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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 BUCKEYE DISPOSAL, LLC, FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.3.101.B NMAC & 19.15.4.201 NMAC AS TO TWO WELLS; THAT THE OPERATOR HAS FAILED TO COMPLY WITH THE TERMS OF ACO 183; DETERMINING THAT THE VIOLATION OF 19.15.3.101.B NMAC & 19.15.4.201 NMAC IS KNOWING & WILLFUL AND IMPOSING PENALTIES; REQUIRING OPERATOR TO POST THE REQUIRED SINGLE-WELL FINANCIAL ASSURANCES FOR BOTH WELLS AND PLUG & ABANDON BOTH WELLS BY A DATE CERTAIN; ENFORCING THE PENALTY PROVISION OF ACO 183 AND REQUIRING OPERATOR TO REMIT PAYMENT OF THE PENALTY PURSUANT TO THE TERMS OF ACO 183 BY A DATE CERTAIN; AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED, AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT ANY APPLICABLE FINANCIAL ASSURANCE, LEA COUNTY, NEW MEXICO.

CASE NO. 14108

APPLICATION FOR COMPLIANCE ORDER
AGAINST BUCKEYE DISPOSAL, LLC

1. Buckeye Disposal, LLC ("Operator" or "Buckeye") is a corporation operating wells in New Mexico under OGRID 222759.
2. Buckeye is the Operator of Record for the following wells:
 - State AF#1 - API: 30-025-20546
 - State AF#2 - API: 30-025-20979
3. Operator has posted a \$50,000 surety blanket plugging bond (Bond No. 1002171) to secure its obligation to plug and abandon wells, pursuant to

19.15.3.101.A NMAC. The bond has been secured through Lexon Insurance Company, P.O. Box 98, Louisville, KY 40201. Operator has posted no single-well financial assurances applicable to either of the subject wells.

I. NON-COMPLIANCE WITH TERMS OF ACO 183

4. With regard to the State AF#1 well, Operator Buckeye previously entered into an Agreed Compliance Order ("ACO"), ACO 183, with the OCD. ACO 183 was executed by Operator on May 20, 2007 and by the Director of the OCD on June 1, 2007. **Exhibit A.**

5. ACO 183 addressed Operator's violation of Rule 201 with regard to the State AF#1 well, and rendered a finding by the OCD that Operator had failed to either plug and abandon or obtain approved temporary abandonment status within 90 days after a period of 1 year of continuous inactivity, as required by Rule 201. *Id.*

6. By signing ACO 183, Operator expressly:

- (a) acknowledge[d] the correctness of the Findings and Conclusions set forth in [the] Order;
- (b) agree[d] to pay the \$1,000 penalty assessed in the Order at the time the Order [was] executed;
- (c) agree[d] to file a sundry notice **within 10 days of the date [the] Order [was] executed** stating its intent to produce, plug or temporarily abandon the State AF #1;
- (d) agree[d] to return the State AF #1 to compliance with Rule 201 **within 6 months of the date [the] Order [was] executed;**
- (e) agree[d] that if it fail[ed] to return the State AF #1 to compliance with Rule 201 within 6 months of the date [the] Order [was] executed, **it [would] pay an additional penalty**

of \$1,000 for each full week after that deadline that the State AF #1 remain[ed] out of compliance with Rule 201;

- (f) waive[d] any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior to or subsequent to the entry of [the] Order or to an appeal from [the] Order; and
- (g) agree[d] that the Order may be enforced by OCD or Oil Conservation Commission Order, by suit or otherwise to the same extent and with the same effect as a final Order of the OCD or Oil Conservation Commission entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act.

Id. (Emphasis added.)

7. With the ACO having been fully executed as of June 1, 2007, the deadline for submission of the sundry referenced above in subparagraph (c) was been Monday, June 11, 2007, and the deadline for Operator to have brought the State AF#1 into compliance with Rule 201 (as noted in subparagraph (e)) was December 1, 2007.

8. Operator failed to file the designated sundry by the June 11, 2007 deadline, and failed to meet the December 1, 2007 deadline for returning the State AF#1 to compliance with Rule 201 (by plugging and abandoning the well, returning it to production or seeking and obtaining a designation of approved temporary abandonment status). As of the date of the filing of this Application, Operator still has not brought the subject well back into compliance. *Id.*

9. Operator now owes, and continues to accrue, a penalty assessment in an amount equal to \$1,000 for each full week that has elapsed since December 1, 2007, the expired deadline for bringing the well into compliance as per the

ACO. *Id.* [By the date of the scheduled hearing of April 17th regarding this application, more than 19 full weeks will have elapsed since the December 1, 2007 date, making the total amount of penalty accrued for this particular violation by that date, \$19,000.00].

10. The Division seeks an Order finding that Operator failed to comply with the terms of ACO 183 and enforcing the penalty assessment provision of ACO 183, requiring Operator to remit payment of the penalty assessment accrued to date by a date certain.

11. NMSA 1978, Section 70-2-14(B) provides:

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. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

12. In addition to its request for enforcement of the penalty assessment provision of the ACO, the Division respectfully requests, pursuant to Section 70-2-14(B), an Order requiring Operator to Plug and Abandon the State AF#1 by a date certain, with the contingency that if the specified deadline is not met by the Operator, any applicable bond posted by Operator in relation to this well shall be forfeited, and the Division shall be authorized to proceed to plug and abandon the well.

II. VIOLATION OF OCD RULE 101.B

13. Rule 101.B [19.15.3.101.B NMAC] requires that Operators post additional financial assurances/one-well financial assurances for wells that have

been inactive/in temporary abandonment for more than two years, with the amounts of such single-well financial assurances being based upon the total depth of the well involved. Rule 101.B went into full effect as of January 1, 2008.

Id.

14. Between the time that the Rule change was passed and the date of the full implementation (January 1, 2008), the OCD took numerous steps to provide notification to each Operator of Record in the state of New Mexico regarding the single-well financial assurance obligations imposed by Rule 101.B.

15. Operator last reported production for the State AF#1 in December, 2003.

16. Operator acquired the State AF#2 well in November 2003, at which time, per OCD records, it had been granted "approved temporary abandonment status" by the Division. Since acquiring this well, Operator has never reported production or injection for this well, and the approved "TA" status expired in October 2007.

17. Both the State AF#1 and the State AF#2 have been inactive/in temporary abandonment for more than two years. Under Rule 101.B, therefore, both of the subject wells require additional single-well financial assurances; however, no such additional financial assurances have been posted by Buckeye for these two wells.

18. NMSA 1978, Section 70-2-14(B) provides:

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. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

19. NMSA 1978, Section 70-2-31 (A) provides, in relevant part:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation.

20. NMSA 1978, Section 70-2-33(A) defines "person" as used in the Oil and Gas Act to include corporations.

21. Buckeye's violations of Rule 101.B, and its failure to comply with the obligations imposed by that Rule, are knowing and willful in nature and justify the imposition of penalties pursuant to NMSA 1978, Section 70-2-33(A).

III. VIOLATION OF OCD RULE 201

22. Division rule 19.15.4.201 NMAC requires an operator to plug and abandon or temporarily abandon a well in accordance with Division rules within 90 days after a period of one year of continuous inactivity.

23. The wells identified in Paragraph 2 of this Application are operated by Operator in New Mexico, have been inactive for a continuous period exceeding one year plus 90 days, and are neither plugged and abandoned in

accord with 19.15.4.202 NMAC nor on approved temporary abandonment status in accord with 19.15.4.203 NMAC.

24. As is articulated in and established by ACO 183 regarding the State AF#1 well, OCD personnel made numerous attempts to obtain Operator's cooperation and compliance with regard to that well and Rule 201. Despite those efforts, with full knowledge that this well has been and continues to be in violation of Rule 201, and despite the acknowledgements made and the terms agreed to by Operator by executing ACO 183, Operator continues to refuse to bring the State AF#1 into compliance with Rule 201.

25. With regard to the State AF#2 well, Operator knew of the TA status at the time it acquired the well, and it nonetheless allowed the TA period to expire without taking any of the necessary steps return the well to compliance with Rule 201.

26. NMSA 1978, Section 70-2-14(B) provides:

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. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

27. NMSA 1978, Section 70-2-31 (A) provides, in relevant part:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. For purposes

of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation.

28. NMSA 1978, Section 70-2-33(A) defines "person" as used in the Oil and Gas Act to include corporations.

29. The Division seeks an Order determining that the subject wells are not in compliance with Rule 201 [19.15.4.201 NMAC], finding that Operator's violation of Rule 201 as to these two wells was knowing and willful, and imposing a penalty pursuant to NMSA 1978, Section 70-2-31 (A).

30. The Division further seeks an Order requiring Operator to bring the wells into compliance with Rule 201 by a date certain, and ordering that, pursuant to NMSA 1978, Section 70-2-14(B), if the subject wells are not brought into compliance with Rule 201 by the date set in the order, the OCD will be authorized to plug the wells, and any financial assurances relating to the wells shall be forfeited.

III. CONCLUSION & PRAYER FOR RELIEF

WHEREFORE, the Enforcement and Compliance Manager of the Division hereby applies to the Director to enter an Order:

As to Operator's Non-Compliance with ACO 183

A. Finding that Operator failed and refused to comply with the terms of ACO 183 by:

1. Failing to submit the required sundry by June 11, 2007;

2. Failing to bring the well into compliance with Rule 201 by December 1, 2007; and
 3. Failing to remit payment of the penalty assessment as provided by the terms of ACO 183.
- B. Enforcing the penalty assessment provision of ACO 183, and Ordering Operator to remit payment of the penalty accrued to date pursuant to ACO 183 by a date certain;
- C. Requiring the Operator to plug and abandon the State AF#1 well by a date certain;
- D. If the State AF #1 well is not plugged and abandoned by the designated date set in the order,
1. declaring the wells abandoned;
 2. authorizing the OCD to plug the subject wells in accordance with an OCD-approved plugging program and restore and remediate the locations; and
 3. authorizing the OCD to forfeit any applicable financial assurances associated with the subject wells;

As to Operator's Violation of Rule 101

- E. Determining that the subject wells are not in compliance with 19.15.4.101 NMAC;

- F. Determining that Operator knowingly and willfully violated 19.15.4.101 NMAC;
- G. Ordering Operator to post the required single-well financial assurances for each of the two subject wells by a date certain;
- H. Imposing a penalty on the Operator in an amount consistent with the degree and duration of Operator's knowing and willful violations of 19.15.4.101 NMAC as to the subject two wells;

As to Operator's Violation of Rule 201

- I. Determining that the subject wells are not in compliance with 19.15.4.201 NMAC;
- J. Determining that Operator knowingly and willfully violated 19.15.4.201 NMAC;
- K. Imposing a penalty on the Operator in an amount consistent with the degree and duration of Operator's knowing and willful violations of 19.15.4.201 NMAC as to the subject two wells;
- L. Requiring the Operator to plug and abandon each of the subject wells by a date certain;
- M. If the subject wells are not brought into compliance with 19.15.4.201 NMAC by the date set in the order,
 - 1. declaring the wells abandoned;

2. authorizing the OCD to plug the subject wells in accordance with an OCD-approved plugging program and restore and remediate the locations; and
 3. authorizing the OCD to forfeit any applicable financial assurances associated with the subject wells; and
- N. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED, this 5th day
of March, 2008 by



Mikal Altomare
Assistant General Counsel
Energy, Minerals and Natural Resources Dept.
of the State of New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451

Attorney for The New Mexico Oil
Conservation Division

CASE NO. 14108. Application of the New Mexico Oil Conservation Division for a Compliance Order against **Buckeye Disposal, LLC** ("Buckeye") seeking an Order Finding that the Operator is in Violation of 19.15.3.101.B NMAC & 19.15.4.201 NMAC as to Two Wells; that the Operator has Failed to Comply with the Terms of ACO 183; Determining that the Violation of 19.15.3.101.B NMAC & 19.15.4.201 NMAC is Knowing & Willful and Imposing Penalties; Requiring Operator to Post the Required Single-Well Financial Assurances for Both Wells and Plug & Abandon Both Wells by a Date Certain; Enforcing the Penalty Provision of ACO 183 and Requiring Operator to Remit Payment of the Penalty Pursuant to the Terms of ACO 183 by a Date Certain; and in the Event of Non-Compliance, Declaring the Wells Abandoned, Authorizing the Division to Plug the Wells and Forfeit Any Applicable Financial Assurance, Lea County, New Mexico. The subject wells, identified specifically below, are located approximately 15 miles West of Hobbs and 20 miles Southwest of Lovington in Lea County:

State AF#1 - API: 30-025-20546

State AF#2 - API: 30-025-20979

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

NMOCD - ACO 18-3

IN THE MATTER OF BUCKEYE DISPOSAL, LLC,

Respondent.

AGREED COMPLIANCE ORDER

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act") and OCD Rule 1227.E [19.15.14.1227(E) NMAC], the Director of the Oil Conservation Division ("OCD") and Buckeye Disposal LLC ("Operator" or "Buckeye") enter into this Agreed Compliance Order ("Order") under which Operator acknowledges the violations described below, agrees to a penalty of \$1,000, and agrees to take the corrective action described below.

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act, and rules and orders adopted pursuant to the Act.
2. Operator is a limited liability company doing business in the state of New Mexico.
3. Operator operates wells in New Mexico under OGRID 222759.
4. Buckeye became the operator of record for the State AF #1, API No. 30-025-20546 in November 2003.
5. OCD Rule 201 [19.15.4.201 NMAC] requires a well to be either properly plugged and abandoned or placed in approved temporary abandonment in accordance with OCD rules within 90 days after a period of one year in which a well has been continuously inactive.
6. No production or injection has been reported for the State AF #1 since December 2003. The well is neither properly plugged nor on approved temporary abandonment status.
7. By letters dated March 16, 2005, June 22, 2005 and July 5, 2006, the OCD notified Buckeye that the State AF #1 was inactive and in violation of Rule 201. The most recent letter instructed Buckeye to repair the well by July 19, 2006.

ACO: State AF #001
Buckeye Disposal, LLC
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8. Buckeye did not respond to the letters.
9. On April 25, 2007, the OCD issued Notice of Violation (1-7-04) to Buckeye alleging the knowing and willful violation of Rule 201 as to the State AF #1.
10. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly and willfully violates any provision of the Oil and Gas Act or any rule or order adopted pursuant to the Act.
11. NMSA 1978, Section 70-2-33(A) defines "person" in relevant part as
"any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity..."

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Buckeye violated Rule 201 by failing to properly plug and abandon or place on approved temporary abandonment status the State AF #1 well within 90 days after one year of continuous activity.
3. The violation of Rule 201 was knowing and willful: Buckeye did not take corrective action on the State AF #1 well even after three letters from the OCD notifying Buckeye of the violation.
4. Operator is a "person" as defined by NMSA 1978, Section 70-2-33(A) and may be subject to civil penalties for knowing and willful violations of the Oil and Gas Act or rules or orders adopted pursuant to the Act.

ORDER

1. The OCD assesses, and Buckeye agrees to pay, a penalty of \$1,000.00 for the knowing and willful violation of Rule 201 at the State AF #1 well.
2. The \$1,000.00 penalty shall be paid at the time Buckeye executes this Order. Payment shall be made by check payable to the "New Mexico Oil Conservation Division," mailed or hand-delivered to the EMNRD-OCD, Attn: Director, 1220 South St. Francis Drive, Santa Fe, NM 87505.
3. Within 10 days of the date this order is executed, Buckeye shall file a sundry notice indicating its intent to produce, plug or temporarily abandon the State AF #1 well.

4. Within 6 months of the date this order is executed, Buckeye shall take one of the following actions to return the State AF #1 well to compliance with Rule 201:
- a. return the well to production and file a C-115 reporting production;
 - b. plug the wellbore of the well and file a sundry notice reporting the plugging; or
 - c. place the well on approved temporary abandonment status.
5. If Buckeye fails to return the State AF #1 well to compliance with Rule 201 within 6 months of the date this order is executed, Buckeye agrees to pay an additional penalty of \$1,000 for each full week after the deadline that the well remains out of compliance with Rule 201.
6. By signing this Order, Operator expressly:
- (a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - (b) agrees to pay the \$1,000 penalty assessed in the Order at the time the Order is executed;
 - (c) agrees to file a sundry notice within 10 days of the date this Order is executed stating its intent to produce, plug or temporarily abandon the State AF #1;
 - (d) agrees to return the State AF #1 to compliance with Rule 201 within 6 months of the date this Order is executed;
 - (e) agrees that if it fails to return the State AF #1 to compliance with Rule 201 within 6 months of the date this Order is executed, it will pay an additional penalty of \$1,000 for each full week after that deadline that the State AF #1 remains out of compliance with Rule 201;
 - (f) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior to or subsequent to the entry of this Order or to an appeal from this Order; and
 - (g) agrees that the Order may be enforced by OCD or Oil Conservation Commission Order, by suit or otherwise to the same extent and with the same effect as a final Order of the OCD or Oil Conservation Commission entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act.

Done at Santa Fe, New Mexico this ^{1st} ~~23rd~~ day of ^{June} ~~May~~ 2007

By: 

Mark Fesmire, P.E.
Director, Oil Conservation Division

ACCEPTANCE

Buckeye Disposal, LLC hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

Buckeye Disposal, LLC

By: 

(Please print name)

Title:

Date:

PETER BERNSTEIN

Member

5/30/07