

Brooks, David K., EMNRD

From: Brooks, David K., EMNRD
Sent: Friday, May 01, 2009 12:38 PM
To: 'bdb bliss@ncbetg.com'
Cc: 'jamesbruc@aol.com'
Subject: Case No. 14271; Application of Vanguard Permina LLC for a Non-Standard Spacing Unit, etc.

Dear Mr. Bliss

This is a response to the letter that you attached to your e-mails dated April 29, 2009 regarding the above case.

To the extent that your letter comments on the merits of the Vanguard's application, it would not be appropriate for me to respond. The case is under advisement, and the issues will be discussed in the order that the Division Director issues when it has been decided.

However, you have raised procedural questions to which I reply as follows:

First, you have asked what constitutes the evidentiary record upon which the Division will decide the merits of Vanguard's application. The evidentiary record consists of the testimony and exhibits admitted in evidence at the hearing on April 16, 2009, and Exhibits 1 and 5 to Mr. Bruce's letter of April 20. These exhibits are copies of documents on file with the Division and we can verify their genuineness by referring to the copies in our files. Such documents are specifically made admissible in OCD hearings by OCD Rule 4.17.A. Mr. Bruce's letter itself is merely argument and not evidence, as is your letter. The exhibits Mr. Bruce has attached other than Exhibits 1 and 5 are either not relevant or merely duplicate other evidence otherwise in the record. So only Exhibit 1 and 5 will be considered part of the evidentiary record.

Second, you have asked whether OCD will consider the permit status of the W.D. Grimes NCT-A Well No. 4 in this case. We will do so, and I have caused a hearing on that subject to be set for May 14, as I indicated I would do in the communication previously sent to you. However, I anticipate that the Division will issue separate orders, one dealing with Vanguard's application, and the other dealing with the Grime #4 well.

You have the right to appear at the hearing on May 14 and offer any evidence you have to support your assertion that you have all permits necessary for the operation of the Grimes No. 4 well, or other evidence relevant to the issue of whether the Grimes No. 4 well should be shut in by reason of your not having those permits.

However, there may be better ways of handling this issue. Prior to May 14, the Division will review all pertinent OCD records to see if we can locate non-standard location and simultaneous dedication approvals for the Grimes No. 4 well. If we locate such orders, I will furnish copies to you and to Mr. Bruce, and I will withdraw the show-cause notice. If you have copies of orders in your files that grant such approvals, please provide copies to me and to Mr. Bruce prior to May 14. If documents you furnish indicate that you have the requisite approvals, I will withdraw the show cause notice. If we cannot find, and you cannot furnish, documentary evidence that the required approvals have been granted, then you have the right to apply for the requisite approvals through our administrative exception process, as described in Rules 15.11.C (relating to simultaneous dedication) and 15.13 (relating to non-standard locations). These applications would not require a hearing unless another operator protested your application, and, at this point, I am not aware of any reason why OCD would not now grant exceptions for the Grimes No. 4 well if Techsys applied for them. Of course, if you do not now have those approvals, your well should be shut in until the Division determines whether the exceptions should be granted, just as we have ordered Vanguard to shut in their well pending our approval of their application for an exception.

Very truly yours,