JOA (Claims and Lawsuits). It can be argued that the JOA provision includes the cost of attorney services (either operator's legal staff or outside counsel), while the COPAS provision specifically excludes such costs and requires the prior approval of the non-operators before such costs can be appropriately incurred on behalf of the joint account.

COPAS also interprets Paragraph 10, Section II as not allowing a direct charge for legal expenses (either operator's legal staff or outside counsel) associated with title examination and curative activities. (23)

In contrast, the JOA specifically allows a direct charge for title examination by outside counsel. (24)

It is not specifically clear in Paragraph 10 how legal expenses are to be handled in a situation where a non-operator initiates a claim against the operator for actions taken on behalf of the joint account. Costs associated with defending or settling legal actions which are the result of the gross negligence or willful misconduct of an operator (incorrect royalty payments, for example) are also difficult to deal with under this provision.


Parties to joint venture agreements should be aware that some taxing authorities have attempted to saddle the operator with liability for ad valorem taxes attributable to delinquent working interest owners (25) and for sales taxes on that portion of expenses billed to the other working interest owners. (26)

It may be of benefit to clarify this provision of the COPAS exhibit to specifically indemnify the operator from such liability.


Many of the costs associated with the obligation to properly abandon and reclaim wellsites and surface facilities originates from the underlying oil and gas lease and/or damage settlement agreement. Paragraph 13, Section II of the COPAS exhibit should be amended to specifically encompass requirements under these type agreements in addition to those required by "... governmental or other regulatory authority."

§ 12.04. General Comments.


The Authorization for Expenditure (AFE) is one of the most important accounting and operations forms within the oil and gas industry, yet the AFE has received little attention in both the JOA and accompanying COPAS exhibit. It is the AFE and its estimated detail costs of the proposed operation which form the basis upon which most financial and risk analysis decisions are made. No organization has yet to propose a model form AFE which recognizes the common cost components of a drilling or workover operation. Many of
these individual cost components are routinely omitted in proposed operations with the result that AFE's are commonly underestimated. The underestimating of costs in turn has direct implications on project cash control and the ability or willingness of both the operator and non-operator to meet their financial obligations. Attorney J. David Heaney effectively summarized the problem when he wrote:

In short, no custom has developed in the industry which simultaneously solves the problems of lack of ability to estimate costs, the reluctance of parties to commit in advance to an unknown expenditure, the possibility of financial failure or mismanagement by an Operator or Non-Operator, and the difficulty of estimating the level of expenditures to date in any operation.\(^{(27)}\)

Many solutions to these problems are currently being utilized effectively on individual joint ventures.\(^{(28)}\)

Industry organizations such as the American Association of Professional Landmen and COPAS should consider the advantages of a model form AFE. A comprehensive model form would force the preparing party to consider commonly recognized cost components of a project and would give non-operators a greater comfort level that the cost estimate is as accurate as possible given current available information. Additionally, the author feels that the AFE should be given greater importance in the joint operating agreement and/or COPAS exhibit than is currently contemplated. As the court in *C&C Partners v. Sun Exploration & Production Co.*\(^{(29)}\) noted, the joint operating agreement (A.A.P.L. Form 610 - 1982) does not specify that any particular form of consent is required and, in fact, the provisions concerning consent contain nothing about AFEs. Therefore, operators are constantly faced with determining whether or not adequate consent to an operation has been obtained from partners.\(^{(30)}\)

[2]**New Remedies for Default.**

Historically, the only remedies for non-payment by the non-operator were foreclosure of liens or the assessment of interest on unpaid balances. The A.A.P.L. Model Form 610-1989 JOA now has many enhanced remedies including Suspension of Rights (Article VII.D.1), Suit for Damages (Article VII.D.2), and Deemed Non-Consent (Article VII.D.3). Practitioners should consider how the COPAS exhibit can be revised to act in concert with these new remedies.\(^{(31)}\)

Despite being proposed, the industry has not yet generally accepted more aggressive cash management provisions.\(^{(32)}\)

[3]**Gas Marketing Complications.**

Regulatory initiatives such as the Federal Energy Regulatory Commission's (FERC) Order Number 636 has significantly altered the industry's gas marketing environment. These fundamental changes have a direct impact on the joint venture agreements which govern exploration and development projects.

In recognition of the increased administrative burden and procedures necessitated by the existing marketing environment, COPAS has suggested that the text that appears in Attachment No. 2 to this paper be incorporated into joint operating agreements.

[4]**Interfacing in Exploration and Development Operations.**

Lack of internal company communication between geologist, landmen, drilling engineers, and accounting personnel is one of the most detrimental factors in successfully providing accurate financial accounting to
non-operators. For example, in order to accurately prepare a well-cost estimate, it is imperative that drilling engineers coordinate with geological personnel regarding the expected subsurface geological environment and the type of subsurface evaluation tools the geologist desires to utilize (conventional cores, sidewall cores, logging programs, etc.). It is equally important that the landman communicate with the drilling engineers and accounting personnel concerning project approvals and limitations imposed on project operations by existing contracts. Prompt communication of subsequent changes to joint venture ownership, proper coding of third party vendor invoices by rig personnel, proper allocation of costs and subsequent management of such costs by accounting personnel are all key to limiting audit exceptions.

In order to effectively manage a project or property, each discipline must know and communicate the possible effects their various levels of individual decision-making may have on other's areas of responsibility.

§ 12.05. Conclusion.

The "good ol' boy" attributes of business have served the oil and gas industry well for decades. However, as the industry has had to respond quickly to sudden changes in the world petroleum markets, the handshake of the past is increasingly giving way to the use of litigation as a negotiating tool. Increased organizational effectiveness and cost effective, practical management of operations must be based on a firm knowledge of what our joint venture agreements say or do not say. We must recognize that to minimize conflict, model forms should be tailored to fit specific and current projects.

Attachment 1

COPAS Bulletins

NUMBER TITLE

1 Classifications for use in Summary Form Billing Producing Gasoline Plant Operations

2 Determination of Values for Well Cost Adjustments Joint Operations

3 The Initiation of Joint Account Audits, Protocol and Guides in the Petroleum Industry

4 COPAS FORMS

5 Accounting Procedure Joint Operations (1962)

6 Material Classification Manual

7 Gas Accounting Manual

8 Accounting Procedure Joint Operations (1969)

9 Accounting For Farmouts/Farmins, Net Profits Interest, Carried Interest

10 Petroleum Industry Accounting Educations Training Guide

11 Accounting For Unitizations

12 Computer Production Control Guidelines

13 Accounting Procedure Joint Operations (1975)
14 Accounting Procedure Arctic Operations (1974)
15 Accounting Procedure Offshore Joint Operations
16 Overhead - Joint Operations
17 Oil Accounting Manual
18 Distribution of Boat and Fuel Expenses Offshore Operations
19 Distribution of Helicopter - Expenses Offshore Operations
20 Shore Base Facilities Accounting Guidelines
21 Material Pricing Manual
23 Guidelines for Revenue Audits in the Petroleum Industry
24 Accounting for Over and Short Gas Deliveries
26 Guidelines for Expenditure Audits in the Petroleum Industry
27 Guideline for Cash Flow Budgeting in the Petroleum Industry
28 Joint Task Force Guidelines on Natural Gas Administrative Issues
29 Guidelines for Contractor Audits in the Petroleum Industry
30 Guidelines for Investigations of Suspected Irregularities
31 Guideline for an Internal Review of an Oil and Gas Production and Exploration Division
32 Gas Processing Systems Material Classification Manual

**COPAS Interpretations**

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18 Freight Rates: Change of Information Source
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20 Freight Rates: Revised Method of Determining Freight Rates for Tubular Goods
21 Documentation supporting Joint Interest Expenditures
22 Twenty-Four month Audit Period Audit and Accounting Adjustments
23 Material Transfer Valuation

**Attachment 2**

COPAS BULLETIN NO. 28 makes the following recommendation:

**STANDARD JOINT OPERATING AGREEMENTS ADMINISTRATIVE PROVISIONS**

The following text should be incorporated into new joint operating agreements or used as an addendum to existing agreements. Similar language could be used to amend processing, gathering, and exchange agreements.

All parties shall be responsible for giving timely written notice to the Operator of its gas marketing arrangements (excluding price) for the following month. Additionally, each party shall promptly advise the Operator (by telephone, confirmed in writing or by electronic communication) of any changes in its gas marketing arrangements. The Operator shall be responsible for performing, on a timely basis, the following services for the parties hereto; advising parties of gas deliverability for the following month, confirming all nominations with the gas transportation, calculating and advising the parties of the gas allocations, and managing gas balancing pursuant to the Gas Balancing Agreement attached as Exhibit " " hereto. In the event any transportation nomination cannot be met for any reason (including, but not limited to force
majeure or makeup by an underproduced party), the operator shall promptly notify the appropriate parties. Operator shall be compensated for performing such services in accordance with Exhibit " " hereto. It is understood, however, that the Operator shall rely on statements made to it and shall have no liability with respect to the performance of its duties hereunder except as may result from gross negligence or willful conduct.

1. Unless otherwise noted, all discussion and references are based on review of the COPAS 1984 Onshore Accounting Procedure.

2. The author expresses thanks to those who have provided valuable insight by previously publishing articles or papers addressing this subject. See Cook, "The Standard COPAS Accounting Form Ð Its Operational & Economic Aspects," (Rocky Mtn. Min. L. Found., Denver, Colorado) Special Institute on Oil and Gas Pooling and Unitization (1980). Thanks are also in order to those individuals who were kind enough to review this paper and offer editorial comments based on their vast and practical industry experience.

3. J.O. Young has a comprehensive overview of the development of the A.A.P.L. Form 610 joint operating agreement in his paper "Oil and Gas Operating Agreements: Producers 88 Operating Agreements, Selected Problems and Suggested Solutions," 20 Rocky Mtn. Min. L. Inst. 197 (Matthew Bender & Co. 1975).

4. These early accounting procedures were the result of the local petroleum accountant's societies desire to offer recognized solutions to an increasingly complex set of expenditures. Under joint venture agreements the recording, reporting and sharing of expenses between partners was often a fertile source for conflict Ð for example, was the operator securing competitively priced material and services, was the operator building an unnecessary inventory of material, should the operator be reimbursed for employee training required for the primary benefit of the joint property?

5. Unless otherwise noted, all discussion and references to the joint operating agreement refer to the A.A.P.L. Form 610 Ð 1989 Model Form Operating Agreement.


7. Both the COPAS and JOA provisions lack practical and equitable application to the industry's standard handling of capital outlays. However, the conflicting provisions are often ignored because of the difficulty in negotiating replacements. The non-operator will want to delay payment of capital until the expense is incurred while the operator will want payment in advance of the actual expenditure. Related issues involving escrow accounts and interest on capital have yet to gain wide favor in the industry due partly to the administrative costs necessary to handle such arrangements.
8. Article VII.C of the A.A.P.L. Model Form reads "Operator, at its election, shall have the right from time to time to demand and receive from one or more of the other parties payment in advance of their respective shares of the estimated amount of the expense to be incurred in operations hereunder during the next succeeding month, which right may be exercised only by submission to each such party of an itemized statement of such estimated expense, together with an invoice for its share thereof."

9. In *Exxon Corp. v. Crosby-Mississippi Resources, Ltd.*, Civ. A. No. J89-0628(B) (S. D. Miss., Oct. 15, 1991) the court, in ruling for Exxon, held that actual receipt of a billing statement is necessary for the presumption of correctness to attach. However, the court also noted that Crosby-Mississippi had failed to make written exception to the operator when they received a status of account statement which showed delinquent payments for the months for which they denied receipt of actual billing statements.

10. In *Howell Petroleum Corp. v. Leben Oil Corp.*, 976 F.2d 614 (1992), Howell entered into a farmout agreement with LDI, Leben's predecessor in title. LDI was to provide quarterly statements on revenues and expenses so that Howell could monitor the status of payout. The farmout expressly was to expire in four years, unless terminated earlier. The contract expired in 1970 and no quarterly statements were made after 1971. Howell requested the statements in 1985, then sued, seeking an accounting under the contractual provisions. The court held that the contractual requirement of quarterly statements ended when the farmout terminated.

11. The tenuous nature of this practice can be demonstrated by the decisions in *Exxon Corp. v. Crosby-Mississippi Resources, Ltd.*, Civ. A. No. J89-0628 (B) (S. D. Miss., October 15, 1991); and *Calpetco 1981 v. Marshall Exploration, Inc.*, 989 F.2d 1408 (1993). The *Exxon* court held that failure of a non-operator to take written exception entitles monthly billing statements to a conclusive presumption of correctness. The court also held that payment by the non-operator is not a prerequisite to the application of the presumption. The Fifth Circuit Court in *Calpetco* states that an effective "written exception" must point to specific charges and invoices; alleged general patterns of overcharges or inappropriate charges without specific detail will not suffice as a claim for adjustment.

12. *Id.*

13. The COPAS exhibit requires non-operator approval for numerous pricing and expense scenarios which are considered unusual (i.e., incurring services of technical personnel not directly engaged on the Joint Property, charges for moving material to other properties belonging to operator, legal expenses not contemplated by the agreement, defining catastrophes not listed in the agreement, disposal of surplus, controllable material not purchased by the operator, expense of conducting periodic inventories, etc.).

15.

15 42 U.S.C. § 9601 *et seq.*

16.

16 In *Branch v. Mobil Oil Corp.*, 788 F. Supp. 531 (W.D. Okla. 1991) the court held that the operator was the agent of the working interest owners if it created the nuisance or pollution while pursuing unit business, and that costs incurred for pollution cleanup or damages is within the definition of "unit expenses" to be proportionately shared. Okla. Stat. 52 § 287.13 (C).

17.


18.

18 Time allocations, or allocations based on the actual number of wells or facilities serviced are common methods.

19.

19 COPAS, *Overhead D Joint Operations*, No. 16 (October, 1980) p. 8, "What constitutes 'professional skills'? Where is the dividing line on . . . specific operating conditions and problems for the benefit of the joint property? What is the proper distinction between onsite and offsite? When does onsite technical labor begin and end?"

20.


21.

21 *Id.*

22.

22 Such as expenditures due to oil spill, blowout, explosion, fire, storm, and hurricane.

23.


24.
The A.A.P.L. Model Form Article IV.A provision reads

Costs incurred by Operator in procuring abstracts, fees paid outside attorneys for title examination (including preliminary, supplemental, shut-in royalty opinions and division order title opinions) and other direct charges as provided in Exhibit "C" shall be borne by the Drilling Parties in the proportion that the interest of each Drilling Party bears to the total interest of all Drilling Parties as such interests appear in Exhibit "A". Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above functions.

25. In Wyoming Tax Comm'n v. BHP Petroleum Co., 856 P.2d 428 (Wyo. 1993), the state claimed a deficiency on severance taxes and sought to impose liability (including interest and penalties) for the full amount directly upon the operator. BHP argued that, as operator, it had no control or possession of proceeds of production and did not control how and when production was sold. The court held that BHP was the "person extracting" (as contained in Wyo. Stat. §39-6-307(c)), because it had responsibility for the physical activities of the unit through the unit operating agreement.

26. In McGowan v. Marx, (Slip Op. 57, 973, December 21, 1988), the Mississippi Supreme Court held that an operator is liable for sales taxes on that portion of expenses billed to non-operators.


28. Provisions such as "cost-point" non-consent elections (where, upon reaching a specified percentage of an original AFE, 125% for example, parties may opt out of further cost participation) or escrow agreements are commonly used. The provisions, however, create their own troublesome circumstances. For instance, many joint venture partners object to the concept of cost and risk sharing percentages changing during a drilling operation.


30. See Sonat Exploration Co. v. Mann, 785 F.2d 1232 (5th Cir. 1986).

31. The JOA, under Article VII.D.1 allows non-defaulting parties the right to suspend all of the rights of a defaulting party (after notice). Does this include the rights contained in the COPAS exhibit to audit, request inventories and receive credits for the sale of surplus material?
One of the early working drafts of A.A.P.L.'s Model Form 610-1989 JOA included provisions which called for cash advances to be placed in separate accounts, escrow accounts, and letters of credit. These provisions were eventually omitted from the final published model form.