

**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 DELAWARE ENERGY LLC TO REVOKE THE INJECTION
AUTHORITY GRANTED UNDER SWD-1680 FOR THE ALPHA SWD NO. 1
WELL OPERATED BY ALPHA SWD OPERATING LLC, EDDY COUNTY, NEW
MEXICO.**

**CASE NO. 15855
ORDER NO. R-14484-A**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 7, 2017, at Santa Fe, New Mexico, before Examiner Phillip R. Goetze.

NOW, on this 13th day of February, 2018, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

- (1) Due public notice has been given, and the Division has jurisdiction of this case and the subject matter.
- (2) Delaware Energy LLC (the "Applicant" or "Delaware") seeks an order to revoke the injection authority of Administrative Order SWD-1680 issued June 28, 2017, to Alpha SWD Operating LLC (the "Operator" or "Alpha").
- (3) Administrative Order SWD-1680 authorized the Alpha SWD Well No. 1 (API No. 30-015-44237; the "proposed well"), located 1457 feet from the South line and 2093 feet from the East line (Unit J) of Section 10, Township 24 South, Range 28 East, NMPM, Eddy County, New Mexico, for commercial disposal of produced water into the Devonian and Silurian formations through an open-hole interval from approximately 14,000 feet to approximately 15,200 feet below surface.
- (4) On September 12, 2017, Delaware filed a "*Motion to Stay Administrative Order SWD-1680.*"

(5) On October 4, 2017, Alpha filed "*Alpha SWD Operating LLC's Response in Opposition to Delaware Energy LLC's Motion to Stay Administrative Order SWD-1680.*"

(6) On October 11, 2017, the Division issued an Emergency Stay Order, Division Order No. R-14484, that suspended Administrative Order SWD-1680 pending a hearing on Delaware's application to revoke the administrative order.

(7) Delaware appeared at hearing through counsel and presented testimony stating:

- (a) that Alpha did not provide proper notice under Division Rule 19.15.26.8 NMAC;
- (b) that the Division issued Administrative Order SWD-1680 prematurely; and
- (c) that the Division acted improperly in issuing Order SWD-1680 without considering Delaware's prior administrative application for a proposed Devonian disposal well.

(8) Alpha appeared at hearing through counsel and presented testimony stating:

- (a) that Alpha had no prior knowledge of Delaware's competing Form C-108 application in the same area and the same injection interval as the proposed well approved by Administrative Order SWD-1680;
- (b) that Alpha was not required to notify Delaware, under Division Rule 19.15.26.8(B)(2) NMAC, as part of the application process; and
- (c) that Division properly processed the Form C-108 application for Administrative Order SWD-1680 and, therefore, the order is valid.

(9) Matador Production Company ("Matador") appeared through legal counsel and submitted a written statement seeking modification of Administrative Order SWD-1680 to include certain specific conditions. No other party appeared at the hearing, or otherwise opposed the granting of the application.

(10) On December 22, 2017, Matador requested the opportunity to supplement the record with affidavits by two employees regarding the testimony offered by parties in this case. Both the Division and Applicant agreed to this request with counsel for the Applicant reserving the right to review the affidavits prior to their admission into the record. The Division and the Applicant were provided the affidavits on January 3, 2018, and reviewed their content. The Applicant protested the admission of the affidavits into the record and the Division subsequently denied their inclusion as exhibits.

The Division concludes as follows:

(11) The Division must first determine the validity of the administrative order prior to considering all of the issues cited in the Applicant's case.

(12) The Form C-108 application was duly filed by Alpha under the provisions of Division Rule 19.15.26.8 NMAC and was entered into the administrative application database by the Division on June 12, 2017 (administrative application No. pMAM1716358339).

(13) Concurrently on June 12, 2017, the Division notified Alpha by e-mail that its application was deficient in failing to provide the necessary content for the application to be considered complete and suspended review of administrative application No. pMAM1716358339. The content required to be submitted included the evidence of notifications required under Rule 19.15.26.8 NMAC [Section XIII of Form C-108] and an affirmation statement regarding hydrologic connectivity endorsed by a qualified person [Section XII of Form C-108].

(14) Alpha provided the requested items as attachments to an e-mail sent to the Division on June 19, 2017, and the Division deemed the Form C-108 application complete.

(15) Division Rule 19.15.26.8(C)(2) NMAC was in full force and effect on June 19, 2017, and provides, as follows, with regard to applications for authority to inject:

19.15.26.8 INJECTION OF FLUIDS INTO RESERVOIRS:

C. Administrative approval.

(2) The division shall not approve an application for administrative approval until 15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of 19.15.26.8 NMAC. [emphasis added]

(16) Having received the required documentation for a properly completed Form C-108 on June 19, 2017, the Division could not have approved an administrative order until the fifteenth day after June 19, which is July 4, 2017.

(17) By approving Administrative Order SWD-1680 on June 28, 2017, the Division did not fulfill the required waiting period under Rule 19.15.26.8(C)(2) NMAC and, therefore, the administrative order is void and should be rescinded.

IT IS THEREFORE ORDERED THAT:

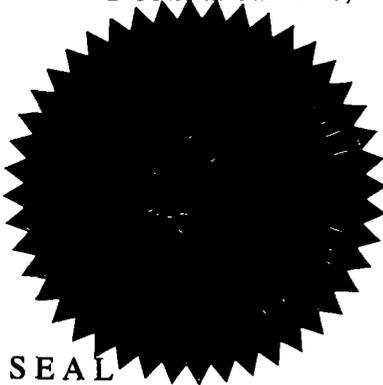
(1) Pursuant to the application by Delaware Energy LLC, the Division hereby rescinds Administrative Order SWD-1680.

(2) This order is without prejudice to the right of Alpha SWD Operating LLC to file an application to obtain proper injection authority for the proposed well as a new application, accompanied by a new Form C-108, with notice to whom notice of a new injection application is required under Rule 19.15.26.8 NMAC.

(3) In view of the rescision of Administrative Order SWD-1680, the request by Matador Production Company to modify that order is dismissed as moot.

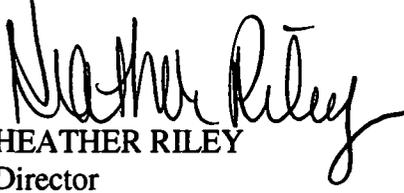
(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


HEATHER RILEY
Director