

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

NMOCD - OGA 04- 46

IN THE MATTER OF MGM OIL & GAS CO.,

psem0500633551

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 MGM Oil & Gas Co. ("MGM"), 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. MGM is a foreign profit corporation doing business in the State of New Mexico under SCC number 2054690.
3. MGM is the operator of record for the following wells, located in Lea County, New Mexico (hereinafter the "subject wells"):

Kemnitz Wolfcamp Unit #9, API 30-025-01921, M-20-16S-34E
Kemnitz Wolfcamp Unit #6, API 30-025-01918, M-19-16S-34E
Kemnitz Wolfcamp Unit #19, API 30-025-01272, C-25-16S-33E
Kemnitz Wolfcamp Unit #21, API 30-025-01274, E-25-16S-33E
Kemnitz Wolfcamp Unit #22, API 30-025-01273, G-25-16S-33E
Kemnitz Wolfcamp Unit #28, API 30-025-01944, K-30-16S-34E

4. MGM posted a \$50,000 blanket bond, number RLB0001523, issued by RLI Insurance Company, to secure its obligation to plug and abandon the wells 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. According to OCD field inspections conducted on September 26, 2000 and on several subsequent dates, the subject wells are shut-in and incapable of production.

7. According to OCD records, the subject wells have not been plugged and abandoned pursuant to 19.15.4.202 NMAC or temporarily abandoned pursuant to 19.15.4.203 NMAC.

8. By letter dated May 10, 2002, the OCD informed MGM that the following wells were out of compliance with 19.15.4.201 NMAC:

Kemnitz Wolfcamp Unit #9, API 30-025-01921, M-20-16S-34E
Kemnitz Wolfcamp Unit #19, API 30-025-01272, C-25-16S-33E
Kemnitz Wolfcamp Unit #21, API 30-025-01274, E-25-16S-33E
Kemnitz Wolfcamp Unit #22, API 30-025-01273, G-25-16S-33E

9. MGM responded to OCD's May 10, 2002 letter by letter dated May 15, 2002.

10. During an OCD inspection conducted on June 16, 2004, the president of MGM confirmed that the Kemnitz Wolfcamp Unit #9 was shut in, but stated that they planned to have a flow line connected by July 16, 2004. The OCD sent MGM a written notice of violation on July 16, 2004, describing the conversation with the president of MGM.

11. By letter dated September 28, 2004, the OCD again notified MGM that the Kemnitz Wolfcamp Unit #9 was shut in and in violation of OCD rules.

12. OCD rule 19.15.101.M NMAC authorizes the OCD to order the operator to plug and abandon any well not in compliance with rule 201 by a date certain, and to direct the OCD to forfeit the bond and cause such well to be plugged in accordance with a OCD-approved plugging program if, after the time provided in such order, the operator has failed to plug the well.

13. MGM's monthly production reports identify each of the subject wells as "pumping" or "flowing," reports production for each well, and indicates that each well produced every day of the month.

14. On April 17, 2002, an OCD inspector spoke to the president of MGM, and told him that MGM should not report production for shut-in wells, and that this reporting could be considered fraudulent.

15. MGM has continued to file monthly reports after the April 17, 2002 conversation identifying the subject wells as "flowing" or "pumping," reporting production for the subject wells, and indicating that the subject wells produced every day of the month.

16. NMSA 1978, Section 70-2-31(B) prohibits any person from knowingly and willfully making any false entry or statement in a report required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act for the purpose of evading or violating the Oil and Gas Act.

17. 19.15.13.1115.A NMAC provides in relevant part:

"Operator's monthly report, form C-115 or form C-115-EDP, shall be filed on each producing lease and each secondary or other enhanced recovery project or pressure maintenance project injection well within the state of New Mexico for each calendar month, setting forth complete information and data indicated on said forms in the order, format and style prescribed by the division director. Oil production from wells which are producing into common storage shall be estimated as accurately as possible on the basis of periodic tests."

18. Form C-115 requires the operator to report the amount of production by well, state the number of days each month that the well produced, and indicate by code letter the status of the well (example: flowing, pumping, gas lift, shut-in, etc.).

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. 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."

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

"If any of the requirements of the Oil and Gas Act 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."

22. On October 18, 2004, the OCD filed its "Application for Compliance Order" in case number 13374, seeking an order determining that MGM knowingly and willfully violated NMSA 1978, Section 70-2-31(B)(2), 19.15.13.1115.A NMAC and 19.15.4.201 NMAC, requiring NMG to bring the subject wells into compliance with 19.15.4.201 NMAC, assessing appropriate civil penalties, and in the event of non-compliance,

authorizing the OCD to plug the subject wells and forfeit the applicable financial assurance. Case number 13374 was set for hearing on the November 18, 2004 docket.

23. After receiving the application, the president of MGM contacted the OCD, showed an OCD inspector a buried line for the Kernnitz Wolfcamp Unit #9 well, and indicated that the well was producing. A compliance conference was conducted on November 3, 2004, with MGM's president, MGM's counsel, and representatives of the OCD. At the conference, MGM agreed to bring the remaining subject wells into compliance with 19.15.4.201 NMAC by December 31, 2004, report correctly in the future, and pay an appropriate civil penalty.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. As operator of the subject wells, MGM is responsible for reporting production for the wells, and bringing the wells into compliance with OCD rule 19.15.4.201 NMAC.
3. MGM violated OCD rule 19.15.4.201 NMAC by allowing the subject wells to remain inactive for a continuous period exceeding one year plus ninety days, without plugging and abandoning the wells or placing the wells on temporary abandonment status.
4. MGM's failure to bring the subject wells into compliance with 19.15.4.201 NMAC after the OCD notified MGM of the violation constitutes an on-going violation of 19.15.4.201 NMAC subject to civil penalties under NMSA 1978, Section 70-2-31(A).
5. MGM's filing of false reports of production on the subject wells after being told by an OCD inspector not to file reports indicating production for shut-in wells constitutes a repeated violation of NMSA 1978, Section 70-2-31(B)(2) and 19.15.13.1115.A NMAC subject to civil penalties under NMSA 1978, Section 70-2-31(A).
6. MGM is a "person" as defined by 19.15.1.7.P(2) NMAC subject to civil penalties for knowing and willful violations of the Oil and Gas Act or rules or orders adopted pursuant to the Act.
7. Because MGM violated 19.15.4.201 NMAC, NMSA 1978, Section 70-2-31(B)(2) and 19.15.13.1115.A NMAC, the OCD may order MGM's wells plugged and abandoned by MGM within a certain time period, and may forfeit MGM's financial assurance if it fails to comply within the time period set by the order. Pursuant to 19.15.4.101.M NMAC, the OCD may then plug and abandon the wells.

ORDER

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling two thousand five hundred dollars (\$2,500) against MGM

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for violating 19.15.4.201 NMAC, NMSA 1978, Section 70-2-31(B)(2) and 19.15.13.1115.A NMAC.

2. The civil penalty shall be paid at the time MGM executes this order. Payment shall be made by certified or cashier's 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. MGM is hereby directed to bring each of the subject wells into compliance with 19.15.4.201 NMAC by either:

- (a) restoring the well to production or other OCD-approved beneficial use by June 30, 2005;
- (b) causing the wellbore to be plugged in accordance with 19.15.4.202 NMAC by June 30, 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 June 30, 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. Within one week of restoring one of the subject wells to production MGM must conduct a 24-hour test to measure oil, gas and water produced from the well, and conduct the test annually thereafter. MGM shall provide at least 24-hour notice to the OCD prior to conducting the tests. Test results must be submitted on a C-104. A well "restored to production" by swabbing must 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. Further, if the subject wells are not brought into compliance with 19.15.4.201 NMAC by June 30, 2005:

- (a) MGM is ordered to plug and abandon each of the subject wells by July 30, 2005; and
- (b) if MGM fails to plug and abandon each of the subject wells by July 30, 2005, the OCD is authorized to forfeit immediately the applicable security and plug the subject wells in accordance with an OCD-approved plugging program.

8. If MGM plugs and abandons any of the subject wells but fails to remediate the site within one year of plugging the wellbore,

- (a) MGM is ordered to plug and abandon each of the subject wells by July 30, 2005; and
- (b) if MGM fails to plug and abandon each of the subject wells by July 30, 2005, the OCD is authorized to forfeit immediately the applicable security and plug the subject wells in accordance with an OCD-approved plugging program.

9. By signing this order, MGM expressly:

- (a) acknowledges the correctness of the Findings and Conclusions set forth in this order;
- (b) agrees to comply with ordering paragraphs one through nine;
- (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 MGM in the amount of the penalties assessed and may impose additional penalties in the discretion of the court for violating the terms of this order.

10. Upon execution of this order and payment of the \$2,500 penalty, the OCD shall dismiss case number 13374.

Done at Santa Fe, New Mexico, this 5th day of January 2005

By: 

Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

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MGM OIL & GAS CO. hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

MGM OIL & GAS CO.

By: *James Bruce*

Title: PRESIDENT

Date: 1-4-2005