

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

NMOCD - OGA 04- 44
PSEM0435D30033

IN THE MATTER OF LINDENMUTH & ASSOCIATES, INC.,

Respondent.

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") issues this Order to Lindenmuth & Associates, Inc. ("Lindenmuth"), directing compliance with the Act and the OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD rules.
2. Lindenmuth is a corporation doing business in the State of New Mexico.
3. Lindenmuth is the operator of record for the Post #001 well, API # 30-025-27984, located at Unit Letter N, Section 1, Township 14 South, Range 37 East, in Lea County, New Mexico ("Post #001 well").
4. Lindenmuth posted a \$50,000 letter of credit, number SB 500395, issued by the International Bank of Commerce, to secure its obligation to plug and abandon the well in compliance with OCD rules.
5. OCD rule 19.15.4.201 NMAC requires an operator to plug and abandon or temporarily abandon a well in accordance with OCD rules within 90 days after a period of one year of continuous inactivity.
6. The Post #001 well has been inactive for a continuous period exceeding one year plus 90 days, and has neither been plugged and abandoned pursuant to 19.15.4.202 NMAC nor temporarily abandoned pursuant to 19.15.4.203 NMAC.
7. The OCD notified Lindenmuth that the Post #001 well was out of compliance with 19.15.4.201 NMAC.
8. OCD rule 19.15.101(M) NMAC authorizes the Director to order the operator to plug and abandon any well not in compliance with 19.15.4.201 NMAC by a date certain,

and to direct the OCD to forfeit the applicable financial assurance and plug such well in accordance with an OCD-approved plugging program if, after the time provided in such order, the operator has failed to plug the well.

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

10. OCD rule 19.15.1.7.P(2) NMAC defines "person" as

"an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees."

11. On October 4, 2004, the OCD filed its "Amended Application for Compliance Order" in case number 13371, seeking an order requiring Lindenmuth to bring the Post #001 well into compliance with OCD rule 19.15.4.201 NMAC, authorizing the OCD to plug the well and forfeit the applicable security in the event Lindenmuth fails to comply, and assessing an appropriate civil penalty. Case number 13371 was set for hearing on the November 18, 2004 docket.

12. After receiving the amended application, a Lindenmuth representative contacted the OCD. He explained that Lindenmuth was dealing with a new surface owner, and having difficulty in obtaining access to the well. Lindenmuth agreed to bring the Post #001 into compliance by March 31, 2005, and to pay a \$1000 civil penalty.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.

2. As operator of the Post #001 well, Lindenmuth is responsible for bringing that well into compliance with OCD rule 19.15.4.201 NMAC.

3. The Post #001 well is not in compliance with OCD rule 19.15.4.201 NMAC because it has been inactive for a continuous period exceeding one year plus ninety days, and is neither plugged and abandoned nor on approved temporary abandonment status.

4. Lindenmuth is a "person" as defined by OCD rule 19.15.1.7.P(2) subject to civil penalties for knowing and willful violations of the Oil and Gas Act or rules or orders adopted pursuant to the Act.

5. Lindenmuth's failure to bring the Post #001 well into compliance with 19.15.4.201 NMAC after notification from the OCD constitutes a violation of 19.15.4.201 NMAC subject to civil penalties under NMSA 1978, section 70-2-31(A).

ORDER

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling one thousand dollars (\$1000) against Lindenmuth for violating 19.15.4.201 NMAC.

2. The civil penalty shall be paid within sixty days of receipt of this order. Payment shall be made by check payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention: Director, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505.

3. Lindenmuth is hereby directed to bring the Post #001 well into compliance with 19.15.4.201 NMAC by either:

- (a) restoring such well to production or other OCD-approved beneficial use by March 31, 2005;
- (b) causing the wellbore to be plugged in accordance with 19.15.4.202 NMAC by March 31, 2005, and causing the site to be remediated in accordance with 19.15.4.202 NMAC within one year of plugging the wellbore; or
- (c) securing OCD approval for temporary abandonment of the well in accordance with 19.15.4.203 NMAC by March 31, 2005.

4. A well shall be considered "restored to production or other approved beneficial use" for purposes of order paragraph 1(a) above when actual production or other approved beneficial use has commenced. A well "restored to production" by swabbing must also successfully pass the mechanical integrity test required under 19.15.4.203 NMAC.

5. A well shall be considered "plugged" for purposes of order paragraph 1(b) above when the operator has plugged the wellbore in accordance with 19.15.4.202.A and B(1) and (2), and filed a sundry notice with the appropriate district office notifying them that the wellbore has been plugged. The wellsite must be remediated in accordance with 19.15.4.202.B(3) NMAC within one year of plugging the wellbore. Upon completion of the remediation, the operator must contact the appropriate district office to arrange for an inspection of the well and location.

6. A well shall be considered "temporarily abandoned" for purposes of order paragraph 1(c) above when the well has successfully passed the mechanical integrity test required by 19.15.4.204 NMAC and the operator has filed the request for temporary abandonment with the appropriate district office.

7. If Lindenmuth plugs and abandons the Post #001 well but fails to remediate the site within one year of plugging the wellbore, Lindenmuth agrees to pay \$1000 for each full month of noncompliance with the remediation requirements of 19.15.4.202.B(3) NMAC.

8. If Lindenmuth does not bring the Post #001 well into compliance with 19.15.4.201 NMAC by March 31, 2005 the OCD is authorized to plug the Post #001 well in accordance with an OCD-approved plugging program. The OCD agrees to notify Lindenmuth of its actual costs in plugging the Post #001 well, using the following fax address: 512-499-0829. If the OCD does not receive reimbursement in full of its actual plugging costs from Lindenmuth within 20 days of sending the notice, the OCD is authorized to forfeit the applicable security.

9. By signing this order, Lindenmuth expressly:

- (a) acknowledges the correctness of the Findings and Conclusions set forth in this order;
- (b) agrees to comply with ordering paragraphs one through seven;
- (c) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this order or to an appeal from this order;
- (d) agrees that if it fails to comply with this order, the order may be enforced by suit or otherwise to the same extent and with the same effect as a final order of the OCD entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended); and
- (e) agrees that if it fails to pay penalties assessed pursuant to this order, upon application by the OCD the district court may enter judgment against Lindenmuth in the amount of the penalties assessed.

10. Upon execution of this order, the OCD shall dismiss case number 13371.

Done at Santa Fe, New Mexico, this 13th day of December 2004

By: _____

Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

LINDENMUTH & ASSOCIATES, INC. hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

LINDENMUTH & ASSOCIATES, INC.

By: _____

Title: _____

Date: _____

PRESIDENT

12/8/04

Lindenmuth Agreed Compliance Order