

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

**IN THE MATTER OF THE HEARING CALLED BY
THE OIL CONSERVATION DIVISION TO
CONSIDER:**

**CASE NO. 16040
ORDER NO. R-14663**

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION
COMPLIANCE AND ENFORCEMENT BUREAU FOR A COMPLIANCE ORDER
AGAINST CANO PETRO OF NEW MEXICO, INC. FOR WELLS OPERATED IN
CHAVES AND ROOSEVELT COUNTIES, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 5, 2018, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 1st day of May 2018, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) The Oil Conservation Division Compliance and Enforcement Bureau (the "Bureau") seeks a compliance order against Cano Petro of New Mexico, Inc. (the "Operator" or "Cano Petro"):

- a. determining the Operator is out of compliance with 19.15.25.8 NMAC and with Paragraph (4) of Subsection A of 19.15.5.9 NMAC;
- b. requiring the Operator to return to compliance with 19.15.25.8 NMAC and with Paragraph (4) of Subsection A of 19.15.5.9 NMAC within forty-five days, and requiring producing wells shut-in until compliance is achieved; and
- c. in the event of non-compliance, declaring the wells abandoned and authorizing the OCD to plug the violating wells in accordance with a Division-approved plugging program and restore and remediate the location, recover costs from the Operator's financial assurance as permitted by

19.15.8.13 NMAC, and seek indemnification and costs as permitted by Subsection E of NMSA 1978, § 70-2-14.

(3) The Bureau appeared at the hearing through legal counsel and presented the following testimony:

- a. Operator is registered under OGRID No. 248802.
- b. Operator currently has 269 wells out of a total of 323 wells out of compliance with 19.15.25.8 NMAC, exceeding the amount allowed under Paragraph (4) of Subsection A of 19.15.5.9 NMAC. Operator had 267 wells out of compliance with 19.15.25.8 NMAC at the time the Division filed its Application to the Division. *See the Bureau's Exhibit No. 2: Inactive Well List.* (the "Subject Wells").
- c. On June 20, 2017, the Bureau sent Operator notice, via first class mail, that it was out of compliance with 19.15.5.9 NMAC and that the Bureau would seek formal compliance proceedings if no action was taken by Operator to return to compliance within 60 days as required by Subsection B of 19.15.5.9 NMAC.
- d. Operator has not contacted the Bureau to resolve the outstanding compliance issues.
- e. Operator had more than five wells out of compliance with Subsection B of 19.15.25.8 NMAC. Operator, based on its total number of wells, pursuant to 19.15.5.9(A)(4), may have a total of no more than five wells out of compliance with Subsection B of 19.15.25.8 NMAC.

(4) Cano Petro appeared at the hearing through legal counsel. Counsel stated in the pre-hearing statement that Cano Petro is currently in financial distress. Cano Petro and other associated entities are wholly owned subsidiaries of NBI Services, Inc. and are defendants in a foreclosure action brought by Crossfirst Bank, a Kansas banking corporation. NBI Services, Inc. encountered financial problems when the holder of 30 percent of the bank notes put its share up for sale.

(5) Cano Petro presented the following testimony from the supervisor of field operations:

- a. Cano Petro, or the previous operator, previously installed up-to-date surface facilities.
- b. More than one and one-half years ago, the parties controlling the gas pipeline stopped gathering gas from the wells in the Cato San Andres Pool and from this waterflood.

- c. Due to this lack of gas gathering, waterflood operations are only active for a portion of this waterflood project.
- d. The producing wells in the non-active portion of this waterflood project produce dangerous levels of hydrogen sulfide gas and therefore those producing wells have been shut-in.
- e. In the waterflood, the supervisor stated its operations were "intact" and that its weakness is at the batteries where gas is venting. Further, the supervisor stated anytime hydrogen sulfide is present, there will be repair costs.

(6) Mr. Scott F. Frerichs, attorney for U. S. Specialty Insurance, participated in the hearing and questioned the witnesses. No other party appeared at the hearing or otherwise opposed the granting of the Bureau's application.

(7) Based on Division records, the Subject Wells are not included in an agreed compliance order between the Division and the Operator.

(8) The Division maintains a public database, through its *E-permitting* website, summarizing the well status for all current operators in New Mexico. This database also identifies the wells in violation of the financial assurance requirements, along with the corresponding amount for each well necessary to satisfy the applicable financial assurance requirement.

(9) 19.15.2(I)(4) NMAC defines as "inactive well" a well "that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over."

(10) Division well records indicate that the current condition of the Subject Wells may pose a threat to health, safety and the environment, if no action is properly taken to plug and abandon the wells, return the wells to production, or place the wells in approved temporary abandonment status.

The Division Concludes

(11) The wells operated by Cano Petro have been affected by the lack of gas gathering. However, Cano Petro did not indicate any attempt had been made to negotiate with the gas gatherer or ask for additional time in which to obtain sales for the casing-head gas. The Bureau showed the Subject Wells had been shut-in for an extended period, the number of shut-in wells has continued to increase over time, and Cano Petro did not dispute the increase in the number of inactive wells or submit any sort of plan to return to compliance.

(12) Subsection B of 19.15.5.10 NMAC authorizes the Division to commence compliance proceedings for violation of a provision of the Oil and Gas Act, NMSA 1978,

Sections 70-2-1 through 70-2-38, or a provision of a rule or order issued pursuant to the Act.

(13) Cano Petro is the Operator of record for the Subject Wells and is responsible for compliance with the Oil and Gas Act and Division Rules. The Bureau has established that the Operator is in violation of 19.15.25.8 NMAC as to the Subject Wells.

(14) The Operator should be required to return to compliance with 19.15.25.8 NMAC and with Paragraph (4) of Subsection A of 19.15.5.9 NMAC within 45 days. In the event of non-compliance,

- a. the wells operated by Cano Petro should be declared as abandoned, and the OCD should be authorized to plug the wells in accordance with Division-approved plugging programs and restore and remediate the locations; and
- b. the Division should be authorized to recover costs from the Operator's financial assurance as permitted by 19.15.8.13 NMAC and seek indemnification and costs as permitted by Subsection E of NMSA 1978, § 70-2-14.

(15) The portion of the Bureau's application requiring the Operator to shut-in the producing wells while attempting to return to compliance within 45 days with 19.15.25.8 NMAC and with Paragraph (4) of Subsection A of 19.15.5.9 NMAC was not justified or explained in the hearing and should be denied.

IT IS THEREFORE ORDERED THAT

(1) Cano Petro shall return to compliance with 19.15.25.8 NMAC and with Paragraph (4) of Subsection A of 19.15.5.9 NMAC within 45 days of the issuance date of this Order by either plugging and abandoning, placing in approved temporary abandonment status, or returning its wells to production.

(2) If, after 45 days, Operator has not performed the work described in Ordering Paragraph (1), Cano Petro shall be in violation of this Order and the Division shall be authorized,

- a. to plug and abandon the well or wells operated by Cano Petro that are out of compliance with Division rules in accordance with Division-approved plugging programs;
- b. to restore and remediate the well locations;
- c. to direct forfeiture of the applicable financial assurance of the Operator;

- d. to recover plugging, restoration, and remediation costs from the Operator's financial assurance as permitted by 19.15.8.13 NMAC; and
- e. to seek indemnification and costs from the Operator as provided in Subsection E of NMSA 1978, § 70-2-14 if there are not sufficient funds recovered from financial assurance to cover all costs the Division incurs while plugging and abandoning the wells and restoring and remediating the well locations.


(3) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


HEATHER RILEY
Director