

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:**

**CASE NO. 13163
ORDER NO. R-12132-A**

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR
AN ORDER REQUIRING SABA ENERGY OF TEXAS, INC. TO PROPERLY PLUG
AND ABANDON SIX WELLS, IMPOSING CIVIL PENALTIES IN EVENT OF
FAILURE TO COMPLY, AUTHORIZING THE DIVISION TO PLUG SAID WELLS
IN DEFAULT OF COMPLIANCE BY OPERATOR, AND ORDERING A
FORFEITURE OF APPLICABLE SECURITY, LEA COUNTY, NEW MEXICO.**

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on July 15, 2004 at Santa Fe, New Mexico on the application of Saba Energy of Texas, Inc. for *de novo* review, and the amended application of the New Mexico Oil Conservation Division (the Division), and the Commission, having heard the evidence and arguments of counsel and carefully considered the same, now, on this 12th day of August, 2004,

FINDS,

1. Notice has been given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter.

2. In the original application in this case and in its amended application, the Division alleges that Saba Energy of Texas, Inc. (Saba) is the operator of the following six wells (the subject wells) located in Lea County, New Mexico:

<u>Well Name</u>	<u>API Number</u>	<u>Well Location</u>
San Simon 5 State No. 1	30-025-27564	Unit E, Section 5, T22S, R35E
San Simon 5 State No. 2	30-025-28480	Unit G, Section 5, T22S, R35E
Fern Guye No. 1	30-025-34488	Unit M, Section 5, T13S, R36E

Saba State No. 1	30-025-33726	Unit I, Section 7, T13S, R36E
Morris No. 1	30-025-29247	Unit D, Section 8, T13S, R36E
Harton State No. 1	30-025-28540	Unit H, Section 7, T13S, R36E

3. The Division seeks an order directing Saba to bring the subject wells into compliance with Division Rules by a date certain, by either (a) plugging such wells in accordance with a Division-approved plugging program in accordance with Division Rules 201 and 202 [19.15.4.201 and 19.15.4.202 NMAC], (b) restoring such wells to production, or (c) causing such wells to be placed in approved temporary abandonment status in accordance with Division Rule 203 [19.15.4.203 NMAC], including filing of additional financial assurance as provided in Rule 203.B(5); and, if Saba fails to comply with the terms of said order within the time therein provided, authorizing the Division to proceed to plug and abandon the subject wells, ordering forfeiture of the financial assurance furnished by Saba to secure its obligation to properly plug and abandon such wells and imposing civil penalties.

4. The Division presented the testimony of Mr. Chris Williams, the Division's District Supervisor for the District including Lea County, and offered in evidence material from the records of the Division, authenticated by the testimony of Mr. Williams, and by the affidavits of Ms. Jane Prouty, Supervisor of Production and Permitting for the Division and Ms. Dorothy Phillips, Bond Administrator for the Division.

5. Records of the Division admitted in evidence reflect that the subject wells have not produced any oil or gas, nor has any substance been injected into any of such wells, since the respective dates shown below:

<u>Well Name</u>	<u>Date of Last Production</u>
San Simon 5 State No. 1	November 1999
San Simon 5 State No. 2	August 1998
Fern Guye No. 1	November 1999
Saba State No. 1	October 2001
Morris No. 1	October 2001
Harton State No. 1	March 2002

6. Documents on file with the Division and admitted in evidence at the hearing reflect that Saba of Texas, Inc. is the operator of record of each of the subject wells, so designated, as to each such well, either in a form C-101 (Application for Permit to Drill, Re-Enter, Deepen, Plugback, Etc) executed by Saba or in a form C-104 (Request for Allowable and Authorization to Transport) executed by Saba and by a previous operator.

7. Although certain documents on file with the Division and admitted in evidence at the hearing show Greka Energy (Greka) as operator of some of the subject wells, Mr. Williams testified, based on his review of the well files of the Division pertaining to the subject wells, that no form C-104 designating Greka as operator in accordance with Division Rule 1104 [19.15.13.1104 NMAC] has been filed for any of the subject wells.

8. Mr. Williams further testified that none of the subject wells has been plugged, and that none of the subject wells has been approved for temporary abandonment pursuant to Rule 203.

9. Mr. Williams further testified that OCD Exhibit 15 admitted in evidence at the hearing comprised procedures for the proper plugging and abandonment of the subject wells in accordance with Division rules.

10. Mr. Williams further testified that two of the subject wells, the San Simon 5 State wells No. 1 and No. 2, are located on expired State of New Mexico leases.

11. Mr. Williams further testified that a release of hydrocarbons recently occurred at one of the subject wells, and that the occurrence of that release, together with the condition of the equipment at the subject wells, indicates a probability of fluid leaks that could adversely affect **groundwater** in the area.

12. Michael and Linda Harton and other owners of mineral interests in the Harton State No. 1 (the **Hartons** and the **Duncans**) appeared at the hearing through counsel, Mr. Michael A. Short, who represented that:

(a) the Hartons and the Duncans claim an interest in the Harton State No. 1, and the Hartons claim an interest in the Fern Guye No. 1, by reversion, the leases to Saba covering these properties having, according to their contention, terminated;

(b) the claim of the Hartons and the Duncans to the Harton State No. 1 is the subject of litigation pending in the District Court of Lea County, New Mexico;

(c) the Hartons and the Duncans believe that the Harton State No. 1 is capable of producing in paying quantities; and

(d) the Fern Guye No. 1 is potentially useful as an injection well.

13. The Division issued Order No. R-12132 in this case on April 23, 2004, directing Saba to properly plug the subject wells no later than June 1, 2004, and providing for a penalty of \$1,000 per day per well for each day thereafter that any of the subject wells remained non-compliant.

14. Saba filed a *de novo* appeal of Order No. R-12132 on May 21, 2004, but neither filed a request to stay said order, in accordance with Division Rule 1220 [19.15.14.1220NMAC], nor took any action to comply therewith.

15. Saba has furnished financial assurance, in accordance with NMSA 1978 Section 70-2-14, as amended, to secure its obligation to properly plug and abandon its wells in New Mexico, including the subject wells, in the form of Redland Insurance Company Bond No. RED 1023122 in the amount of \$50,000 (Saba's bond).

16. The Commission concludes that:

(a) Saba is an operator of the subject wells, and accordingly is responsible for proper plugging and abandonment of the subject wells in accordance with NMSA 1978 Section 70-2-14, as amended, and Division Rule 201.

(b) The subject wells are inactive and have been continuously inactive for a period of more than one year plus ninety days; accordingly, unless the subject wells are restored to production, they must be plugged in accordance with Rule 201 or temporarily abandoned in accordance with Rule 203.

(c) The San Simon 5 State wells No. 1 and No. 2 are located on expired State of New Mexico leases. However, Saba remains responsible as operator for proper plugging and abandonment of these wells.

(d) If the subject wells are not plugged, or otherwise brought into compliance, fluids could escape from the formations in which they are encountered into other formations or to the surface, endangering fresh water and the environment.

(e) Saba had notice of the filing of the application in this case and of the entry of Order No. R-12132 by the Division.

(f) By failing to properly plug and abandon the subject wells, or to otherwise bring the subject wells into compliance with Division Rules , during the time from June 1, 2004 to July 15, 2004, Saba knowingly and willfully violated Rule 201, a rule of the Division duly adopted pursuant to the New Mexico Oil and Gas Act [NMSA 1978 Sections 70-2-1 through 70-2-38, as amended], and also knowingly and willfully violated Order No. R-12132, an order duly issued by the Division, which was not stayed or suspended.

(g) Pursuant to NMSA 1978 Section 70-2-31.A, as amended, civil penalties should be assessed against Saba for knowingly and willfully violating a Division rule and a Division order, in the amount of \$1,000 per day for each of the subject wells from June 1, 2004, through and including July 15, 2004, the date of the Commission hearing.

IT IS THEREFORE ORDERED THAT :

1. Saba is hereby ordered to properly plug and abandon the following wells within thirty (30) days after issuance of this order:

<u>Well Name</u>	<u>API Number</u>	<u>Well Location</u>
San Simon 5 State No. 1	30-025-27564	Unit E, Section 5, T22S, R35E
San Simon 5 State No. 2	30-025-28480	Unit G, Section 5, T22S, R35E

2. Saba is hereby ordered to bring each of the remaining subject wells into compliance with Division Rules by either (a) plugging such well in accordance with a Division-approved plugging program, in accordance with Rules 201 and 202, (b) restoring such well to production, or (c) causing such well to be placed in approved temporary abandonment status in accordance with Division Rule 203, no later than the respective dates indicated below:

<u>Well Name</u>	<u>API Number</u>	<u>Well Location</u>
Wells to be brought into compliance no later than thirty (30) days after issuance of this order		
Saba State No. 1	30-025-33726	Unit I, Section 7, T13S, R36E
Morris No. 1	30-025-29247	Unit D, Section 8, T13S, R36E

Wells to be brought into compliance no later than December 31, 2004

Harton State No. 1	30-025-28540	Unit H, Section 7, T13S, R36E
Fern Guye No. 1	30-025-34488	Unit M, Section 5, T13S, R36E

3. In bringing the subject wells into compliance as directed in ordering paragraphs 1 and 2, Saba shall comply with all applicable Division rules, including but not limited to, Rules 201, 202 and 203, and with the plugging procedures admitted in evidence in this case as OCD Exhibit 15, or other Division-approved plugging procedure.

4. Saba shall notify the Hobbs District Office of the Division prior to conducting any procedures on the **subject** wells pursuant to this order, so that Division personnel may be present to witness such procedures.

5. In the event that Saba fails to plug and abandon any of the subject wells, or to otherwise restore any of such wells to compliance, in the manner and within the time herein provided, then:

(a) **Saba's** bond shall be forfeited as provided in NMSA 1978 Section 70-2-14, as amended;

(b) The Division is hereby authorized to plug and abandon any such well not brought into compliance within the time herein provided, and to remediate the site thereof in accordance with Division rules;

(c) The Division is further authorized to demand and collect reimbursement of its costs incurred in plugging and abandoning such wells and in remediating the sites thereof from the surety on **Saba's** bond, and from Saba to the

extent of any excess of such costs over and above the amount collected from the said surety.

6. A civil penalty is hereby assessed against Saba, in accordance with NMSA 1978 Section 70-2-31.A, as amended, in the amount of \$270,000 for knowing and willful violation of Division Rule 201 and of Division Order No. R-12132, as above described, during the period from June 1 through July 15, 2004. Saba shall deliver payment of such civil penalty to the Division no later than thirty (30) days from the issuance of this order.

7. Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

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

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


MARKE. FESMIRE, P.E., CHAIR


JAMI BAILEY, CPG, MEMBER


FRANK T. CHAVEZ, MEMBER

SEAL