

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:**

**APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION, THROUGH THE
ENVIRONMENTAL BUREAU CHIEF, FOR AN
ORDER DETERMINING THE RESPONSIBLE
PARTY OR PARTIES TO COMPLETE AND
PERFORM AN ABATEMENT PLAN PURSUANT
TO OCD RULE 19; LEA COUNTY, NEW
MEXICO**

**DE NOVO
CASE NO. 13061
ORDER NO. R-12280-A**

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER, having come before the Oil Conservation Commission ("the Commission") on May 12, 2005 at Santa Fe, New Mexico, on the application of the Oil Conservation Division ("the Division") through its Environmental Bureau Chief for an order determining the responsible party or parties to complete and perform an abatement plan pursuant to Division Rule 19 (19.15.1.19 NMAC) in the South Langlie Jal Unit in Lea County, New Mexico; for an order directing Smith & Marrs, Inc. to comply with the Stage I abatement plan and prior settlement agreement and submit a Stage I investigative report to the Division for approval; and requesting the assessment of civil penalties for Smith & Marrs, Inc.'s failure to submit a Stage I investigative report by February 15, 2004, and the Commission, having carefully considered the evidence, the pleadings and other materials the parties submitted, now, on this 9th day of June, 2005,

FINDS:

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter.
2. This matter concerns Smith & Marrs, Inc.'s failure to submit a Stage I investigative report for the South Langlie Jal Unit in Lea County, New Mexico as the Division required pursuant to Division Rule 19 and as Smith & Marrs, Inc. agreed to in a settlement agreement dated November 17, 2003.

3. The Division, Smith & Marrs, Inc. and Chaparral Energy, L.L.C. (Chaparral) appeared through their respective counsels and presented evidence.

4. In 1999, the Division's Environmental Bureau began investigating salt contamination of soils and fresh water within the South Langlie Jal Unit in Lea County, New Mexico.

5. Division investigations indicated that groundwater in drinking water wells contains chlorides and total dissolved solids that exceed New Mexico Water Quality Control Commission standards.

6. On August 8, 2000, the Division required Bristol Resources, Inc., the operator at the time the Division commenced investigations, to submit by October 2, 2000 an abatement plan for water pollution that appeared to be caused by operation of the South Langlie Jal Unit.

7. Chaparral acquired the South Langlie Jal Unit at a bankruptcy auction on September 15, 2000.

8. On October 1, 2000, Chaparral assumed operation of the South Langlie Jal Unit.

9. On October 30, 2000, the Division required Chaparral, as the South Langlie Jal Unit's operator, to file a Stage I abatement plan by December 31, 2000.

10. On February 7, 2001, Chaparral acknowledged that it had purchased the property.

11. On March 12, 2001, the Division issued a notice of violation to Chaparral for failing to file a Stage I abatement plan, and requiring Chaparral to file the abatement plan by March 26, 2001.

12. On March 23, 2001, Chaparral filed a proposed Stage I abatement plan without challenging its responsibility under Division rules.

13. On June 13, 2001, the Division notified Chaparral of deficiencies in its proposed Stage I abatement plan and required Chaparral to correct the deficiencies by July 13, 2001.

14. On July 16, 2001, the Division granted Chaparral an extension of time to correct the deficiencies until July 27, 2001.

15. On August 22, 2001, Chaparral filed an amended Stage I abatement plan.

16. On September 7, 2001, the Division determined that Chaparral's Stage I abatement plan was administratively complete, and directed Chaparral to give the notices Division rules require.

17. On January 1, 2002, the Division required Chaparral to supply additional information pertinent to the Division's review and approval of the Stage I abatement plan by February 2, 2002.

18. On February 22, 2002, the Division issued a notice of violation to Chaparral due to Chaparral's failing to supply the information the Division had requested on January 1, 2002 by February 2, 2002.

19. On February 28, 2002, Chaparral submitted a second amended Stage I abatement plan.

20. On March 21, 2002, the Division notified Chaparral of remaining deficiencies in Chaparral's amended Stage I abatement plan.

21. On April 12, 2002, Chaparral submitted the additional information and exhibits the Division had requested.

22. On April 25, 2002, the Division approved Chaparral's amended Stage I abatement plan with conditions.

23. On July 9, 2002, Chaparral requested an extension of time to implement the Stage I abatement plan due to continuing negotiations with the surface owner regarding access.

24. On August 5, 2002, the Division granted Chaparral an extension of time to file its investigative report until October 31, 2002.

25. On November 7, 2002, Chaparral notified the Division that it was transferring the South Langlie Jal Unit to "Ricky Smith Oil & Gas Corporation".

26. On November 13, 2002, Smith & Marrs, Inc., in a letter to Chaparral, stated that "Smith & Marrs, Inc. hereby agrees to be designated the responsible party who shall assume the responsibility to conduct the Stage 1 Abatement Plan and all other actions required by [Rule 19] . . .".

27. On January 13, 2003, the Division issued a notice of violation to Chaparral and Smith & Marrs, Inc. for their failure to submit a Stage I report by October 31, 2002, and notified them to file the required investigative report by February 17, 2003.

28. On March 20, 2003, the Division filed the application in this case.

29. On July 15, 2003, the Division's application for enforcement was scheduled for hearing. The Division, Chaparral and Smith & Marrs, Inc. agreed to a settlement agreement under which Smith & Marrs, Inc. assumed primary responsibility for completing the approved abatement plan including the Stage I investigative report and Stage II abatement plan if the Stage I investigation reveals the existence of contamination of which the South Langlie Jal Unit is determined to be the probable source.

30. On November 17, 2003, the Division, Chaparral and Smith & Marrs, Inc. signed the settlement agreement. The settlement agreement specified that Smith & Marrs, Inc. would file its investigative report within 90 days after the final signature on the settlement agreement, which was February 15, 2004, and in the event Smith & Marrs, Inc. was unable to obtain an access agreement from the surface owner it would institute legal proceedings to secure an injunction authorizing access for the purpose of performing the Stage I abatement plan.

31. On December 23, 2003, Smith & Marrs, Inc. sent a letter to the surface owner, Clay Osborn, requesting an access agreement.

32. On December 27, 2003, Clay Osborn, sent Smith & Marrs, Inc. a letter proposing a meeting.

33. Smith & Marrs, Inc. did not submit the Stage I investigative report by February 15, 2004.

34. On July 14, 2004, Smith & Marrs, Inc. re-sent its December 23, 2004 letter to Clay Osborn.

35. At the May 12, 2005 hearing, Clay Osborn testified that Smith & Marrs, Inc. never responded to his December 27, 2003 letter and that he met with Smith & Marrs, Inc.'s consultant once or twice, but the consultant informed Mr. Osborn that he lacked authority to reach an agreement on surface access.

36. Clay Osborne testified at the May 12, 2005 hearing that he would allow Smith & Marrs, Inc. access to test wells and start on core sites, but not establish monitoring wells, without a surface access agreement.

37. On July 30, 2004, the Division filed its application to re-open this case to obtain Smith & Marrs, Inc.'s compliance.

38. On August 31, 2004, two days before the hearing scheduled on the Division's application to re-open this case, Smith & Marrs, Inc. filed a petition in the 5th Judicial District for permanent injunction against Clay Osborn.

39. On September 2, 2004, Division hearing examiner, William V. Jones, heard the case.

40. On January 28, 2005, the Division entered Order No. R-12280 ordering Smith & Marrs, Inc. to file a Stage I investigative report with the Division by May 1, 2005.

41. On February 22, 2005, Smith & Marrs, Inc. applied to have the Commission hear this case de novo pursuant to Division Rule 1220 (19.15.14.1220 NMAC).

42. Rule 19.15.1.19(C) NMAC (Rule 19 of the Oil Conservation Division rules) requires responsible persons who are required to abate water pollution that exceeds state standards do so according to a Division approved abatement plan, which includes specific deadlines for submitting Stage I investigative reports.

43. The Oil and Gas Act, NMSA 1978, Section 70-2-31(A) provides for a civil penalty up to \$1,000 per violation for knowingly and willfully violating any provision of the Oil and Gas Act or Oil Conservation Division rules.

44. The evidence described above, in particular the November 13, 2002 letter from Smith & Marrs, Inc. to Chaparral, and the November 17, 2003 settlement agreement, establishes that Smith & Marrs, Inc. is the party responsible for performing and completing the abatement plan required by Division Rule 19 in the South Langlie Jal Unit in Lea County, New Mexico.

45. The evidence described above demonstrates that Smith & Marrs, Inc. knowingly and willfully failed to submit the Stage I investigative report by the Division's final deadline of February 17, 2003 before it filed its March 20, 2003 enforcement action, or the February 15, 2004 deadline the Division, Smith & Marrs, Inc. and Chaparral agreed to in the settlement agreement dated November 17, 2003.

46. The evidence described above demonstrates that Smith & Marrs, Inc. has recourse in the courts to seek an injunction allowing it surface access, but failed to file an action for such recourse until August 31, 2004, which is more than six months after its February 15, 2004 deadline to submit the Stage I investigative report.

47. The Commission should assess a civil penalty in the amount of \$1,000 for each day Smith & Marrs, Inc. failed to comply with Rule 19(C)(2) and the settlement agreement and submit the Stage I investigative report by February 15, 2004. From February 15, 2004 until August 31, 2004 this is 197 days. This equates to a total civil penalty in the amount of \$197,000.

IT IS THEREFORE ORDERED:

1. Smith & Marrs, Inc. is the party responsible for performing and completing an abatement plan in the South Langlie Jal Unit in Lea County, New Mexico.

2. Smith & Marrs, Inc. shall submit a Division approved Stage I investigative report to the Division's Environmental Bureau by December 9, 2005.

3. A civil penalty is assessed against Smith & Marrs, Inc. in the amount of \$197,000.00. Smith & Marrs, Inc. shall pay the assessed penalty as follows:

a. One-third of \$197,000.00, which is \$65,666.67, within 30 days following this order's entry;

b. One-third of \$197,000, which is \$65,666.67, within 30 days following the December 9, 2005 deadline for Smith & Marrs, Inc.'s submittal of the Stage 1 investigative report. If Smith & Marrs, Inc. provides the Stage I investigative report by December 9, 2005 the Commission will waive the \$65,666.67.

c. One-third of \$197,000, which is \$65,666.66, within 30 days following the deadline the Division establishes for Smith & Marrs, Inc. to submit and fully perform a Stage II abatement plan as required by 19.15.1.19 NMAC, including any conditions the Division imposes. If Smith & Marrs, Inc. completes the Stage II abatement in accordance with Division deadlines and requirements as required by 19.15.1.19 NMAC, or if the Division determines from the Stage I Investigative report that there is no contamination or that contamination exists but the South Langlie Jal Unit operations are not the probable source of contamination then the Commission will waive the \$65,666.66.

4. The Commission retains jurisdiction of this matter for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



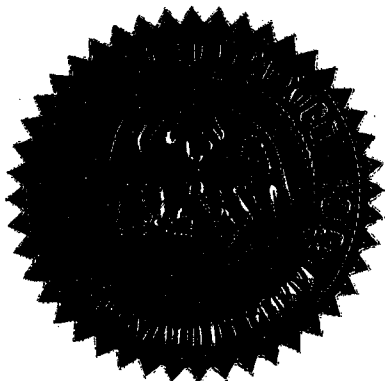
MARK E. FESMIRE, P.E., CHAIR



JAMI BAILEY, CPG, MEMBER



FRANK T. CHAVEZ, MEMBER



SEAL