

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST JACKIE BREWER D/B/A SANDLOTT ENERGY, FINDING THAT OPERATOR KNOWINGLY AND WILLFULLY VIOLATED RULE 19.15.3.116 NMAC; ORDERING OPERATOR TO RETURN WELLS TO COMPLIANCE BY A DATE CERTAIN; ORDERING OPERATOR TO PLUG THE WELLS AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IF OPERATOR FAILS TO COMPLY WITH THE ORDER; ASSESSING PENALTIES; EDDY COUNTY, NEW MEXICO.

**CASE NO. 14074
ORDER NO. R-12961**

**JACKIE BREWER, D/B/A SANDLOTT ENERGY'S
MOTION FOR STAY**

Pursuant to 19.15.14.1221.B NMAC, Jackie Brewer, d/b/a Sandlott Energy ("Brewer"), moves the Commission to enter an order staying Division Order No. R-12961, which was entered on June 16, 2008. In support of his motion, Brewer states:

1. On November 14, 2007, the Division's Enforcement and Compliance Manager filed an Application for a Compliance Order against Brewer. The application alleged that Brewer had knowingly and intentionally (i) failed to notify the Division of unauthorized releases, and (ii) failed to take corrective action at ten well sites.

2. A Division Hearing Examiner conducted a evidentiary hearing on the application on March 20, 2008.

3. On June 16, 2008, the Division Director entered Order No. R-12961. The Order requires Brewer to (i) pay a civil penalty in the amount of \$48,000 on or before July 30, 2008, (ii)

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take Division-approved corrective action at the ten well sites, and have the well sites remediated, by August 30, 2008, and (iii) plug and abandon the ten wells if Brewer fails to remediate the well sites by August 30, 2008. A copy of Order No. R-12961 is attached hereto as Exhibit A.

4. On July 14, 2008, Brewer filed a timely application for a *de novo* hearing before the Commission.

5. Payment by July 30, 2008 of the penalty assessment, which Brewer contends is unwarranted under the circumstances presented, would have significant negative financial consequences for Brewer, who is a sole proprietor. Since Order No. R-12961 was entered, Brewer has communicated with Division representatives in the District 2 office regarding the corrective action, has taken soil samples, and has submitted the soil analyticals to the District 2 office. However, the completion of all corrective action at all of the ten well sites before August 30, 2008 is unrealistic and untenable.

6. Accordingly, Brewer requests that the Commission stay Order No. R-12961 pending the Commission's hearing and the issuance of its decision.

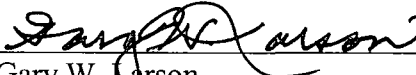
7. Brewer has contacted counsel for the Division regarding this motion. Division counsel does not oppose a stay of the penalty assessment, but does oppose a stay of the deadline for completing corrective action.

8. Brewer has contemporaneously submitted to the Commission Clerk a proposed order staying Order No. R-12961.

WHEREFORE, Brewer requests that the Commission grant his motion and enter its order staying Order No. R-12961.

Respectfully submitted,

HINKLE, HENSLEY, SHANOR & MARTIN, LLP



Gary W. Larson

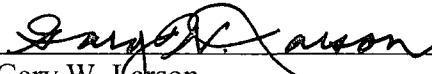
Post Office Box 2068
Santa Fe, NM 87504-2068
505.982.4554

Attorneys for Jackie Brewer, d/b/a Sandlott Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Jackie Brewer, d/b/a Sandlott Energy's Motion for Stay* was emailed and mailed this 24th day of July 2008, to:

Sonny Swazo, Esq.
Assistant General Counsel
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505



Gary W. Larson

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

CASE NO. 14074
ORDER NO. R-12961

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION ("DIVISION") THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER FOR A COMPLIANCE ORDER AGAINST JACKIE BREWER D/B/A SANDLOT ENERGY; (1) FINDING THAT OPERATOR KNOWINGLY AND WILLFULLY VIOLATED RULE 19.15.3.116 NMAC AS TO TEN WELLS; (2) ASSESSING PENALTIES FOR THE VIOLATIONS; (3) REQUIRING OPERATOR TO RETURN THE WELLS TO COMPLIANCE BY A DATE CERTAIN; (4) REQUIRING OPERATOR TO PLUG THE WELLS AND AUTHORIZING THE DIVISION TO PLUG SAID WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IN THE EVENT OF NON-COMPLIANCE; EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 20 2008, at Santa Fe, New Mexico, before Examiner Richard I. Ezeanyim.

NOW, on this 16th day of June, 2008, 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 its subject matter.

(2) The New Mexico Oil Conservation Division ("Division") seeks an order requiring Jackie Brewer d/b/a Sandlot Energy ("operator") to comply with Division Rule 19.15.3.116 NMAC for each of the following ten (10) listed wells.

| Well Name | API Number | Location |
|---------------------------|--------------|-------------|
| (a) Daugherty State # 001 | 30-015-02589 | A-4-18S-28E |
| (b) Levers A State # 002 | 30-015-26895 | B-8-18S-28E |

| | | | |
|-----|---------------------------|--------------|--------------|
| (c) | Levers State # 7 | 30-015-02575 | N-4-18S-28E |
| (d) | Resler Yates State # 317 | 30-015-10254 | F-21-18S-28E |
| (e) | Resler Yates Srtaes # 322 | 30-015-10285 | I-20-18S-28E |
| (f) | Resler Yates # 367 | 30-015-20088 | F-32-18S-28E |
| (g) | Resler State # 370 | 30-015-20094 | H-32-18S-28E |
| (h) | Resler State # 381 | 30-015-26134 | G-32-18S-28E |
| (i) | Thomas State # 001 | 30-015-02672 | A-9-18S-28E |
| (j) | Welch Duke State # 018 | 30-015-06125 | C-28-18S-28E |

(3) The Division also seeks an order determining that operator knowingly and willfully violated 19.15.3.116 NMAC and requiring operator to remediate the contaminated well sites by a date certain as to the subject wells, and if the operator fails to remediate the well sites, the operator should be ordered to plug and abandon the wells. Additionally, if the operator fails to plug the subject wells by a date set in the order, the Division should be authorized to plug the wells and declare forfeiture of applicable financial assurance.

(4) Further, the Division seeks a penalty of \$48,000 for knowing and willful violation of Rule 19.15.3.116 NMAC.

(5) The Division appeared at the hearing through legal counsel and presented the following testimony.

(a) Jackie Brewer d/b/a Sandlot Energy is the current operator of the ten wells listed in Finding Paragraph (2), and was the operator during the time period relevant to this proceeding;

(b) Jackie Brewer d/b/a Sandlot Energy knowingly and willfully violated 19.15.3.116 NMAC because the operator failed to remediate the contaminated well sites despite repeated efforts (including but not limited to meetings, verbal and written communications) by the Division district office in Artesia to bring the operator into compliance with Rule 116 over a long period of time;

(c) The Division district office in Artesia gave Jackie Brewer d/b/a Sandlot Energy ample opportunity to come into compliance with Rule 116. At a meeting on January 10, 2005, Jackie Brewer d/b/a Sandlot Energy and the district office in Artesia, agreed to a deadline of September 30, 2008, to remediate the well sites. Jackie Brewer d/b/a Sandlot Energy still failed to remediate the well sites at the expiration of this deadline; and

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(d) Until the date of this hearing, Jackie Brewer d/b/a Sandlot Energy has not complied with Rule 19.15.3.116 NMAC to the satisfaction of the Division district office in Artesia, and these contaminated well sites remain un-remediated by this un-cooperative operator.

(6) The Division records indicate that the operator has posted a \$50,000 blanket plugging bond (Bond No. BO5910) secured by funds deposited with RLI Insurance Company of Houston, Texas.

(7) The operator appeared at the hearing through legal counsel who argued that the operator did not knowingly and willfully violate Division Rule 19.15.3.116. He agreed that the operator has had some minimal releases at his well sites, and has conducted land-farming in an attempt to remediate the well sites. He contended that if the land-farming procedure is not enough to satisfy the Division district office, the operator will certainly do further remediation operations to satisfy the district office.

(8) The counsel for the operator further argued that since the operator did not knowingly and willfully violate Rule 19.15.3.116 NMAC, and tried to remediate the well sites, penalties should not be assessed, and the subject wells should not be plugged and abandoned.

Analysis:

(9) It is evident from the testimony offered by the Oil Conservation Division (OCD), and the behavior of Jackie Brewer d/b/a Sandlot Energy before and during the hearing process that Mr. Brewer is an un-cooperative operator.

(10) The OCD is seeking penalties for knowing and willful violation of Rule 19.15.3.116 NMAC. However, at the hearing OCD did not invoke the provisions of Division Rule 19.15.1.13.B NMAC, which states in part that "All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plants operators or other persons shall at all times conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal, and storage wells or other facilities in a manner that will prevent waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas, or allow either to leak or escape from a natural reservoir, or from wells, tanks, containers, pipe or other storage, conduit or operating equipment." The OCD also did not invoke the provisions of Division Rule 19.15.2.52.A NMAC which prohibits disposition of produced water on the surface of the ground. Accordingly, penalties should be assessed under these circumstances because the operator knowingly and willfully violated all these rules.

(11) Division Rule 19.15.3.116 defines a Major release as an un-authorized release of any volume of materials, excluding natural gases, in excess of 25 barrels, and a Minor release as an un-authorized release of a volume greater than 5 barrels but not more than 25 barrels.

(12) The above definition offered by Division Rule 116 lends itself to subjective interpretation as to the exact amount of releases by individuals. The OCD contends that the releases in the operator's well sites are either minor and, in some cases, major releases subject to the reporting requirements with subsequent and appropriate corrective action. The operator contends that the releases at his well sites are less than minor releases as defined by Rule 116.

(13) The operator testified that he did not report the releases, and he remediated the contaminated well sites with land-farming procedure because he believed that the releases are less than minor. However, Division Rule 19.15.3.116.A NMAC provides that "The division shall be notified of any un-authorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, natural gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico in accordance with the requirements of Section 116 of 19.15.3 NMAC". There is no minimum quantity required by the above provision. Notwithstanding this provision, the operator still failed to report the releases and failed to use the Division District II approved remediation plan in remediating the well sites.

(14) The operator argued that he failed to notify OCD of the releases because he believed that the releases were neither a major or minor releases that should not be reported to OCD. However, the Division District II office in Artesia made several attempts with the operator and allowed him ample time to come into compliance with Rule 116, because OCD believed that the releases were either major or minor releases.

(15) The OCD argued that since these releases were either major or minor releases, they could endanger the environment if proper corrective action is not taken. Division Rule 116.D on corrective action provides that the responsible person must complete the Division approved corrective action for releases which endanger public health or the environment, and that releases will be addressed in accordance with a remediation plan submitted to and approved by the Division. The OCD further argued that the operator failed to conduct Division approved corrective action despite repeated attempts to bring the operator into compliance with Division Rule 116. The Division is therefore seeking a penalty of \$48,000 for knowing and willful violation of this rule.

(16) The counsel for the operator, however, argued that the penalties are not warranted because the operator believed that the releases were neither major nor minor, and that the operator had already remediated the well sites with land-farming remediation procedure.

(17) The Division believes that these releases, whether major or minor, could endanger the environment and should be properly remediated with a plan submitted to and approved by the Division District II office in Artesia.

(18) The Division concludes that Jackie Brewer d/b/a Sandlot Energy is the operator of the ten (10) wells listed in Finding Paragraph (2). The Division also finds that the operator violated 19.15.3.116 NMAC by not notifying OCD of these releases and not properly remediating the well sites with a plan approved by the Division District II office in Artesia. Additionally, the Division concludes that the operator also violated Division Rules 19.15.1.13.B NMAC, and 19.15.3.52.A NMAC. Therefore, taking all the evidence and testimony presented in this case into consideration, the Division concludes that the operator knowingly and willfully violated these three rules and should be ordered to pay a penalty of \$48,000.

(19) The operator should also be ordered to remediate the well sites by August 30, 2008 using the Division District II approved remediation plan. Should the operator fail to remediate the well sites by August 30, 2008, then the operator should be ordered to plug and abandon the subject wells, and if the operator fails to plug and abandon the wells, then the Division should be authorized to plug and abandon the subject wells and declare forfeiture of any applicable financial assurance.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of the Division, Jackie Brewer d/b/a Sandlot Energy is hereby ordered to take corrective action on the following listed ten (10) wells sites, by August 30, 2008. The well sites shall be remediated in accordance with a plan submitted to and approved in advance by the Division District office in Artesia.

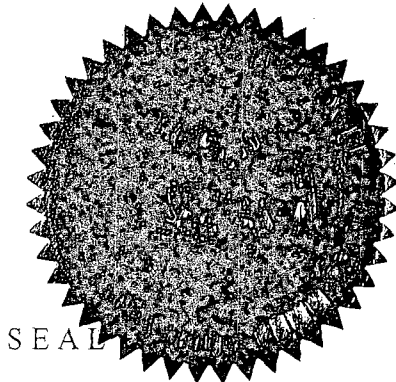
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| (i) Thomas State # 001 | 30-015-02672 | A-9-18S-28E |
| (j) Welch Duke State # 018 | 30-015-06125 | C-28-18S-28E |

(2) Should the operator fail to remediate the well sites by August 30, 2008, then the operator shall plug and abandon the subject wells, and if the operator fails to plug and abandon the wells, then the Division shall be authorized to plug and abandon the subject wells and declare forfeiture of any applicable financial assurance.


(3) The operator is also hereby ordered to pay a penalty of \$48,000 on or before July 30, 2008, for knowing and willful violations of Division Rules 19.15.13.116 NMAC, 19.15.1.13.B NMAC, and 19.15.2.52.A NMAC. Should the operator fail to pay this penalty by July 30, 2008, additional penalties of \$1,000 per day shall be assessed until the penalties are paid in full.

(4) 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.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.
Director

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST JACKIE BREWER D/B/A SANDLOTT ENERGY, FINDING THAT OPERATOR KNOWINGLY AND WILLFULLY VIOLATED RULE 19.15.3.116 NMAC; ORDERING OPERATOR TO RETURN WELLS TO COMPLIANCE BY A DATE CERTAIN; ORDERING OPERATOR TO PLUG THE WELLS AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IF OPERATOR FAILS TO COMPLY WITH THE ORDER; ASSESSING PENALTIES; EDDY COUNTY, NEW MEXICO.

CASE NO. 14074
ORDER NO. R-12961

ORDER STAYING DIVISION ORDER NO. R-12961

THIS MATTER came before the Commission on Jackie Brewer, d/b/a Sandlott Energy's ("Brewer's") motion to stay Division Order No. R-12961. Having reviewed the motion, and being otherwise duly advised, the Commission finds that Brewer's motion is well taken and should be granted.

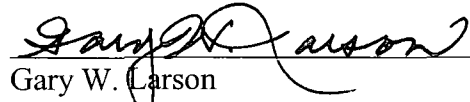
IT IS THEREFORE ORDERED that Division Order No. R-12961 is stayed pending the Commission's issuance of an order addressing the Division's Application for a Compliance Order.

MARK E. FESMIRE, P.E.

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SUBMITTED BY:

HINKLE, HENSLEY, SHANOR & MARTIN, LLP

A handwritten signature in dark ink, appearing to read "Gary W. Larson", is written over a horizontal line.

Gary W. Larson
Post Office Box 2068
Santa Fe, NM 87504-2068
505.982.4554

Attorneys for Jackie Brewer, d/b/a Sandlott Energy

APPROVED AS TO FORM BY:

ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT - OIL
CONSERVATION DIVISION

Approved via email 07.24.08

Sonny Swazo, Esq.
Assistant General Counsel
1220 S. St. Francis Drive
Santa Fe, NM 87505