

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

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION
COMPLIANCE AND ENFORCEMENT BUREAU FOR A COMPLIANCE ORDER
AGAINST DC ENERGY, LLC, FOR WELLS OPERATED IN LEA COUNTY,
NEW MEXICO.**

**CASE NO. 15432
ORDER NO. R-14122**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:30 a.m. on January 21, 2016, at Santa Fe, New Mexico, before Examiner Michael McMillan and legal counsel David Brooks. The Examiner continued the case to 8:15 a.m. on February 4, 2016, and it adjourned that day.

NOW, on this 5th day of February, 2016, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Proper and sufficient notice has been given to DC Energy, LLC, DC Energy, LLC's chapter 7 bankruptcy trustee Clarke C. Coll, and interested parties Dan and Colleen Johnson.

(2) The Division has jurisdiction over the subject matter of this case.

(3) By Application dated December 22, 2015, the New Mexico Oil Conservation Division Compliance and Enforcement Bureau ("Bureau") sought an order declaring:

A. Determining that Operator violated 19.15.16.11 NMAC by not proceeding with diligence to eliminate the hazard to fresh water when the Gregory El Paso Federal #004 well, API No. 30-025-11871, failed an MIT test on December 3, 2014;

B. Requiring Operator to eliminate the hazard of waste or contamination of fresh water from the Gregory El Paso Federal #004 well, API No. 30-025-11871, in accordance with 19.15.16.11 NMAC by a date certain;

C. Determining that Operator is in violation of 19.15.29 NMAC by not reporting releases at the Gregory and Mexico tank batteries;

D. Requiring Operator to perform corrective action as required by 19.15.29.11 NMAC;

E. Determining that the following wells have been inactive for a period in excess of one year plus 90 days and are not in compliance with Division Rule 19.15.25.8 NMAC and requiring Operator to plug and abandon the violating wells by a date certain;

- i. Crosby Deep #002, API No. 30-025-24287
- ii. Crosby Deep #004, API No. 30-025-25985
- iii. Gregory El Paso Federal #001, API No. 30-025-20491

F. Determining that Operator is out of compliance with Division Rule 19.15.5.9 NMAC;

G. In the event of non-compliance with the sought Division order by dates established by the Division, finding the Operator in violation of a Division order, declaring the violating wells abandoned and authorizing the Division to plug the subject wells in accordance with a Division-approved plugging program and restore and remediate the location and recover costs from the Operator's financial assurance as required by 19.15.8.13 NMAC and seek indemnification as permitted by § 70-2-14(E), NMSA 1978. ;

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

(4) DC Energy did not appear at the hearing. Clarke C. Coll, chapter 7 bankruptcy Trustee for DC Energy appeared through counsel, Stephanie Schaeffer. The Trustee did not present argument or testimony.

(5) Dan and Colleen Johnson ("the Johnsons) appeared through counsel, Robert Fueille and James Fueille.

(6) The Johnsons did not present any testimony. They used their appearance to cross examine the Bureau's witnesses.

(7) The Bureau appeared at the hearing through legal counsel and presented the following testimony:

A. DC Energy is registered under OGRID No. 268370 and Corporation No. 4201893.

B. DC Energy has one blanket cash plugging bond filed with the OCD in the amount of \$50,000. The cash bond is on deposit with Wells Fargo Bank, N.A. ("Bank").

C. DC Energy is the Operator of Record for the following wells:

- a. Crosby Deep #002, API No. 30-025-24287
- b. Crosby Deep #004, API No. 30-025-25985
- c. Gregory El Paso Federal #001, API No. 30-025-20491
- d. Gregory El Paso Federal #004, API No. 30-025-11871
- e. Mexico U #002, API No. 30-025-12513
- f. Mexico U #004, API No. 30-025-31933

(8) The Division inspected DC Energy's well sites on December 15, 2015 and January 5, 2016, and found that DC Energy was not in compliance with OCD Rules. The Bureau presented clear and convincing evidence on the following violations:

- A. On December 3, 2014 Operator failed a mechanical integrity test ("MIT") on its Gregory El Paso Federal No. 4 salt water disposal well. Despite being ordered to do so by Letter of Violations and Shut-In Directive dated December 4, 2014, Bureau Exhibit 3, DC Energy has not proceeded with diligence to eliminate the hazard as required by 19.15.16.11 NMAC and 19.15.26.10 NMAC;
- B. On December 15, 2015, OCD inspected and discovered existing and unreported releases, in violation of 19.15.29 NMAC, of oil, produced water, condensate or oil field waste, other oil field related contaminants or mixtures of the chemicals or contaminants at the tank battery associated with the Gregory El Paso Federal No. 4 salt water disposal well;
- C. On December 15, 2015, OCD inspected and discovered existing unreported releases, in violation of 19.15.29 NMAC, of oil, produced water, condensate or oil field waste, other oil field related contaminants or mixtures of the chemicals or contaminants at the tank battery associated with the Mexico U wells;
- D. On January 5, 2016, OCD inspectors revisited the Mexico U well battery and discovered an active and unreported release, in violation of 19.15.29 NMAC, of oil, produced water, condensate or oil field waste, other oil field related contaminants or mixtures of the chemicals or contaminants from its transfer pump;
- E. Three (3) of Operator's wells have been inactive in excess of a period of 1 year plus 90 days, and are not plugged or abandoned, nor placed in temporary abandonment status in violation of OCD Rule 19.15.25.8 NMAC;

- F. Operator currently has three (3) wells out of a total of six (6) wells out of compliance with Division Rule 19.15.25.8 NMAC, exceeding the amount allowed under OCD Rule 19.15.5.9(A)(4) NMAC;
- G. There is evidence that a third party, and not the operator of record, has been operating the Mexico U wells illegally.

(9) Failure to correct a failed MIT, such as the one at the Gregory El Paso Federal No. 4 salt water disposal well creates a risk that separate and distinct strata may communicate fluids, damaging ground water or other correlative rights.

(10) The Gregory El Paso Federal No. 4, API No. 30-025-11871, Crosby Deep #002, API No. 30-025-24287, and Crosby Deep #004, API No. 30-025-25985 have been inactive for more than one year.

(11) The existing release at the Gregory El Paso Federal No. 4 salt water disposal well is a major release as defined by 19.15.29.7 NMAC.

(12) Depth to ground water beneath the Mexico U wells and the associated battery is less than 25'.

(13) The existing release at the Mexico U wells and the associated battery is a major release as defined by 19.15.29.7 NMAC due to its proximity to ground water.

(14) The Mexico U wells and the associated battery are less than one mile from the city of Hobbs and domestic water wells.

(15) Actual harm and risk of harm to groundwater and correlative rights will increase without affirmative action to correct.

(16) Neither Dan nor Colleen Johnson nor any entity they are associated with are registered with the OCD as an operator in the state of New Mexico.

(17) OCD has received no production reports for DC Energy's wells since March of 2015.

(18) The Gregory El Paso Federal No. 4 salt water disposal well's authority to inject has automatically terminated due to a one year period of non-injection pursuant to 19.15.26.12 C. NMAC.

(19) There is evidence that a third party, and not the operator of record, has been operating the Mexico U wells illegally.

(20) The OCD appeared at the hearing through legal counsel, James Jacobsen of the New Mexico Attorney General's Office and presented the following testimony:

- A. DC Energy is a debtor in a chapter 7 bankruptcy pending in the United States Bankruptcy Court, District of New Mexico;

B. Federal Law, specifically 28 U.S.C. § 959, requires any person, including trustees, to manage and operate property in accordance with the valid laws of the state in which they are located;

C. The police and regulatory exception to the automatic stay set out in 11 U.S.C. §362(b)(4) permits the entry of a compliance order, but the stay may need to be modified or terminated if OCD is to exercise any control over property of the bankruptcy estate.

D. Jennifer Pruett of State Land Office was called as a witness and testified that according to State Land Office records, the state lease for the Mexico U wells was assigned to DC Energy by Xeric Oil and Gas Corporation on November 25, 2009, the assignment was approved by the Commissioner of Public Lands on May 11, 2010, that approval of the assignment by the Commissioner was a condition precedent for the validity of the assignment, that the Lease has not been subsequently assigned, and that under its terms, with no reported production or royalty payments, expired under its own terms in April, 2015.

(21) Counsel for the Johnson's opined, but did not present any testimony or evidence, that the Bureau did not meet its burden to show that the release on the Mexico U well sites and associated battery met the reporting requirements under rule 19.15.29 by volume and should not be included in this order.

(22) After considering the testimony regarding the releases at the Mexico U well sites and associated battery, the OCD finds that the Compliance and Enforcement Bureau met its burden of showing that reporting is necessary for the releases at the Mexico U well sites and associated battery by reviewing the testimony of Mark Whitaker who personally witnessed an active release from the battery's transfer pump, testimony from Dr. Oberding regarding the volume, and depth to ground water, and photographic evidence of the site taken on December 15.

The Division determined the following:

(1) NMSA 1978, Section 70-2-14(B) provides, in relevant part, "If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules."

(2) Division Rule 19.15.5.10(B) NMAC authorizes the division to commence compliance proceedings for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act.

(3) DC Energy is the operator of record for the subject wells and is responsible for compliance with the Oil and Gas Act and OCD rules.

(4) DC Energy is in violation of the following rules: 19.15.26, 19.15.16, 19.15.29, 19.15.25, and 19.15.5.9 NMAC, as established in the findings.

IT IS THEREFORE ORDERED THAT:

(1) The Mexico U wells No. 2 and 4 are to be shut in immediately until DC Energy returns to compliance with 19.15.7.24 NMAC. The shut in may be lifted upon DC Energy returning to compliance with OCD rules, or the OCD approving the transfer of those wells to an operator recognized by the State of New Mexico.

(2) DC Energy shall commence activity to return all inactive wells to compliance with 19.15.25.8 NMAC wells within fifteen (15) days of the issuance of this order. For purposes of this order, commence activity shall be defined as any activity that would manifest the operators intent to begin the process of plugging and abandoning their wells and followed by real action to fulfill the project within a reasonable timeframe.

(3) DC Energy shall repair, or plug and abandon the Gregory El Paso Federal No. 4 salt water disposal well within fifteen (15) days of the issuance of this order. For purposes of this order, commence activity shall be defined as any activity that would manifest the operators intent to begin the process of plugging and abandoning their wells and followed by real action to fulfill the project within a reasonable timeframe.

(4) DC Energy shall file OCD Form C-141 to address the releases at the Gregory El Paso Federal No. 4 salt water disposal well and Mexico U well sites and Battery pursuant to 19.15.29.11 NMAC and submit a remediation plan and for approval by the division or with an abatement plan submitted in accordance with 19.15.30 NMAC within 15 days.

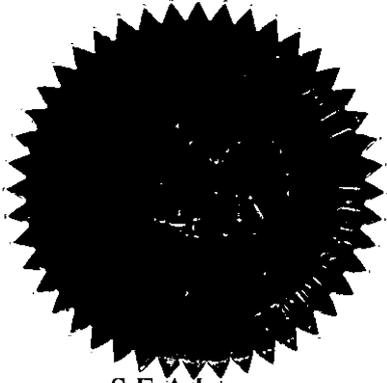
(5) If DC Energy fails to comply, they will be found in violation of this commission order as required by Rule 19.15.5.11 NMAC and will therefore be out of compliance with Rule 19.15.5.9 (A)(2) NMAC.

(6) If no activity is commenced after fifteen (15) days, DC Energy shall be in violation of this order if the work described in Ordering paragraphs (1-4) above is not yet done, and the Division will be authorized to plug and abandon the subject wells that are out of compliance with division rules, remediate the well sites, forfeit the applicable financial assurance and recover costs from DC Energy in accordance with Division Rule 19.15.8.13 NMAC and may seek additional penalties.

(7) In the event DC Energy fails to comply within the time permitted, the Division shall determine how to proceed in light of DC Energy's chapter 7 bankruptcy, and proceed accordingly.

(8) 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 designated above.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

DAVID R. CATANACH
Director