

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

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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST JACKIE BREWER D/B/A SANDLOTT ENERGY, FINDING THAT OPERATOR KNOWINGLY AND WILLFULLY VIOLATED RULE 19.15.3.116 NMAC; ORDERING OPERATOR TO RETURN WELLS TO COMPLIANCE BY A DATE CERTAIN; ORDERING OPERATOR TO PLUG THE WELLS AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IF OPERATOR FAILS TO COMPLY WITH THE ORDER; ASSESSING PENALTIES; EDDY COUNTY, NEW MEXICO.

**DE NOVO CASE NO. 14074
ORDER NO. R-12961-C**

**STIPULATED ORDER DECLARING THAT
ORDER NO. R-12961-B HAS BEEN SATISFIED**

The Oil Conservation Division (“OCD”) and Jackie Brewer, d/b/a Sandlott Energy (“Operator”) hereby enter into this Stipulated Order and agree to the following:

1. The OCD is the state agency charged with administration and enforcement of the Oil and Gas Act (“the Act”) and the rules promulgated pursuant to the Act.

2. Operator is a sole proprietorship that operates wells in New Mexico under OGRID 154329 and is the operator of record of the following ten wells:

• Daugherty State No. 001	30-015-02589	4-4-18S-28E
• Levers A State No. 002	30-015-26895	B-8-18S-28E
• Levers State No. 7	30-015-02575	N-4-18S-28E
• Resler Yates State No. 317	30-015-10254	F-21-18S-28E
• Resler Yates State No. 322	30-015-10285	I-20-18S-28E
• Resler Yates State No. 367	30-015-20088	F-32-18S-28E
• Resler Yates State No. 370	30-015-20094	H-32-18S-28E
• Resler Yates State No. 381	30-015-26134	G-32-18S-28E
• Thomas State No. 001	30-015-02672	A-9-18S-28E
• Welch Duke State No. 018	30-015-06125	C-28-18S-28E

3. Operator has operated these ten wells since 1996.

4. Pursuant to NMSA 1978, § 70-2-14, Operator has posted a fifty thousand dollar (\$50,000) blanket plugging bond (Bond No. BO5910) through RLI Insurance Company in Houston, Texas to secure Operator's obligation to plug and abandon his wells in compliance with OCD rules.

5. NMSA 1978, § 70-2-14(B) states if any of the requirements of the Act or the rules and regulations promulgated pursuant to the Act have not been complied with, the OCD, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with OCD rules and regulations and forfeit the applicable financial assurance.

6. NMSA 1978, § 70-2-31(A) provides that any person who knowingly and willfully violates any provision of the Act or any provision of any rule or order issued pursuant to the Act shall be subject to a civil penalty of not more than one thousand dollars for each violation, and that in the case of a continuing violation, each day of violation shall constitute a separate violation.

7. NMSA 1978, § 70-2-33(A) defines "person" to mean "any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity."

8. On January 8, 2008, the OCD filed an Application for a Compliance Order ("Application") which alleged that Operator knowingly and willfully violated OCD Rule 116 (since numbered 19.15.29 NMAC) and requested an order assessing penalties for Operator's knowing and willful violation of OCD Rule 116, requiring Operator to remediate the contamination at the sites of the ten wells listed in ¶ 2, above, by a date certain, requiring Operator to plug his wells pursuant to Section 70-2-14(B), by a date certain, if he failed to

remediate the contamination at the ten well sites by the date set out in the Order, authorizing the OCD to plug Operator's wells and forfeit the applicable financial assurance if he failed to plug the subject wells by the date set out in the Order, and requiring Operator to inspect all of his wells for contamination and file a remediation work plan with the appropriate OCD district office and environmental bureau chief if contamination was found.

9. On March 20, 2008, a Division Hearing Examiner conducted an evidentiary hearing on the Application. On June 16, 2008, the Division Director entered Order No. R-12961, which required Operator to remediate the ten well sites by August 30, 2008 in accordance with a plan submitted to and approved in advance by the OCD's Artesia District Office, and assessed a civil penalty in the amount of \$48,000. Order No. R-12961 required Operator to plug and abandon the ten wells if he failed to remediate the well sites by August 30, 2008, and authorized the OCD to plug and abandon the wells and forfeit any applicable financial assurance if Operator failed to plug and abandon the wells.

10. Operator then filed a request for a *de novo* hearing before the Commission.

11. In lieu of an evidentiary hearing, counsel for the OCD and Operator presented a Stipulated Order & Settlement Agreement to the Commission, which unanimously approved the Agreement and entered it as Order No. R-12961-B on November 7, 2008.

12. Under the terms of Order No. R-12961-B, the OCD and Operator agreed to the following relevant conditions:

- a. Operator agreed to remediate the releases and spills at all ten well sites in accordance with Order No. R-12961-B, OCD Rule 116, and the OCD's release and spill remediation guidelines by May 7, 2009. This included, but

was not limited to, *filing a remediation work plan with the OCD's Artesia District Office that complied with OCD Rule 116 and the OCD's release and spill remediation guidelines and included and was based on sample delineation and site ranking;*

- b. Operator agreed to the imposition of a \$48,000 civil penalty for the violations of OCD Rule 116 asserted in the Application;
- c. The OCD agreed to waive \$36,000 of the \$48,000 civil penalty if Operator remediated the ten well sites in accordance with Order No. R-12961-B, OCD Rule 116, and the OCD's release and spill remediation guidelines by May 7, 2009;
- d. Operator agreed to pay the \$36,000 penalty if he failed to remediate the releases and spills at all ten well sites in accordance with Order No. R-12961-B, OCD Rule 116, and the OCD's release and spill remediation guidelines by May 7, 2009;
- e. Operator agreed to plug and abandon the ten wells by August 7, 2009 if he failed to remediate the releases and spills at all ten well sites in accordance with Order No. R-12961-B, OCD Rule 116, and the OCD's release and spill remediation guidelines by May 7, 2009; and
- f. Operator agreed that the OCD would be authorized to plug and abandon the wells and forfeit the \$50,000 blanket plugging bond if he did not plug and abandon the wells by August 7, 2009.

13. Remedial action was not completed at all ten well sites by May 7, 2009 as required by Order No. R-12961-B, although the remedial field work that Operator subsequently submitted to the OCD for its review and approval, and was approved by OCD, was conducted before May 7, 2009.

14. On May 12, 2009, OCD counsel sent Operator's counsel an email inquiring about the status of the remediation. OCD counsel did not receive a response from Operator's counsel.

15. On June 16, 2009, the OCD sent Operator a letter stating that it considered the \$36,000 that Operator agreed to pay to the OCD under Order No. R-12961-B if he did not remediate the ten well sites by May 7, 2009 to be due and owing because he had not remediated the releases at all ten well sites by May 7, 2009 as required by Order No. R-12961-B. The letter further stated that most of the ten well sites remained contaminated and that Operator had not filed a remediation work plan with the OCD's Artesia District Office.

16. On June 22, 2009, the OCD's Artesia District Office received for its review and approval a remediation work plan, a closure report, and a final C-141 Release Notification and Corrective Action report for each of the ten well sites from Operator and his environmental consultant. Each closure report described Operator's remediation efforts at the well site and requested that OCD require no additional remedial activity of the site.

17. On September 29, 2009, the OCD's Artesia District Office approved Operator's closure reports and final C-141 reports.

18. A dispute has arisen between the parties concerning Operator's compliance with the requirements of Order No. R-12961-B.

19. Operator has conceded that he did not strictly comply with the requirements of Order No. R-12961-B in that his C-141s and remediation work plans were not submitted to the OCD's Artesia District Office until after the May 7, 2009 deadline. He nevertheless contends that the primary purpose of Order R-12961-B has been satisfied because he completed all of the remediation field work at the ten well sites before the May 7, 2009 deadline and the OCD's Artesia District Office subsequently concluded that no further remedial action would be required.

20. On October 8, 2009, Operator filed a Motion for Declaration that Order No. R-12961-B Has Been Satisfied pursuant to 19.15.5.9(D)(3) NMAC. Also on October 8, 2009, Operator filed a motion pursuant to 19.15.4.23(B) NMAC requesting that the Commission enter an order staying any OCD enforcement of Order No. 12961-B during the pendency of Operator's motion for declaratory relief.

21. For purposes of resolving Operator's pending motions, the parties stipulate as follows:

- a. Operator has satisfied the requirement of Order No. R-12961-B that he remediate the spills and releases at all ten well sites;
- b. Operator shall not be required to pay the \$36,000 civil penalty as provided by Order No. R-12961-B;
- c. Operator shall not be required to plug and abandon the ten wells as provided by Order No. R-12961-B;
- d. The OCD shall not plug and abandon the ten wells as provided by Order No. R-12961-B; and

e. The OCD shall not forfeit Operator's blanket plugging bond as provided by Order No. R-12961-B.

22. Nothing in this Order relieves Operator of his liability should he fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment.

23. Nothing in this Order relieves Operator of his responsibility to properly report and remediate any future spills or releases that may occur at the ten well sites identified in ¶ 2. above.

24. Nothing in this Order relives Operator of his responsibility to comply with any other federal, state or local laws and regulations.

25. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

JACKIE BREWER, D/B/A SANDLOTT ENERGY



Jackie Brewer



Date

OIL CONSERVATION DIVISION

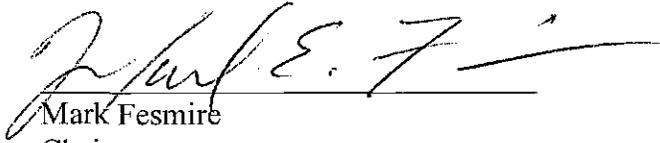


Sonny Swazo
Assistant General Counsel



Date

APPROVED BY:



Mark Fesmire
Chairman
Oil Conservation Commission

4/8/10
Date



Jami Bailey
Commissioner
Oil Conservation Commission

4/8/10
Date



William C. Olson
Commissioner
Oil Conservation Commission

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Date