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COMM'N
OIL CONSERVATION [REDACTED]

CASE NUMBER 13,564

Devon EXHIBIT NUMBER 1

October 13, 2005

Hand Delivered

Mark E. Fesmire, P.E.
Chairman
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Commission Case No. 13,564
Application for Rule Adoption and Amendment

Dear Mr. Fesmire:

This letter is submitted on behalf of Devon Energy Corporation and its affiliates Devon Energy Production Company, L.P. and Devon Louisiana Corporation (collectively, "Devon"):

- Devon is an active producer and operator of exploratory and development wells in the State of New Mexico.
- Devon has reviewed the proposed enforcement rules which are the subject of this case. Devon fully supports the expressed intention of the Commission to insure industry compliance with Division rules and regulations, as well as the strong and consistent enforcement of Division rules and regulations by the agency. However, Devon shares many of the concerns expressed by other operators in the state.
- One of Devon's major concerns is the lack of due process afforded to an operator who could lose its "good standing" status solely by the number of "inactive" wells it operates as itemized on a list of inactive wells appearing on the Division's website. Devon has noticed that the current list of inactive wells maintained on the website contains errors and/or is out of date with respect to the current status of some wells. Since loss of "good standing" status can have far-reaching repercussions to an operator under the proposed rules, we believe that an operator has a minimal right to due process by being notified at least 30

days in advance of losing its "good standing" status in order to correct errors or enter into a compliance agreement with the Division.

- Also, related to the issue of "good standing," Devon believes that the proposed rules regarding the number of inactive wells appearing on the Division's list triggering loss of "good standing" is unreasonable, particularly as applied to the larger operators. We believe a more reasonable approach would be to limit the inactive wells by an operator to not more than 5 wells or a reasonable percentage (Devon suggests 5%) of total wells operated in the state, whichever is the larger, to remain in "good standing."
- From a procedural standpoint, Devon is concerned with the abbreviated notice and comment period associated with this case, and recommends a return to the collaborative joint workgroup process used historically by the Division to engage interested parties in identifying problems and proposing solutions prior to formal rule-making hearings. Devon believes this process has worked well for all stakeholders in the past, and would have worked well here had it been applied.
- Devon has participated in, and fully supports, the written comments and testimony of the New Mexico Oil and Gas Association in this case, and appreciates the opportunity to make this statement.

Sincerely,



James Bruce

Attorney for Devon Energy Corporation

1

**Statutory
Responsibilities: Conservation**
§70-2-6(A)

- The division shall have jurisdiction, authority, and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the **conservation** of oil or gas and the prevention of waste of potash as a result of oil and gas operations.
- Compare: Laws of 1935, Chap. 72, §4

2

**Statutory Responsibilities:
Waste & Correlative Rights**

- §70-2-11(A): "The division is hereby empowered, and it is its duty, **to prevent waste** prohibited by this act and **to protect correlative rights**, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.
- Compare: Laws of 1935, Chap. 72, §9 (waste) and Laws of 1949, Chap. 168, §9 (correlative rights)

3

Laws of 1935, ch. 72, § 10

- (1) To require dry or abandoned wells to be plugged in such way as to confine the crude petroleum oil, natural gas, and water in the strata in which they are found; and to prevent them from escaping into other strata; the Commission may require a bond of not to exceed Ten Thousand (\$10,000.00) Dollars conditioned for the performance of such regulations;
- (2) To prevent crude petroleum oil, natural gas, and water from escaping from the strata in which they are found into another stratum or other strata.

4

§70-2-12(B)(1) & (2)

- (1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;
- (2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata.

5

Statutory Responsibilities: Other

- §70-2-12(B) "Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act of the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection."

6

Statutory Responsibilities: Produced Water

- §70-2-12(B)(15) "to regulate the disposition of water produced or used in connection with the drilling for or production of oil or gas... in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer."

7

Statutory Responsibilities: Wastes (added by Laws, 1989, ch. 289, §1)

- §70-2-12(B)(22) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas **to protect public health and the environment**
- §70-2-12(B)(23) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil **to protect public health and the environment, including administering the Water Quality Act**

8

Statutory Enforcement Tools: Penalties

- §70-2-31(A): "Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation." For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The penalties provided in this subsection shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or the division."

9

Statutory Enforcement Tools: Plugging

- §70-2-14(B): If any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

10

Statutory Enforcement Tools: District Court

- §70-2-28: Injunctions and penalties
- §70-2-29: Injunctions by private parties
- §70-2-30: Appointment of receiver
- §70-2-31: Criminal prosecution
- §70-2-32: Seizure of illegal oil, gas or product

11

Enforcement Tools by Rule- Affecting Well Operators

- 118.D.5: failure to submit H2S plan; denial of APD; cancellation of allowable or "other enforcement action"
- 306: violation of vent/flare rule; suspension of allowable
- 703.E: injection wells or projects exhibiting failure to confine injected fluids may be subject to restriction of injection volume and pressure, or shut in
- 1104.D: no allowable until well in "full compliance"
- 1105.A: if well completion or recompletion reports not received, allowable is withheld
- 1115: failure to file monthly reports; cancellation of authority to produce

12

Proposed Amendment to 7(K)

- Knowingly and willfully, for purposes of assessing civil penalties under Section 70-2-31(A), NMSA 1978, means . . .

13

If operator is not in good standing, OCD....

- May deny APD (permissive) (Rule 102)
- Shall refuse to assign allowable to new or newly completed well (mandatory) (Rule 1104)
- Shall deny injection permit applications (mandatory) (Rule 701)
- May, after notice and hearing, revoke an injection permit (permissive) (Rule 701)
- May deny registration, change of operator (permissive) Rule 100

14

Cerrillos Gravel Products, Inc. v.
Board of County Commissioners,
2005-NMSC-023, ¶16

- "We agree that the power to revoke a permit is necessarily implied from the power to approve a permit."

15

NMOGA Proposal: A well is not inactive if it is:

- A dewatering coal gas well;
- An approved injection well;
- Not producing because of delays in obtaining surface access to the well.

16

§70-2-14(A)

- "In addition to the blanket plugging financial assurance, the oil conservation division may require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years."

17

Proposed Rule 101.G(1)

- The division *may* [shall] release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and location released pursuant to 19.15.4.202 NMAC, or have been covered by another financial assurance the division has approved.
- Compare §70-2-14(A): The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

18

Proposed Rule 101.B

- The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well.

19

Use of financial assurance

- 101.L (current): All bonds required by these rules shall be conditioned for well plugging and location cleanup only, and not to secure payment for damages to livestock, range, **water**, crops, tangible improvements, nor any other purpose.
- 101.D(3) (proposed): A financial assurance shall be conditioned for well plugging and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops, tangible improvements or any other purpose.

20

Temporary Abandonment

- **§70-2-14(A)**: In addition to the blanket plugging financial assurance, the oil conservation division may require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years.
- **7.T(2) (current)**: Temporary abandonment shall be the status of a well which is inactive and has been approved for temporary abandonment in accordance with the provisions of these rules.

Proposed Definitions

- **7.1 (proposed):** Temporary abandonment shall be the status of a well that is inactive.
- **7.A (proposed):** Approved temporary abandonment shall be the status of a well that is inactive; has been approved in accordance with 19.15.4.203 NMAC, and is in compliance with 19.15.4.203 NMAC.

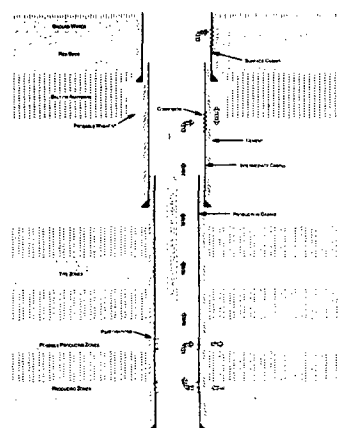
Proposed Rule 701.A

- The division shall grant a permit for injection under 19.15.9.701 NMAC only to an operator who is in good-standing pursuant to 19.15.1.37 NMAC. The division may revoke a permit for injection issued under 19.15.9.701 NMAC after notice and hearing if the operator is not in good standing pursuant to 19.15.1.37 NMAC.

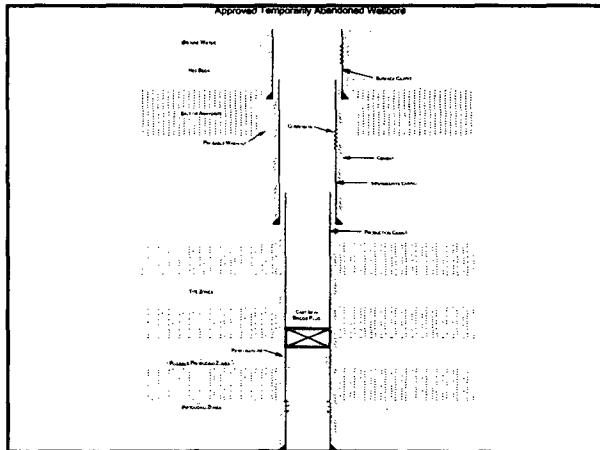
Statutory Responsibilities:

- §70-2-12(B)(1): "to require dry or abandoned wells to be plugged in a way to confine the crude petroleum, oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata.
- §70-2-12(B)(2): "to prevent crude petroleum, oil, natural gas or water from escaping from strata in which it is found into other strata.
- (Compare to Laws, 1935, ch. 72, § 10)

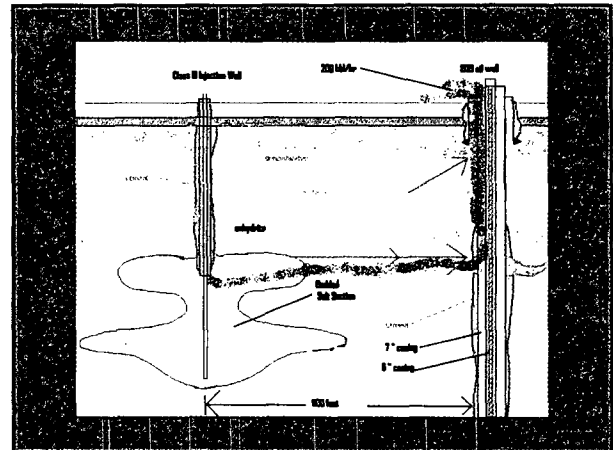
Potential Problem of a Temporarily Abandoned Wellbore



25



26



27

Rule 203.B(3) [Deleted Text]

- If the well fails the mechanical integrity test required herein, the well shall be plugged and abandoned in accordance with these rules or the casing problem corrected and the casing retested within ninety (90) days.

28

Rule 203.C(1)(a)

- The operator may set a cast iron bridge plug [will be set] within [one hundred (100)] feet of uppermost perforations or production casing shoe, [and] load the casing [loaded] with inert fluid and pressure test[ed] to 500 pounds per square inch surface pressure with a pressure drop of not more than 10% for [thirty (30)] minutes.

29

Rule 203.C(1)(b)

- The operator may run a retrievable bridge plug or packer *[will be run]* to within *[one hundred (100)]* feet of uppermost perforations or production casing shoe, *[and] and test the well [tested to] to 500 pounds per square inch [for] surface pressure for [thirty (30)] minutes with a pressure drop of not greater than 10% for [thirty (30)] minutes*

30

Rule 203.C(1)(c) [Deleted Text]

- *[for a gas well in southeast New Mexico completed above the San Andres formation, if the operator can demonstrate that the fluid level is below the base of the salt and that a Bradenhead test shows no casing leaks, the Division may exempt the well from the requirement for a bridge plug or packer]*

31

Rule 203.C(1)(d) [Deleted Text]

- *[a casing inspection log confirming the mechanical integrity of the production casing may be submitted]*

32

Rule 203.C(1)(c) [New Text]

- The operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline

33

Rule 203.C(3) [New Text]

- The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 10000 pound spring, which has been calibrated within the six months prior to conducting the test. All witnesses to the test shall sign the chart. The operator shall submit the chart with the form C-103 requesting approved temporary abandonment status.

34

Rule 1210 A(2)(a)

- Affected persons are the following persons owning interests in the adjoining spacing units:
 - the division-designated operator;
 - in the absence of an operator, any lessee whose interest is evidenced by a written conveyance document of record or known to the applicant as of the date he filed the application; and
 - in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he filed the application.

35

Average actual costs v. current bond amounts and proposed bond amounts, producing counties

<u>Less than 5,000 feet</u>	
Actual cost:	\$11,590
Current bond:	\$5,000
Proposed bond:	\$5,000-10,000
<u>5,000 to 10,000 feet</u>	
Actual cost:	\$15,234
Current bond:	\$7,500
Proposed bond:	\$10,000-\$15,000
<u>Over 10,000 feet</u>	
Actual cost:	\$16,069
Current bond:	\$10,000
Proposed bond:	\$15,000 and up

36

Deficits - plugging costs not covered by financial assurance

- FY03: \$524,854
- FY04: \$729,641
- FY05: \$564,150

37

Financial Assurance Forms: Current Language

- **Blanket surety bond:** covers wells "on privately owned or state owned lands within the State of New Mexico."
- **Blanket cash bond:** covers wells "on land owned by the State of New Mexico or on privately owned fee land within the State of New Mexico."
- **Letter of credit:** covers wells "on lands in the State of New Mexico."

38

Rule 1115

- A: Substitutes "each non-plugged well completion for which the division has approved a C-104 authorization to transport" for "each producing lease."
- B: Requires electronic filing; keeps provision for obtaining exemption.
- C: Streamlines enforcement.

39

Rule 1115.B(3): Current Enforcement Provisions

- OCD must notify operator in 30 days if operator fails to file, or makes a mistake.
- OCD must send 2nd notice if operator does not respond in 30 days, informing operator that he may be subject to loss of authority to produce from affected well.
- OCD must send 3rd notice, by certified mail, if operator "willfully" fails to respond, stating that in 30 days OCD will cancel authority to produce or inject.
- OCD may then cancel authority if operator fails to request hearing.

40

Rule 1115.C: Proposed Enforcement Provisions

- OCD will notify an operator within 60 days of the original due date if the operator fails to file, or makes an error. The notice will state that the OCD intends to revoke the operator's authorization to transport or inject if operator fails to correct the error.
- If operator does not correct the error or request a hearing within 120 days of the original due date, OCD may revoke authorization to transport or inject.

APPLICATION FOR AUTHORIZATION TO INJECT

- I. PURPOSE: _____ Secondary Recovery _____ Pressure Maintenance _____ Disposal _____ Storage
Application qualifies for administrative approval? _____ Yes _____ No
- II. OPERATOR: _____
ADDRESS: _____
CONTACT PARTY: _____ PHONE: _____
- III. WELL DATA: Complete the data required on the reverse side of this form for each well proposed for injection.
Additional sheets may be attached if necessary.
- IV. Is this an expansion of an existing project? _____ Yes _____ No
If yes, give the Division order number authorizing the project: _____
- V. Attach a map that identifies all wells and leases within two miles of any proposed injection well with a one-half mile radius circle drawn around each proposed injection well. This circle identifies the well's area of review.
- VI. Attach a tabulation of data on all wells of public record within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of completion, and a schematic of any plugged well illustrating all plugging detail.
- VII. Attach data on the proposed operation, including:
1. Proposed average and maximum daily rate and volume of fluids to be injected;
 2. Whether the system is open or closed;
 3. Proposed average and maximum injection pressure;
 4. Sources and an appropriate analysis of injection fluid and compatibility with the receiving formation if other than reinjected produced water; and,
 5. If injection is for disposal purposes into a zone not productive of oil or gas at or within one mile of the proposed well, attach a chemical analysis of the disposal zone formation water (may be measured or inferred from existing literature, studies, nearby wells, etc.).
- *VIII. Attach appropriate geologic data on the injection zone including appropriate lithologic detail, geologic name, thickness, and depth. Give the geologic name, and depth to bottom of all underground sources of drinking water (aquifers containing waters with total dissolved solids concentrations of 10,000 mg/l or less) overlying the proposed injection zone as well as any such sources known to be immediately underlying the injection interval.
- IX. Describe the proposed stimulation program, if any.
- *X. Attach appropriate logging and test data on the well. (If well logs have been filed with the Division, they need not be resubmitted).
- *XI. Attach a chemical analysis of fresh water from two or more fresh water wells (if available and producing) within one mile of any injection or disposal well showing location of wells and dates samples were taken.
- XII. Applicants for disposal wells must make an affirmative statement that they have examined available geologic and engineering data and find no evidence of open faults or any other hydrologic connection between the disposal zone and any underground sources of drinking water.
- XIII. Applicants must complete the "Proof of Notice" section on the reverse side of this form.
- XIV. Certification: I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.
- NAME: _____ TITLE: _____
SIGNATURE: _____ DATE: _____
E-MAIL ADDRESS: _____
- * If the information required under Sections VI, VIII, X, and XI above has been previously submitted, it need not be resubmitted. Please show the date and circumstances of the earlier submittal: _____

III. WELL DATA

A. The following well data must be submitted for each injection well covered by this application. The data must be both in tabular and schematic form and shall include:

- (1) Lease name; Well No.; Location by Section, Township and Range; and footage location within the section.
- (2) Each casing string used with its size, setting depth, sacks of cement used, hole size, top of cement, and how such top was determined.
- (3) A description of the tubing to be used including its size, lining material, and setting depth.
- (4) The name, model, and setting depth of the packer used or a description of any other seal system or assembly used.

Division District Offices have supplies of Well Data Sheets which may be used or which may be used as models for this purpose. Applicants for several identical wells may submit a "typical data sheet" rather than submitting the data for each well.

B. The following must be submitted for each injection well covered by this application. All items must be addressed for the initial well. Responses for additional wells need be shown only when different. Information shown on schematics need not be repeated.

- (1) The name of the injection formation and, if applicable, the field or pool name.
- (2) The injection interval and whether it is perforated or open-hole.
- (3) State if the well was drilled for injection or, if not, the original purpose of the well.
- (4) Give the depths of any other perforated intervals and detail on the sacks of cement or bridge plugs used to seal off such perforations.
- (5) Give the depth to and the name of the next higher and next lower oil or gas zone in the area of the well, if any.

XIV. PROOF OF NOTICE

All applicants must furnish proof that a copy of the application has been furnished, by certified or registered mail, to the owner of the surface of the land on which the well is to be located and to each leasehold operator within one-half mile of the well location.

Where an application is subject to administrative approval, a proof of publication must be submitted. Such proof shall consist of a copy of the legal advertisement which was published in the county in which the well is located. The contents of such advertisement must include:

- (1) The name, address, phone number, and contact party for the applicant;
- (2) The intended purpose of the injection well; with the exact location of single wells or the Section, Township, and Range location of multiple wells;
- (3) The formation name and depth with expected maximum injection rates and pressures; and,
- (4) A notation that interested parties must file objections or requests for hearing with the Oil Conservation Division, 1220 South St. Francis Dr., Santa Fe, New Mexico 87505, within 15 days.

NO ACTION WILL BE TAKEN ON THE APPLICATION UNTIL PROPER PROOF OF NOTICE HAS BEEN SUBMITTED.

NOTICE: Surface owners or offset operators must file any objections or requests for hearing of administrative applications within 15 days from the date this application was mailed to them.

INJECTION WELL DATA SHEET

OPERATOR: _____

WELL NAME & NUMBER: _____

WELL LOCATION: _____

FOOTAGE LOCATION

UNIT LETTER

SECTION

TOWNSHIP

RANGE

WELLBORE SCHEMATICWELL CONSTRUCTION DATASurface Casing

Hole Size: _____ Casing Size: _____

Cemented with: _____ sx. *or* _____ ft³

Top of Cement: _____ Method Determined: _____

Intermediate Casing

Hole Size: _____ Casing Size: _____

Cemented with: _____ sx. *or* _____ ft³

Top of Cement: _____ Method Determined: _____

Production Casing

Hole Size: _____ Casing Size: _____

Cemented with: _____ sx. *or* _____ ft³

Top of Cement: _____ Method Determined: _____

Total Depth: _____

Injection Interval

_____ feet to _____

(Perforated or Open Hole; indicate which)

INJECTION WELL DATA SHEET

Tubing Size: _____ Lining Material: _____

Type of Packer: _____

Packer Setting Depth: _____

Other Type of Tubing/Casing Seal (if applicable): _____

Additional Data

1. Is this a new well drilled for injection? _____ Yes _____ No

If no, for what purpose was the well originally drilled? _____

2. Name of the Injection Formation: _____

3. Name of Field or Pool (if applicable): _____

4. Has the well ever been perforated in any other zone(s)? List all such perforated intervals and give plugging detail, i.e. sacks of cement or plug(s) used. _____

5. Give the name and depths of any oil or gas zones underlying or overlying the proposed injection zone in this area: _____
