

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

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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST SOUTHWESTERN, INC. FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.3.100.D NMAC, FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.4.201 NMAC, 19.15.1.13.B NMAC, 19.15.3.116.D AS TO ONE WELL, DETERMINING THAT THE VIOLATIONS ARE KNOWING AND WILLFUL AND IMPOSING A PENALTY, REQUIRING OPERATOR TO BRING THE WELL INTO COMPLIANCE AND PROVIDE REQUIRED CONTACT INFORMATION BY A DATE CERTAIN, AND IN THE EVENT OF NON-COMPLIANCE AUTHORIZING THE DIVISION TO PLUG THE WELL, REMEDIATE THE LOCATION AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, LEA COUNTY, NEW MEXICO.

CASE NO. 14007

OBJECTION TO REQUEST FOR CONTINUANCE

The Oil Conservation Division (OCD) objects to the request for continuance filed by Southwestern, Inc. (Southwestern) in Case No. 14007 for the following reasons:

1. This case involves a single well that has been inactive since October 2002. During a routine inspection in May 2007, the inspector found that the well was leaking and contaminating the surrounding soil. The inspector attempted to contact Southwestern, the operator of record, but was unable to make contact by telephone or by mail. The OCD determined to take the matter to hearing immediately. In addition to asking the examiner to find Southwestern in violation of the applicable OCD rules and imposing a penalty, the OCD requested authority to plug the well and remediate the site to address the contamination if the operator did not do so by a date certain.

2. On September 19, 2007 the OCD mailed the notice of hearing to five addresses it found for Southwestern. It used certified mail, return receipt requested. The OCD received a green receipt card signed by Dwayne Burris of Southwestern on September 22, 2007.

3. In the notice of hearing, the OCD notified Southwestern that the hearing was set for October 18, 2007. The notice also contained the following statement:

“If you intend to present evidence at the hearing, you should file a pre-hearing statement at least four business days in advance of the hearing, as required by 19.15.14.1211.B NMAC. A copy of that rule is enclosed. I have also enclosed a copy of 19.15.14.1212 NMAC, which addresses representation at administrative hearings before the Division.” (Emphasis in the original)

4. Shortly after the notice of hearing was sent to Southwestern, Dwayne Burris contacted undersigned counsel by telephone, and stated that Southwestern no longer held the lease, and was therefore no longer responsible for the well. Counsel informed Mr. Burris that

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Southwestern was still the operator of record and held the financial assurance for the well, and that the OCD considered Southwestern to be the responsible party.

5. Several days later, Mr. Burris sent an e-mail to undersigned counsel, indicating that he was contacting the lease holder.

6. On Friday, October 12, 2007, Mr. Burris sent an e-mail to undersigned counsel indicating that he would "rather enter into an agreed order than go to hearing," and wanted to put the well back into production.

7. Undersigned counsel was out of the office on Friday, October 12, 2007. On Monday, October 15, she and OCD Compliance and Enforcement Manager Daniel Sanchez called Mr. Burris. After discussing the case, undersigned counsel indicated that she did not believe the matter could be resolved through an agreed order and that she intended to proceed to hearing. At that time, Mr. Burris indicated that he wanted a continuance. Undersigned counsel stated that he would need to file for a continuance, and that she might oppose it. Mr. Burris for the first time indicated that Southwestern would be represented by counsel and that counsel had a conflict with the hearing date.

8. Southwestern did not file the continuance request until Tuesday, October 16 at 11:47.

9. Southwestern did not file a timely pre-hearing statement, which was due Thursday, October 11.

10. Southwestern has been on notice of the hearing since September 22, 2007, when Mr. Burris received the notice of hearing and copies of the rules on pre-hearing statements and representation at examiner hearings.

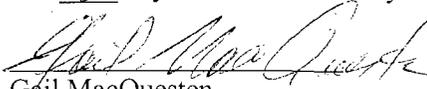
11. Southwestern did not indicate that it wanted a continuance until October 15, 2007, and did not file its request until October 16, 2007 – just two days before the scheduled hearing.

12. The case should be heard promptly, because of the contamination issues involved.

13. OCD inspector Maxey Brown has plans to travel from Artesia to Santa Fe for the hearing. The OCD respectfully requests that the Hearing Examiner rule on the motion for continuance as quickly as possible, so that Mr. Brown will know whether he needs to appear for the October 18, 2007 hearing.

For the forgoing reasons, the OCD respectfully requests that the hearing examiner deny Southwestern's request for continuance.

Respectfully submitted
this 16th day of October 2007 by


Gail MacQuesten
Oil Conservation Division

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Resources Department
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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was faxed to Mr. Glen Houston, attorney for Southwestern, Inc., at 575 397-1061 this 21 day of October 2007.


Gail MacQuesten