

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE SUPERVISOR OF DISTRICT 1, FOR AN ORDER PURSUANT TO 19.15.3.100 NMAC REQUIRING XERIC OIL AND GAS CORPORATION TO COMPLY WITH OCD RULE 19.15.2.50 NMAC AND WITH THE CONDITIONS OF APD PERMIT NO. 1237; AUTHORIZING THE DIVISION TO PLUG THE SUBJECT WELL AND FORFEIT ANY APPLICABLE/AVAILABLE SECURITY IN THE EVENT XERIC OIL AND GAS CORPORATION FAILS TO COMPLY; AND ASSESSING AN APPROPRIATE CIVIL PENALTY; LEA COUNTY, NEW MEXICO.

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Revised

CASE NO. 14107

PRE-HEARING STATEMENT

The Oil Conservation Division submits this pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

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OIL CONSERVATION DIVISION

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8/30/08
WJT

STATEMENT OF THE CASE & UPDATED CHRONOLOGY REGARDING WEST
PEARL QUEEN #301

Through this application, the Oil Conservation Division (OCD) seeks both an order of compliance and an assessment of penalties against Xeric Oil & Gas Corporation ("Xeric"). Xeric is the Operator of Record for the well identified and referenced by the Application as the West Pearl Queen Unit #301.

In August of 2004, when reviewing Xeric's application to drill at the subject site, OCD approved the application with the specific condition that Xeric satisfy all requirements of Rule 19.50.2.15 NMAC, as well as the standards imposed by the OCD's "Pit and Below-Grade Tank Guidelines." Despite the fact that Xeric was informed that the approval was contingent upon this condition, Xeric failed to comply and neither sought an extension of time for closure of the pit nor sought approval for deviation from its originally-submitted pit-closure plan for this site. Xeric allowed the site to deteriorate, and OCD began taking steps to attempt to obtain compliance from Xeric.

On April 25, 2006 Xeric finally submitted a pit closure plan that was approved by the District; however, Xeric failed to thereafter follow through and complete the pit closure at the site as proposed in the submitted plan. A deep trench was dug at the site, but prior to completion of the pit closure, work ceased, and the pit was left open.

In June of 2007, the OCD notified Xeric that there was a hole in the nipple at the wellhead, resulting in blowing oil and water on the ground. The electric and flow-line valve were turned off to address this. However, Xeric continued to allow the site to deteriorate even further.

In August of 2007, OCD personnel observed that the liner of the pit was not only torn, but the pit had been allowed to drain through a large rod that had penetrated the liner at the bottom of the pit.

In February of 2008, OCD personnel noted that the pit persisted in the same state of significant deterioration, and that, additionally, there was a large area of heavy oil staining on the site. The OCD notified Xeric of this spill, and informed Xeric that it was required to submit a spill report and remediation plan to the OCD relating to this incident. **Xeric never submitted either a spill report for this release or a remediation plan as requested by the OCD.**

On March 5, 2008, the OCD filed the present Application against Xeric seeking an order of compliance and an assessment of penalties. On April 15, 2007, just two days prior to the original hearing date of April 17, 2008 scheduled in this case, Xeric contacted OCD counsel to advise that a change was occurring with regard to its corporate officers. Based upon representations made by the new company principals that Xeric was aware of the Unit #301 issues, including the open pit, the open trench and the environmental

concerns, and that they planned to address them immediately, the OCD agreed to seek continuance of the hearing. Xeric did thereafter apparently begin taking steps to close the pit. However, Xeric proceeded to do so by using the originally-filed, now-outdated pit-closure plan from April of 2006. Xeric never did submit the outstanding remediation plan requested in February, nor did Xeric submit an amended pit closure plan that incorporated a remediation plan and/or addressed the interim spills that had occurred since the original pit closure plan was submitted and approved in 2006.

On June 13, 2008, Xeric informed OCD counsel that the pit was closed and that a final report from Phoenix Environmental was imminent. Despite these representations, and despite repeated requests from OCD counsel, Xeric did not provide the OCD with any final documentation regarding the pit closure and the sampling/testing relating to the pit and its closure until August 15, 2008, over two months later. Further, other than the Phoenix Report filed on August 15th, Xeric has not filed a single additional sundry or other form with the OCD to update the OCD's records relating to this well. Prior to the recent August 15, 2008 submission regarding the pit closure, the last document that Xeric submitted to the OCD regarding this well was the C144 pit closure *proposal*, submitted back in 2006. In fact, to date, Xeric has still not filed a C144 pit closure report on the proper OCD form. Moreover, the August 15th "report" from Phoenix Environmental was incomplete as submitted in that it was missing a critical page outlining the chronology and details of work performed at the site.

On August 20, 2008, an OCD inspector noted that a chemical drum remained on site and needed to be removed. A Letter of Violation was issued for this violation.

On August 26, 2008, an OCD Environmental Bureau team-member inspected the site and observed that the above-mentioned chemical was drum still on-site. It was also observed that there were stained soils in the area of the chemical drum, contaminated soils in the reworked areas of the site, and contaminated soils in a pile located south of the wellhead under a 'vener' of caliche. The site appeared to have been reseeded; however, no vegetation regrowth had yet occurred.

On September 4, 2008 a hearing was conducted regarding a number of other Xeric wells, at which time significant discussion took place regarding the West Pearl Queen #301, both on and off the record. Following that hearing, Xeric principals and their counsel were specifically advised by OCD of the remaining issues that would need to be addressed at the West Pearl Queen #301 site *prior to the upcoming, scheduled hearing* in order for the OCD to consider the matter resolved. This included the removal of the chemical drum, the removal and/or remediation of the contaminated soil at the site, and obtaining the confirmation that the surface owner approved of the reseeded performed on the site (and providing the OCD with documentation thereof) - an express condition of the APD approval for this well.

On September 23, 2008, a follow-up inspection was conducted of the site by OCD to ascertain the status prior to the October 2, 2008 hearing. At that time, it was observed that the chemical drum had not yet been removed, and was further observed that the

containment pan beneath the chemical drum was full of fluid, that there was contaminated soil under and around the chemical drum and that, south of the wellhead, there was a pile of contaminated soil. It was also observed that the pumping unit was running at the site.

Through its actions in continuing to fail and refuse to bring this site into compliance, Xeric violated both the conditions of its permit and OCD Rule 50. It is the Division's position that all alleged violations by Xeric at issue in this action were knowing and willful, and that its continued failure and refusal to bring this site into full compliance is also knowing and willful, and thus justifies the imposition of penalties pursuant to NMSA 1978, Section 70-2-31 (A).

The OCD seeks an Order stating the following in this case:

1. Requiring that, by a date certain, Xeric perform an assessment to evaluate the extent to which soils and/or ground water may have been impacted and perform any necessary remediation indicated by the assessment and pursuant to OCD "Pit and Below-Grade Tank Guidelines" and OCD "Guidelines for Remediation of Leaks, Spills and Releases."
2. Requiring that Xeric file a full and complete C-144 in accordance with OCD Rules and the Guidelines by a date certain.
3. Requiring that Xeric complete surface restoration (including removal of the remaining chemical drum) in compliance with Rule 19.15.2.50.F, the Guidelines and the Conditions of Permit No. 1237, **including reseeding of the site with a mixture that is approved or authorized by the surface owner** by a date certain and that documentation reflecting the surface owner approval be provided to the Division.
4. Requiring that Xeric pay a monetary penalty assessment in an amount consistent with the severity and duration of its ongoing, willful violations, pursuant to NMSA 1978, Section 70-2-31(A), for its knowing and willful violations of Rules 19.15.2.50.F(1) and 50.F(2) NMAC.

Further, the OCD requests that Xeric be required to reappear at a date and time certain before the Division Hearing Examiner, within two weeks of the last deadline set by this Order, to report on the status of Xeric's compliance with this Order, and if the subject well is not brought into compliance with 19.15.2.50 NMAC, the terms of Permit No. 1237, the standards imposed by the Guidelines and/or Xeric fails to meet any of the deadlines set by the Order, that a subsequent Order be issued:

1. Assessing a penalty against Xeric of not less than \$1,000.00 for each full week of non-compliance with the Order;
2. Authorizing the Division to plug the subject well in accordance with a Division-approved plugging program;
3. Authorizing the Division to forfeit any applicable security posted in relation to the subject well; and

4. For such other and further relief as the Director deems just and proper under the circumstances.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:

Larry "Buddy" Hill, Compliance Officer
Jim Griswold, Environmental Engineer

1 hour
½ hour

PROCEDURAL MATTERS

None.

Respectfully submitted
this 24th day of September, 2008 by



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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed to counsel for Xeric, Ms. Ocean Munds-Dry, Esq. at OMundsDry@HollandHart.com, this 24th day of September, 2008.



Mikal Altomare