

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**OIL CONSERVATION DIVISION,
PETITIONER**

v.

**SELLERS & FULTON OIL, LLC
RESPONDENT**

**CASE NO. 24905
ORDER NO. R-23566**

ORDER

This matter came before the Director of the New Mexico Oil Conservation Division (“Division” or “OCD”) on the Notice of Violation (“NOV”) dated on or about August 16, 2024, issued to Sellers & Fulton Oil, LLC OGRID #371978 (“Respondent”). The Division’s Hearing Examiner conducted a public hearing on November 21, 2024. The Director, having considered the testimony and evidence presented, and being otherwise fully advised in the premises **FINDS, CONCLUDES AND ORDERS:**

FINDINGS OF FACT

- 1) The Division has jurisdiction over the parties and the subject matter herein.
 - 2) On or about August 16, 2024, the Division issued a NOV, which alleged 3 categories of ongoing violations as demonstrated by OCD Ex.4:
 - a) Respondent is the operator of record of 36 inactive wells which the Division showed were not “plugged and abandoned” or placed into “temporary abandonment status.”
- OCD Ex. 3-A. Under 19.15.5.9(A)(4)(a) NMAC Respondent was not permitted to have more than two inactive wells out of compliance. 19.15.25.8 NMAC requires inactive

wells be plugged and abandoned or placed into approved temporary abandonment status.

- b) Respondent was in violation of 19.15.8.9 NMAC by lacking financial assurance for twenty wells. OCD Ex. 3-B.
 - c) Respondent was in violation of 19.15.7.24 NMAC by not filing the required monthly production reports (Form C-115). OCD Ex 3-C. Respondent last filed Form C-115 for any well in September of 2021.
- 3) The NOV outlined the following relief:
- a) Respondent shall plug and abandon all thirty-six wells listed in OCD Ex. 3-A within 30 days after the issuance of this Order or failing to do so, the Division would assume the liability,
 - b) Respondent's financial assurance is hereby forfeited,
 - c) Respondent's authority to transport from the thirty-six registered wells identified in OCD Ex. 3-A is hereby terminated, and
 - d) Respondent is hereby held civilly liable for violations of 19.15.5.9(A)(4)(a), 19.15.8.9 and 19.15.7.24 NMAC in the amount of \$89,100.00.
- 4) The NOV informed Respondent of OCD's informal resolution process. Respondent did contact the Division during the informal resolution period, however failed to provide any evidence that the alleged violations had not occurred.
- 5) Respondent did not file a prehearing statement to enter an appearance or otherwise present evidence pursuant to 19.15.5 NMAC.

- 6) On August 14, 2024, OCD filed and served the Docketing Notice and formally requested a hearing. Respondent did not answer the NOV in conformance with 19.15.5.10(E)(2)(b) NMAC.
- 7) The Division provided Respondent with notice of the November 7, 2024, hearing pursuant to 19.15.5.10 NMAC. The November 7, 2024 hearing was continued to November 21, 2024 due to inclement weather state office closure. Respondent was immediately informed of the date change of the hearing. Respondent offered no indication as to whether he would appear virtually or in person.
- 8) At the hybrid hearing (in-person at Pecos Hall in Santa Fe, NM and virtually through Microsoft Teams) the NOV was the first agenda item on November 21, 2024, and the Hearing Examiner announced the case several times providing Respondent with the opportunity to be heard. Respondent did not appear virtually or in person.
- 9) The Division presented the Affidavits of Nicholas Karns, Compliance Officer and Bond Administrator with the Division's Administrative and Compliance Bureau, and Sara Griego, OCD Law Clerk.
- 10) The Division provided evidence of notice of the Docketing Statement. OCD Ex. 5.
- 11) Eight Exhibits were admitted into evidence without objection in support of the NOV.
- 12) Mr. Karns, who was previously qualified as an expert in administrative compliance before the Division, provided the following evidence in support of the ongoing violations:
 - a) As of November 21, 2024, Respondent remained out of compliance with the inactive well requirements of 19.15.5.9(A)(4)(a) NMAC. Respondent was the registered

operator of 36 wells, all of which were inactive and not plugged and abandoned or placed in approved temporary abandonment status. OCD Ex. 3-A.

b) Respondent remained out of compliance with 19.15.8.9 NMAC by lacking financial assurance for twenty wells. OCD Ex. 3-B.

c) Respondent remained out of compliance with 19.15.7.24 NMAC, because Respondent had not filed the required C-115 production reports since September 2021. OCD Ex 4-C.

13) The Oil and Gas Act provides that “[i]n assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors.” NMSA 1978, § 70-2-31(C). OCD provided evidence that the penalties were reasonable and lawful. OCD Ex. 3-D.

CONCLUSIONS OF LAW

14) The Division met its burden to show by a preponderance of evidence that:

a) Respondent has violated 19.15.5.9(A)(4)(a) NMAC by failing to plug and abandon 36 inactive wells.

b) Respondent has violated 19.15.8.9 NMAC by lacking financial assurance for twenty (20) of the subject wells.

c) Respondent has violated 19.15.7.24 NMAC by failing to submit the required C-115 forms for all subject wells.

- 15) The civil penalties calculated by the Division are lawful, reasonable under 19.15.5.10(B) NMAC, and supported by the evidence in the Administrative and Hearing Records.

ORDER

- 16) Respondent's authority to transport from subject wells is hereby suspended until such time as Respondent is compliant with this Order and the N.M. Oil and Gas Act.
- 17) Respondent shall plug and abandon all 36 listed in OCD Ex. 3-A no later than 30 days after issuance of this Order.
- 18) Respondent is hereby liable for civil penalties in the amount of \$89,100.00.
- 19) If Respondent fails to plug and abandon the subject wells as directed herein, the Division is hereby authorized to plug and abandon the wells and to forfeit the financial assurance for the wells. Such plugging activities may include necessary reclamation or remediation work associated with wells that have been partially plugged and abandoned, Respondent shall pay the excess costs to plug and abandon the wells no later than 30 days after actual or attempted service of the Division's written demand. If the excess costs to the Division are not received, the Division may seek indemnification.
- 20) The Division retains jurisdiction of this matter for the entry of such further orders as it may deem necessary.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



**GERASIMOS RAZATOS
ACTING DIRECTOR**