

**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:**

**CASE NO. 14108
ORDER NO. R-12968**

**APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A
COMPLIANCE ORDER AGAINST BUCKEYE
DISPOSAL, LLC, LEA COUNTY, NEW
MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 17, 2008, at Santa Fe, New Mexico, before Examiners David K. Brooks and Terry Warnell.

NOW, on this 2nd day of July, 2008, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

- (1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.
- (2) This is a compliance proceeding brought by the Division against an operator pursuant to Rule 1227. The Division asks the Director to find that Buckeye Disposal, LLC (Buckeye) is in violation of Rules 101.B (requiring inactive well bonding), 201 (requiring restoration to production or injection, plugging, or Division approval for temporary abandonment, of inactive wells), and, in addition, has failed to comply with the terms of an Agreed Compliance Order (ACO) entered into between Buckeye and the Division. The Division further seeks an order pursuant to NMSA Section 70-2-14.B requiring Buckeye to plug and abandon its inactive wells, and in event it fails to comply with such order, forfeiting its well plugging financial assurance, as provided in that statute.

(3) The Division appeared at the hearing through counsel and presented testimony and exhibits to the effect that:

(a) Buckeye is the operator of the following wells in Lea County, New Mexico (the subject wells), as follows:

<u>Ref #</u>	<u>Well Name</u>	<u>API No.</u>	<u>Location (ULSTR)</u>
1.	State AF Well No. 1	30-025-20546	M-8-18S-35E
2.	State AF Well No. 2	30-025-20979	O-8-18S-35E

(b) There has been no production from or injection into either of said wells, or other relevant activity, for a continuous period of time exceeding one year plus 90 days, up to and including the last reports available at the time of the hearing.

(c) The last reported production from the State AF Well No. 1 was in December of 2003. The State AF Well No. 2 is classified as an injection well. However, Division records do not indicate that there has ever been injection into that well.

(d) Neither of the subject wells is currently approved by the Division for temporary abandonment. The State AF Well No. 2 was approved for temporary abandonment at the request of a previous operator on October 18, 2002. However, the approval expired on October 17, 2007, and has not been renewed.

(e) On June 1, 2007, the Division, with Buckeye's consent, issued ACO-183. That ACO found that the State AF Well No. 1 was out of compliance with Division Rule 201, and ordered Buckeye to (i) pay a civil penalty of \$1,000; (ii) file a sundry notice within ten days declaring its intention to restore, plug or temporarily abandon the State AF Well No. 1, (iii) restore, plug or secure approval for temporary abandonment of the State AF Well No. 1 within six months; and (iv) pay a civil penalty in the amount of \$1,000 per week for each week after December 1, 2007 that it failed to bring the well into compliance.

(f) Buckeye paid the \$1,000 civil penalty required by ACO-183. However, Buckeye did not file a sundry notice declaring its intentions with respect to the State AF Well No. 1 until January, 2008, and it has wholly failed to return the well to compliance or to pay the penalties provided in the ACO in event of such failure.

(g) Because both of the subject wells have been inactive for more than two years, Rule 101 requires that the operator file single-well financial assurance for the proper plugging and abandonment of each of these wells, in addition to its

blanket financial assurance. Buckeye has not filed the required single-well financial assurance for either of the subject wells.

(h) Buckeye has on file with the Division as blanket financial assurance a \$50,000 surety bond, No. 1002171, issued by Lexon Insurance Company, of Louisville, Kentucky.

(4) Buckeye appeared at the hearing through counsel and presented testimony to the effect that Buckeye plans to plug and abandon the State AF Well No. 1 and to evaluate the State AF Well No. 2 for injection. However, Buckeye's witness did not dispute any of the material facts presented in the Division's evidence, and the Director accordingly concludes that the facts recited in Finding Paragraphs (3) (a) through (h) above are uncontested.

(5) Buckeye's counsel pointed out that, on Pages 9 and 10 of the Division's application, the Division incorrectly cited Division Rule 101 and "19.15.4.101 NMAC." However, the Division correctly cited that rule on Page 4 of the Application, in the section of the Application that specifically describes the alleged violations of the rule. Accordingly, and especially because there is no section 19.15.4.101 NMAC, the Director concludes that this error was harmless, and Buckeye had fair notice of the violations alleged against it.

(6) The evidence does not, however, establish that Lexon Insurance Company (Lexon) received proper notice. The Division filed a notice affidavit stating that a notice was mailed to Lexon at the address shown on the bond, but was returned by the postal service with an indication that this was not a valid address. The affidavit further stated that notice was served by publication. The Division did not, however, offer any evidence that it had exercised reasonable diligence to ascertain a current, valid address for Lexon, as required by Division Rule 1210.B.

The Division Director concludes as follows:

(7) Buckeye is the operator of the subject wells.

(8) Buckeye failed to comply timely with the provision of ACO-183 requiring it to file, not later than June 11, 2007, a sundry notice declaring its intentions for returning the State AF Well No. 1 to compliance. However, it did comply belatedly in January, 2008. Hence this provision of ACO-183 is not now "an order requiring corrective action" of which Buckeye is in violation, as described in Division Rule 40. The Division has not requested assessment of any penalty for failure to file this notice timely.

(9) Buckeye failed to comply with the requirement of ACO-183 that it bring the State AF Well No. 1 into compliance with Rule 201 by December 1, 2007. This provision of ACO-183 is "an order requiring corrective action" of which Buckeye is in violation, as described in Division Rule 40.

(10) Buckeye failed to comply with the requirement of ACO-183 that it pay a civil penalty in the amount of \$1,000 per week for each week from and after December 1, 2007 that the State AF Well No. 1 remains out of compliance. As of the date of the hearing, 19 weeks had elapsed since December 1, 2007. Buckeye has wholly failed to pay this penalty. Accordingly, Buckeye should be ordered to pay the Division a civil penalty in the amount of \$19,000, as required by ACO-183, by July 31, 2008.

(11) Division Rule 101 requires that single-well financial assurance be filed for each well located on land where the mineral fee interest is owned by the State of New Mexico or a private person, that has been inactive for two years. Single-well financial assurance is required under this Rule for each of the subject wells, and Buckeye should be ordered to file such financial assurance with the Division by July 31, 2008, for each of the subject wells that remains inactive on such date.

(12) Each of the subject wells is inactive and out of compliance with Rule 201. Buckeye should be ordered to bring each of the subject wells to compliance by September 30, 2008.

(13) An order forfeiting Buckeye's financial assurance and authorizing the Division to plug the subject wells in the event of Buckeye's failure to bring them into compliance should not be issued at this time due to the Division's failure to give proper notice to Lexon.

IT IS THEREFORE ORDERED THAT:

(1) Buckeye Disposal, LLC (OGRID 222759) is in violation of Ordering Paragraph 4 of ACO-183, which is an "order requiring corrective action" within the meaning of that term in Rule 40, by reason of its failure to bring the State AF Well No. 1 (API No. 30-025-20546) into compliance with Rule 201 by any of the means described in said ACO. Buckeye is accordingly non-compliant with Rule 40 and shall remain so until it has complied with Paragraph 4 of ACO-183.

(2) Buckeye shall file with the Division single-well financial assurance, pursuant to Rule 101, on or before July 31, 2008, for each of the subject wells that remains inactive on such date.

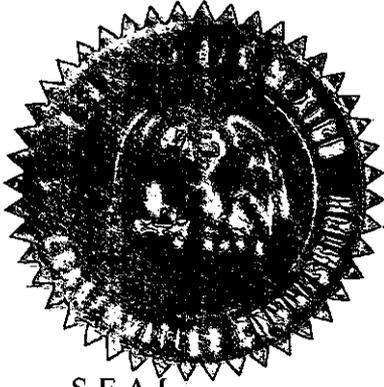
(3) Buckeye shall, on or before September 30, 2008, bring each of the subject wells into compliance with Rule 202 by either (a) plugging the wellbore of such well in accordance with Rule 202 and a Division-approved plugging procedure; (b) returning such well to production injection (including, in the latter case, reinstatement of injection authority under Rule 701) or other Division-approved beneficial use; or (c) placing such well in approved temporary abandonment status pursuant to Rule 203.

(4) The Division's request for an order forfeiting Buckeye's blanket financial assurance and authorizing the Division to plug the subject wells in event of Buckeye's

failure to restore these wells to compliance is denied at this time due to failure to provide proper notice to Lexon Insurance Company, the surety on Buckeye's financial assurance.

(5) 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire". The signature is fluid and cursive, written over the printed name and title.

MARK E. FESMIRE, P.E.
Director