

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

NMOCD-07- 174

IN THE MATTER OF KIMLAR OIL COMPANY,

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"), and the regulations promulgated under the Act, the Director of the Oil Conservation Division of the Energy Minerals and Natural Resources Department of the State of New Mexico ("OCD") issues this Order to **KIMLAR OIL COMPANY ("Kimlar")** directing compliance with the Act and 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. Kimlar is a sole proprietorship doing business in New Mexico, with a mailing address at 913 E. Winkler, Kermit, Texas 79745. Kimlar is assigned OGRID # 152098.

A. Background

3. Kimlar is the operator of the Gourley Federal #003, A-31-22S-28E, 30-015-22660; Gourley Federal #004, J-31-22S-28E, 30-015-22661; Gourley Federal #005, J-31-22S-28E, 30-015-23501; and the Gourley Federal #006, I-31-22S-28E, 30-015-23707, all located in Eddy County, New Mexico.
4. OCD Rule 19.15.13.1115 NMAC provides:
 - A. The operator shall file a monthly report, form C-115, for each non-plugged well completion for which the division has approved a C-104 authorization to transport, and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well with the state of New Mexico, setting forth complete information and data indicated on said forms in the order, format and style the division director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

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- B. If an operator fails to file a form C-115 that the division accepts, the division shall, within 60 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to revoke the operator's authorization to transport or inject if the operator does not submit an acceptable and complete form C-115. If the operator does not file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 120 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.
5. On June 2, 2006, David Bradshaw, OCD, sent a letter advising Kimlar that C-115 production reports were over due from the period beginning June 2004. Kimlar was instructed to provide the reports from June 2004 through March 2006 no later than August 15, 2006, or its authorization to transport from or inject into all the wells it operates would be revoked.
 6. No C-115 reports were filed by the August 15, 2006 deadline.
 7. David Bradshaw, OCD, sent follow up letters to his June 2, 2006 letter; these letters were sent on October 2, 2006, November 2, 2006, January 4, 2007 and February 2, 2007. Kimlar still failed to contact the OCD or file the appropriate C-115 production reports.
 8. On October 12, 2006, a certified letter was sent to Kimlar canceling its authority to transport from or inject into any well it operates. Kimlar failed to respond to the letter.
 9. On February 8, 2007, the OCD filed an Application for Compliance Order Against Kimlar Oil Company, requesting an Order requiring Kimlar to bring the wells into compliance with OCD Rule 19.15.4.201 by plugging or temporarily abandoning the wells, as the OCD records showed the wells had been continuously inactive for a period in excess of one year plus ninety days, as no C-115s have been reported on the subject four wells since May 2005.
 10. The hearing was set for March 15, 2006; appropriate notice of the hearing was sent to Kimlar and published in a local Eddy County newspaper.

B. Investigation

11. On February 15, 2007, Mike Bratcher, OCD District II Inspector, did a site inspection of the wells. He found the Gourley Federal #003, #005 and #006 to be producing; contamination from a possible stuffing box leak was found on the Gourley Federal #003 which is located in a water sensitive area, making it a major release and triggering OCD Rule 116.A,B, D [19.15.3.116 NMCA] notification and cleanup requirements. Gourley Federal #004 is an injection well; it appeared capable of injection but to be inactive.
12. On March 5, 2007, Becky Hill, Kimlar, contacted the OCD and advised that all four wells are active and did not want them plugged. She agreed to an administrative conference.

13. On March 20, 2007 and administrative conference between the OCD and Becky Hill, Kimlar was held.
14. Ms. Hill advised that:
 - a. She had become depressed and behind in her work on the wells due to her father's death. She got behind in everything, but has been seeing a doctor and is now much better.
 - b. Larry Hill is Becky's husband and does the field work; she does the paperwork.
 - c. Ms. Hill has rented an office, and is currently setting it up. She believes that she can be caught up with all the back paper work on these wells within six weeks. She has already sent a form updating Kimlar's address.
 - d. Becky Hill admitted that Kimlar had transmitted after receiving the October 12, 2007 letter from the OCD immediately canceling Kimlar's authority to transport or inject into its wells; she admitted that she had not contacted the OCD following receipt of the letter.
 - e. Ms. Hill apologized for letting the paperwork drop behind and not responding to OCD's correspondence to Kimlar.

C. OCD Rules and Applicable Statutes

1. OCD Rule 13.B provides that "[a]ll operators ... shall at all times conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal, and storage wells or other facilities in a manner that will prevent waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas, or allow either to leak or escape from a natural reservoir, or from wells, tanks, containers, pipe or other storage, conduit or operating equipment."
2. OCD Rule 116 provides that:
 - A. The division shall be notified of any unauthorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, natural gases, produced water, condensate or oil field waste including Regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico in accordance with the requirements of Section 116 of 19.15.3. NMAC.
 - B. ... Notification of the above releases shall be made by the person operating or controlling either the release or the location of the release in accordance with the following requirements:
 - (1) A Major Release shall be reported by giving both immediate verbal notice and timely written notice pursuant to Subsection C, Paragraphs (1) and (2) of 19.1.5.3.116 NMAC. A Major Release is:

(a) an unauthorized release of a volume, excluding natural gases, in excess of 25 barrels;

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(d) a release of any volume which may with reasonable probability be detrimental to water or cause an exceedance of the standards in Section 19, Subsection B, Paragraphs (1) and (2) or (3) of 19.15.1 NMAC.

C. Contents of Notification

(1) Immediate verbal notification required pursuant to Subsection B of 19.15.3.116 NMAC shall be reported within twenty-four (24) hours of discovery to the division district office for the area within which the release takes place. In addition, immediate verbal notification pursuant to Subsection B, Paragraph (1), Subparagraph (d) of 19.15.3.116 NMAC shall be reported to the division's Environmental Bureau chief. This notification shall provide the information required on division Form C-141.

(2) Timely written notification is required to be reported pursuant to Subsection B of 19.15.3. 116 NMAC within fifteen (15) days to the division district office for the area within which the release takes place by completing and filing division Form C-141. In addition, timely written notification required pursuant to Subsection B, Paragraph (1), Subparagraph (d) of 19.15.3.116 NMAC shall also be reported to the division's Environmental Bureau Chief within fifteen (15) days after the release is discovered. The written notification shall verify the prior verbal notification and provide any appropriate additions or corrections to the information contained in the prior verbal notification.

D. Corrective Action. The responsible person must complete division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with Section 19 or 19.15.1 NMAC.

3. OCD Rule 201 requires:

A. The operator of any well drilled for oil, gas or injection; for seismic, core or other exploration, or for a service well, whether cased or uncased, shall be responsible for the plugging thereof.

B. A well shall be either properly plugged and abandoned or temporarily abandoned in accordance with these rules within ninety (90) days after:

- (1) a sixty (60) day period following suspension of drilling operations, or
- (2) a determination that a well is no longer usable for beneficial purposes, or
- (3) a period of one (1) year in which a well has been continuously inactive.

4. OCD Rule 703 [19.15.9.703 NMAC] requires injection wells to be "equipped, operated,

monitored, and maintained to facilitate periodic testing and to assure continued mechanical integrity which will result in no significant leak in the tubular goods and packing materials used and no significant fluid movement through vertical channels adjacent to the well bore.”

5. OCD Rule 1115 [19.15.13.1115 NMAC] provides:

- A. The operator shall file a monthly report, form C-115, for each non-plugged well completion for which the division has approved a C-104 authorization to transport, and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state of New Mexico, setting forth complete information and data indicated on said forms in the order, format and style the division director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.
- B. The operator shall file the reports required to be filed by 19.15.13.1115 NMAC using the division’s web-based online application on or before the 15th day of the second month following the month of production Any operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would operate as an economic or other hardship.
- C. If an operator fails to file a form C-115 that the division accepts, the division shall, within 60 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to revoke the operator’s authorization to transport or inject if the operator does not submit an acceptable and complete form C-115. If the operator does not file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 120 days of the original due date of the form C-115, the division may cancel the operator’s authority to transport from or inject into all wells it operates.

II. CONCLUSIONS

- 1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 2. Kimlar is a person as defined by NMSA 1978, § 70-2-33(A) that may be subject to civil penalties under NMSA 1978, §70-2-31(A).
- 3. Kimlar is subject to civil penalties under NMSA 1978, § 70-2-31(A) for the following knowing and willful violations:

One OCD Rule 116.A,B, D on the Gourley Federal #003 (failure to give immediate verbal and timely written notification of major release originating from the stuffing box, no remediation plan and no cleanup); **four** OCD Rule 1115, one on each of the Gourley Federal #003, Gourley Federal #004, Gourley Federal #005, and the Gourley Federal #006 (failure to file C-115s, production and injection reports).

III. ORDER AND CIVIL PENALTY

- 1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling **Five Thousand Dollars (\$5,000.00)** against Kimlar for a total of five (5) violations of OCD rules, which are as follows:


One knowing and willful violation of OCD Rule 116.A,B, D on the Gourley Federal #003 (failure to give immediate verbal and timely written notification of major release originating from the stuffing box, no remediation plan and no cleanup); **four** OCD Rule 1115 knowing and willful violations, one on each of the Gourley Federal #003, Gourley Federal #004, Gourley Federal #005, and the Gourley Federal #006 (failure to file C-115s, production and injection reports).

2. **One Thousand Dollars (\$1,000.00)** of this fine will be conditionally waived provided that Kimlar submits a remediation plan on the release at the Gourley Federal #003 well no later than April 20, 2007 and completes remediation within a reasonable time thereafter, not to exceed six (6) months. If the work is not completed within the specified time, the **One Thousand Dollar** penalty shall automatically become due and owing and shall be paid immediately by Kimlar to the OCD.
3. For good cause shown, Kimlar may request an extension from the OCD to complete the requirements as set out in Ordering paragraph 2. Such request shall reasonably describe the circumstances encountered by Kimlar that prohibits it from meeting the deadlines set out herein. It shall be in the sole discretion of the OCD as to whether to grant that extension.
4. The assessed **Four Thousand Dollar (\$4,000.00)** civil penalty shall be paid upon execution of this Order. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention: Director, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.
5. In compliance with OCD's October 12, 2006 cancellation of Kimlar's authority to transport from or inject into wells, Kimlar shall not transport from or inject into any of its wells until it has filed C-115s, acceptable to the OCD, through reporting period February 2006, which shall be completed no later than April 30, 2007. Kimlar shall file C-115s for the reporting periods beginning with March 2006 through current reports due no later than June 2007 and shall timely file the reports thereafter.
6. In the event Kimlar fails to meet the reporting requirements set out in Section III, paragraph 5, Kimlar shall be subject to additional penalties for untimely filing of the required C-115 reports.
7. By signing this Order, Kimlar expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with Ordering paragraphs 2, 4 and 5;
 - 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; and
 - 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 Division

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).

8. Nothing in this Order relieves Kimlar of its liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment. In addition, nothing in this Order relieves Kimlar of its responsibility for compliance with any other federal, state or local laws and/or regulations.

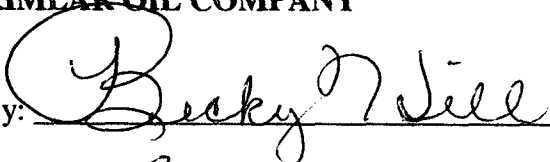
Done at Santa Fe, New Mexico this 23rd day of ^{April}~~March~~ 2007.

By: 
for Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

KIMLAR OIL COMPANY hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth therein.

KIMLAR OIL COMPANY

By: 

Title: Secretary

Date: 4/10/07