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ENFORCEMENT

DATE:

2002-1998

IN THE FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CHAVES

ENDORSED COPY:
ORG. FILED DIST. COURT

AUG 1 2 2002

BEE J. CLEM, CLERK

DARR ANGELL, Individually, and
STATE OF NEW MEXICO, ex rel
DARR ANGELL,

Plaintiffs,

v.

SHELL OIL COMPANY,
POLARIS PRODUCTION CORPORATION, and
UNITED OPERATING, LLC,

Defendants.

CV No. 2002- 565

Case Assigned
To: Judge Charles C. Currier

**PLAINTIFFS' CIVIL COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

COMES NOW, DARR ANGELL, by and through his attorneys Heidel, Samberson, Newell, Cox & McMahon, and for his Complaint for Damages and Injunctive Relief against Shell Oil Company (hereinafter referred to as "Shell"), Polaris Production Corporation (hereinafter referred to as "Polaris") and United Operating LLC (hereinafter referred to as "United"), states:

I.

1. Plaintiff Darr Angell is a resident of Chaves County, New Mexico.
2. Plaintiff State of New Mexico, is a governmental entity which owns the ground water, at issue herein for the people of the State of New Mexico. Darr Angell is a proper party to bring this cause of action in the name of the State of New Mexico, as as to abate a public nuisance pursuant to Section 30-8-8 (1978 N.M.S.A.).
3. Defendant Shell is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent, CSC of Lea County,

Inc. 1819 N. Turner Street, Suite G, Hobbs, New Mexico 88240. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

4. Defendant Polaris is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent, C.T. Corporation System, 123 E. Marcy, Santa Fe, New Mexico 87501. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.
5. Defendant United is a foreign limited liability company or other business entity duly organized and existing pursuant to law. It may be served with citation by serving its registered agent, William F. Carr, 110 N. Guadalupe, Suite 1, Santa Fe, New Mexico 87501. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.
6. To the extent that any of the above-named Defendants are conducting business pursuant to a trade name or assumed name, Plaintiffs hereby demand that upon answering this suit, they answer in their correct legal name and assumed name.

II.

VENUE

7. Venue is proper in this case in Chaves County, New Mexico, pursuant to N.M.S.A. Section 38-3-1(D)(1978).

III.

BACKGROUND INFORMATION COMMON TO ALL ACCOUNTS

8. Plaintiff Darr Angell is the surface interest owners of certain property located in Lea

County, New Mexico. Defendants Shell, Polaris and United is or has been the operator of an oil and gas lease known as Priest lease which is located on or near Plaintiff's property, and which is located in Section 1, Township 15 South, Range 37 East, Lea County, New Mexico. *

9. Contaminants from the Defendants' operations conducted on Plaintiffs Darr Angell's property has migrated both horizontally and vertically. The evidence will further show that such contaminants have impacted Plaintiff Darr Angell's property, including, but not limited to, Plaintiff Darr Angell's surface, subsurface and/or Plaintiff Darr Angell's water wells, and impaired his water rights. Additionally, the evidence will show that the contaminants have polluted the ground water owned by the people of the State of New Mexico.
10. The Defendants have contaminated the surface and subsurface strata of Plaintiff Darr Angell's property, and, further, have contaminated the underlying aquifers. In their day-to-day operations, the Defendants have failed to prevent and/or have caused to occur certain spills, leaks, discharges, and releases to the environment of oil, produced water, naturally occurring radioactive material (NORM), lead and other heavy metals, and other liquids, gases, solids, and/or wasters. The Defendants have not properly and adequately cleaned up their releases and spills. Consequently, those contaminants have seeped deeper into the subsurface; have become more costly to perform and adequate and proper clean-up; and need to be cleaned up before further soil and groundwater contamination occurs.
11. The Defendants are mandatorily required not to conduct their operations in such a

manner as to potentially pollute the natural resources in the underlying fresh water aquifers. The Defendants have that non-delegable duty and responsibility. It is possible for the Defendants to conduct their day-to-day operations without polluting the environment, and if such pollution occurs, to promptly and properly clean up the pollution before it spreads and while it is "economically feasible" to clean up the contaminants and restore the property to its uncontaminated condition. The pollution is abatable and can be cleaned up in an "economically feasible" manner, taking into consideration the natural resources that have already been polluted and the natural resources that will be polluted if the abatement and clean up are not performed by the Defendants. To the extent the Defendants claim it is not economically feasible to abate and clean up the areas of contamination the inactions and purposeful decision not to previously abate and clean up the contamination have caused the cost of remediation to increase.

12. Insofar as the Defendants have not discharged their duties and responsibilities, and continue to refuse to discharge their duties and responsibilities, an injunction should be issued against these Defendants to enjoin them from continuing to permit the pollution to exist and to spread, further contaminating Plaintiffs' property.
13. All of the Defendants owe Plaintiffs the duty to conduct their operations and maintain their equipment and well materials in such a manner that contaminants, pollutants, salt water, hazardous substances, toxic substances, radioactive materials, lead and other heavy metals, and other liquids, gases and solids would not be allowed to contaminate and pollute either the surface and subsurface soils and strata or any portion of the

aquifers underlying Plaintiff Darr Angell's property. As will be set forth below, the Defendants breached their duties owed to Plaintiff Darr Angell and such breach has proximately caused damages to Plaintiffs.

14. Moreover, due to the Defendants' acts or omissions in creating or causing to create the pollution and contamination of the surface and subsurface soils and strata, and portions of the underlying aquifers, their conduct constitutes a "continuing tort".
15. The Defendants have caused pollution and contamination, and their subsequent and continuous failures to clean up or adequately clean up such pollution and contamination, has permitted and allowed further pollution and contamination to occur. This wrongful conduct has caused and will cause further additional damage each day Defendants permit or allow such contamination to persist.

IV.

COUNT ONE

Negligence and Gross Negligence

16. Plaintiffs incorporate under Count One, Paragraph One through Fifteen, set forth hereinabove.
17. Defendants owe Plaintiffs the duty to exercise ordinary care in the conduct of their oil and gas operations. Each of the Defendants have been negligent and such negligence is a proximate cause of Plaintiffs' damages. In addition, the acts and omissions of the Defendants constitute gross negligence based on an intentional indifference to the duties which the Defendants owed to the Plaintiffs.
18. The Defendants knew, or by the exercise of ordinary care, should have known, that

their oil and gas operations could pollute and potentially pollute portions of the underlying aquifers if their operations were not conducted in a reasonable and prudent manner.

19. The Defendant's acts or omissions were carried out or committed with intent to cause substantial damage to Plaintiffs' property and/or with a flagrant disregard for the rights, health and safety of Plaintiffs, and with actual awareness that the result, in reasonable probability, would be the property damage as described above. (Accordingly, punitive damages should be assessed against each of the Defendants in the amount to be set within the sole discretion of the jury) Further, the evidence will show that the Defendants' acts and/or omissions in creating or causing to create the pollution and contamination of the surface and subsurface soils or strata and/or portions of the underlying ground water was conducted with intentional forethought and purposeful conduct.
20. Every day that the pollutants and contaminants have not been cleaned up, those pollutants and contaminants continue to migrate, polluting more of the surface and subsurface of Plaintiff Darr Angell's property, going deeper into the soil depending upon repetitive discharges and other changing conditions such as rainfall, polluting more natural resources, and therefore necessitating even more clean up and remediation to restore the property to its condition prior to the acts that created the pollution and contamination, and to prevent further exposure to cancer-causing agents. Once the pollutants and contaminants reach the aquifer, it is an undisputed hydrogeologic fact that those pollutants and contaminants will then travel in the

aquifer in what are termed "plumes". As those plumes spread and increase in size, more and more precious, useable quality water becomes contaminated and polluted, therefore, increasing the size and amount of pollutants within the aquifer as each day passes. The wrongful conduct of the Defendants has proximately caused and will cause additional, new, and different damages each day that the Defendants have permitted or allowed such pollution and contamination to remain on and/or under the surface, in the subsurface soils and strata, and/or portions of the underlying groundwater.

V.

COUNT TWO
Trespass

21. The Plaintiffs incorporate under Count Two, Paragraphs One through Twenty, set forth hereinabove.
22. The Defendants owe the Plaintiffs the duty to conduct their operations and maintain their equipment in such a manner so that they did not use more of the surface and subsurface than it reasonably necessary to conduct their oil field operations. Insofar as the Defendants' leaks, spills and other releases have polluted and contaminated Plaintiff Darr Angell's surface and subsurface soils or strata and portions of the aquifer owned by the people of the State of New Mexico, then such conduct constitutes a trespass as to Plaintiff's property rights, and until properly cleaned up, abated and/or remediated, constitutes a continuing trespass to Plaintiff's property rights.
23. The Defendants have conducted their operations in such a manner that they have used

and continued to use more of the surface and subsurface than is reasonably necessary to conduct their oil field operations; they have allowed contaminants and pollutants to remain on the surface and in the subsurface; and they have failed to conduct adequate clean-up and adequate remediation so as to remove the potential of these contaminants and pollutants from damaging portions of the underlying fresh water aquifers. These acts and omissions on the part of the Defendants constitute a trespass to which the Plaintiffs seek an injunction, abatement, adequate clean-up and remediation, and/or the reasonable and necessary cost of clean-up and remediation, and in areas of permanent damage, full compensation for the natural resources which Plaintiffs own that have been destroyed and/or permanently damaged, the reasonable and necessary cost associated with replacing the water supply which has been contaminated, and to the extent allowed by law, attorneys fees incurred herein.

VI.

COUNT THREE

Nuisance and Permanent Injunction

24. The Plaintiffs incorporate under County Three, Paragraphs One through Twenty-three, as set forth hereinabove.
25. The Defendants owe the Plaintiffs the duty to conduct their operations and maintain their equipment and well materials in such a manner that they do not create and/or maintain a nuisance. The afore-mentioned acts and omissions of the Defendants unreasonably interfere with, and will continue to unreasonably interfere with, the use and enjoyment of Plaintiff Darr Angell's property and the normal and expected use

and enjoyment of not only the surface of Plaintiff Darr. A
addition, the use and enjoyment of the underlying groundwater
both a public and private nuisance

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26. Without abatement and without clean-up, the underlying aquifer will suffer from additional pollution by the continued failures to adequately clean up the surface and subsurface soils, and the underlying aquifers. Specifically, with respect to the contaminated surface and subsurface soils or strata and aquifers, if not cleaned up at the time of trial, Plaintiffs seek an injunction, and damages, from continuing to permit the surface and subsurface pollution to exist.

27. Without injunction, abatement and/or adequate clean-up, the surface and subsurface soils and aquifers threatened with pollution by virtue of the continued failure to clean up the surface and subsurface soils and aquifers, and to remediate the pollution and contamination.

28. To the extent that the Defendants are not enjoined from continuing to pollute and contaminate the surface and subsurface soils and aquifers, then Plaintiff Darr Angell, on behalf of the State of California, seeks recovery of the reasonable and necessary costs, including reasonable attorneys' fees, associated with restoring those portions of the surface and subsurface soils and aquifers contaminated by the Defendants' operations, to their original condition prior to the contamination occurring.

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36. WHEREFO
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inequities by permitting the Defendants to profit and
cleaning up the surface, the subsurface, and the unde
time devaluing Plaintiff's rights and property thro
Plaintiffs seek interest from the time the Defendan
their profit margin by not spending the money ne
which they caused, The Plaintiffs seek punitive dai
to be determined within the sold discretion of the j

VIII.

COUNT FIVE Damages

32. The Plaintiffs incorporate under Count Five, Parag
set forth hereinabove.

33. Plaintiffs bring suite for the following damages:

- a. The reasonable and necessary mitigation co
the Defendants' pollution and contaminati
underlying aquifers - an expense which I
given their duties and responsibilities to inv
extent of environmental pollution which th
- b. The reasonable and necessary costs incur
remediate the contaminants and pollution c
- c. Such other actual damages incurred by Pl
operations;

damages, punitive damages, pre-judgment and post-judgment interest at the legal rate,
for their attorneys fees, cost of court, and for such other and further relief to which
Plaintiffs may be entitled under the facts and circumstances.

Respectfully Submitted,

HEIDEL, SAMBERSON, NEWELL, COX & MCMAHON
Post Office Drawer 1599
Lovington, New Mexico 88260
(505) 396-3303

By: 

Michael Newell

Attorneys for Plaintiffs



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
DISTRICT I HOBBS
P.O. BOX 1980, Hobbs, NM 88241
(505) 393-6161
FAX (505) 393-0720

Jennifer A. Salisbury
CABINET SECRETARY

June 22, 1998

Mr. Davis Payne
Polaris Production Corp. (PPC)
P.O. Box 1749
Midland, Texas 79702-1749

RECEIVED

JUL 01 1998

Re: NMOCD Order No. R-10879
Shelton Lease Tank Battery
UL F Sec 26-Ts14s-R37e

Environmental
Oil Conservation Division

Dear Mr. Payne:

New Mexico Oil Conservation Division (NMOCD) is in receipt of Gary Payne's letter dated May 22, 1998 concerning the above referenced lease and documentation previously requested by NMOCD. Please note after reviewing the analytical data (enclosed) taken during the sampling event on February 06, 1998 it appears that PPC has not determine the vertical extent of the oilfield contamination. **Therefore you are hereby ordered to perform the following action items pursuant to NMOCD Order No. R-10879.**

1. Please provide to NMOCD for approval an investigation plan which will determine the vertical extent of the contamination in the area where Sample #2 was taken. It appears there was an underground tank in this location at one time.
2. The lease location including the berms exceed the clean-up standards allowed by NMOCD guidelines for leaks & Spills. Please provide a disposal and/or remediation plan for NMOCD approval for all contaminated soils on-site. The NMOCD has information pertaining to the fact that some of these contaminated soils were brought in from other leases' i.e. Pacific Royalty lease.
3. PPC has yet to satisfy action item #4A requested in letter to PPC dated December 11, 1997, "Actual depth to groundwater". The NMOCD cannot accept the information provided in your last response. Information pertaining to where area water wells and the depth of pumps does not satisfy this request.
4. Please **provide in feet** the distance to the nearest fresh water well. The NMOCD accepts the map that was included but requires a distance in feet. The NMOCD also accepts that no lakes, playas, etc are in the area.

Please provide to NMOCD within 30 days of receipt of this letter the information and/or plans as listed above. If you require any further information or assistance please do not hesitate to contact Wayne Price -Environmental Engineer at (505-393-6161) or write this office.

Sincerely Yours,

Chris Williams-NMOCD District I Supervisor

cc: Roger Anderson-Environmental Bureau Chief, Santa Fe, NM
Gary Wink-NMOCD Field Rep. II

file: wp98/polshell

attachments- NMOCD analytical results