

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

NMOCD--08- A10 08-221

IN THE MATTER OF CAULKINS 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 rules 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 **CAULKINS OIL COMPANY**("CAULKINS") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

I. RULES APPLICABLE/RELEVANT TO THIS MATTER

- 1) Regarding requests for allowables and authorizations to transport, OCD Rule 1104.A and B [19.15.13.1104.A and B NMAC] provides as follows:
 - A. The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool, or issue an operator authorization to transport oil or natural gas from such a well if the operator:
 - (1) has filed a complete form C-104;
 - (2) has provided a sworn and notarized tabulation of all deviation tests run on the well, and directional surveys with calculated bottom hole location, in accordance with the requirements of 19.15.3.111 NMAC;
 - (3) has dedicated a standard unit for the pool in which the well is completed, a standard unit has been communitized or pooled and dedicated to the well of the division has approved a non-standard unit; and

(4) is in compliance with Subsection A of 19.15.1.40 NMAC.

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- B. Unless otherwise specified by special pool rules, the allowable the division assigns to a gas well shall be effective at 7:00 a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, **whichever date is later.** *Emphasis added.*

2) OCD Rule 303.A [19.15.5.303.A NMAC] regarding *Segregation of Production from Different Pools or Leases* provides:

A. In general

1. Pool segregation required - Each pool shall be produced as a single common source of supply and wells therein shall be completed, cased, maintained, and operated so as to prevent communication within the wellbore with any other pool. Oil, gas, or oil or gas produced from each pool shall at all times be segregated, and the combination commingling of production, before marketing, with production from any other pool without division approval is prohibited.

3) OCD Rule 303.C [19.15.5.303.C NMAC] regarding *Downhole Commingling* provides that "the director may grant an exception" to the general rule prohibiting commingling when certain conditions are met.

4) OCD Rule 303.C.3 (b) [19.15.5.303.C.3 (b) NMAC] provides one such *exception for wells located in pre-approved pools or areas* and provides that:

Applications to Downhole Commingle in wellbores within pools or areas that have been established by the division as "pre-approved pools or areas" pursuant to Subparagraph (b) of Paragraph (4) of Subsection C of 19.15.5.303 NMAC shall be filed on form C-103 (sundry notice of intent) at the appropriate division district office. The supervisor of the appropriate division district office may approve the proposed Downhole Commingling following receipt of form C-103. In addition to the information required by form C-103, the applicant shall include:

- (i) number of division order that established pre-approved pool or area;
- (ii) names of pools to be commingled;
- (iii) perforated intervals;
- (iv) allocation method and supporting data;
- (v) a statement that the commingling will not reduce the value of the total remaining production;
- (vi) in those instances where the ownership or percentages between the pools to be commingled is not identical, a statement attesting that applicant sent notice to

all interest owners in the spacing unit by certified mail (return receipt) of its intent to apply for downhole commingling and no objection was received within 20 days of sending this notice; and

(vii) a statement attesting that applicant sent a copy of the division form C-103 to the commissioner of public lands for the state of New Mexico for wells in spacing units containing state lands or the bureau of land management for wells in spacing units containing federal lands using sundry notice form 3160-5.

- 5) Although the Rules allow for the filing of certain federal forms in lieu of OCD forms for sites located on federal land, OCD Rule 1128 requires that "all reports and forms as required under the preceding rules of this section of the rules and regulations that pertain to production must be filed on the proper oil conservation division form as set out in said rule - no other forms will be accepted." [19.15.13.1128 NMAC, (FORMS REQUIRED ON FEDERAL LAND)].

II. FINDINGS & DETERMINATIONS BY THE OCD

- 6) The OCD is the state division in New Mexico charged with administration and enforcement of the Act and OCD Rules.
- 7) Caulkins is an Oklahoma Corporation doing business in New Mexico, registered with Secretary of State as a foreign profit corporation under number SCC 0342188. Caulkins is an active entity with a principal and mailing address of 1409 W. Aztec Blvd., Suite B7 Aztec NM, 87410 and mailing address at 1600 Broadway, Suite 1400 Denver Colorado, 80202. The registered agent in New Mexico for Caulkins is Robert L. Verquer. Caulkins has been assigned OGRID # 3824.
- 8) Caulkins is the operator of record for the Sanchez #8 natural gas well, API 30-039-29418, Section 24, Township 26 North, Range 06 West. Rio Arriba County, New Mexico.
- 9) The OCD received Caulkins' sundry notice of intent to re-complete the Sanchez #8 to the Mesa Verde formation on July 23, 2007.
- 10) The Aztec District Office of the OCD informed Operator Caulkins that it had approved the sundry, but had done so with specific qualifications/conditions: Caulkins was informed that the C-104 would be held pending the receipt of a form C-102 plat regarding the Mesa Verde pool (72319).
- 11) On August 23, 2007, Caulkins submitted a C-104 to OCD, seeking approval thereof, but the submission was insufficient as it did not attach the required C-102 plat for the Mesa Verde pool. At that time, OCD advised Caulkins by email

that Caulkins would need to resubmit a C-104 for consideration by the OCD in the proper format, and that in order for it to be approved, Caulkins would have to provide the OCD with the form C-102 Plat for Mesa Verde pool (72319) and would need to apply for and obtain Down-Hole Commingle (DHC) approval.

- 12) On August 24, 2007, when OCD Inspector Sharp contacted Caulkins by telephone to follow up on the instructions she had provided in her email, she was informed that Caulkins had already begun producing the well.
- 13) On August 24, 2007, OCD Inspector Cowden performed a site inspection and confirmed that the well was producing in spite of the fact that no C-104 had been approved for the well. Documents filed by Caulkins with the OCD on August 27, 2007 reported that the "first delivered," commingled production (of natural gas) occurred on August 20, 2007.
- 14) Caulkins resubmitted its C-104 with the OCD on August 27, 2007.
- 15) On September 7, 2007, Caulkins submitted an Application for Downhole Commingling to the OCD pursuant to OCD Rule 303.C.3 (b) [19.15.5.303.C.3 (b) NMAC], and an Administrative Order granting this Application was issued on September 10, 2007 (Order DHC-2682AZ-0).
- 16) Upon confirming that Caulkins' Down-Hole Commingle Application had been approved, the Aztec District office of the OCD approved the C-104 for this site on September 10, 2007.

III. STATEMENTS & ASSERTIONS OF THE OPERATOR, CAULKINS

Caulkins provided the following information and assertions of fact during the October 1, 2007 administrative conference, and in a supplemental email to OCD dated October 16, 2007;

- 17) Caulkins contends that it "thought that the Mesa Verde zone was pre approved under NMOCD order # 11363."
- 18) Caulkins states that with regard to the C-104, it was re-submitted in the correct format August 24, 2007."
- 19) With regard to having produced prior to having obtained C-104 approval, Caulkins states:

From a conversation with a company representative with a neighboring producer I had asked how they were delivering gas to the

line prior to C-104 approval during completion operations. I was told that as long as C-104 was turned in during the month of first delivery that it was legal to produce to the line. Also C-104 has a block under well test data that shows gas delivery date. I in no way willfully violated any OCD rule, but did misinterpret the rule and should have contacted Aztec OCD prior to turning this well on.

20) Caulkins notes that "[t]his well is on Federal land" and that the "intent sundry to commingle well was filed on Federal sundry form 3160-5, Dated July 12, 2007." Caulkins has indicated that its understanding had been that "it was unnecessary to submit a C-103 state sundry and a fed. sundry for the same activities."

21) Finally, Caulkins states that:

Caulkins Oil Company has been doing business in the San Juan Basin for 58 years. This is the first violation we have ever been cited and fined for. We have never willfully violated any OCD regulations. Corrective actions towards C-104 approval have been taken and will be followed faithfully with any future commingling or completions.

IV. CONCLUSIONS OF THE OCD

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

23) NMSA 1978 Section 70-2-31(A) provides, in relevant part, that "[a]ny 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." 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..."

24) Caulkins is a person as defined by NMSA 1978, Section 70-2-33(A) and subject to civil penalties under NMSA 1978, Section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD Rules.

25) OCD Rule 1104.A(1) requires that an Operator have filed a complete form C-104 prior to producing a newly completed or re-completed well, and Caulkins violated this Rule because it produced this re-completed well beginning at least as early as August 20, 2007, and did not file a complete C-104 until August 27, 2007. [19.15.13.1104.A(1) NMAC].

26) Because this well is a **gas well**, pursuant to OCD Rule 1104.B, any allowable assigned by the Division regarding this well would have been effective "at 7:00 a.m. on the date of connection to a gas transportation facility...or the date of receipt of form C-104 by the division, **whichever date is later.**" *Emphasis added.* [19.15.13.1104.B NMAC].

27) Under Rule 1104.B, the allowable assigned by the Division as to this well was effective the date that the Division received a properly submitted C-104 form: August 27, 2004. [19.15.13.1104.B NMAC].

28) Caulkins was informed in June, two months prior to initiating production after re-completion, that no allowable would be approved for this well until it met certain requirements.

29) Caulkins was even more specifically informed of the criteria necessary for approval of allowables regarding this site via email by Inspector Sharp on August 24, 2007, and again by telephone on August 24, 2007.

30) Despite having been informed by the OCD of the conditions and requirements for the approval of allowables for this well, Caulkins began producing the well prior to having met all such requirements. Caulkins' production of this well thus constitutes a knowing and willful violation of Rule 1104 [19.15.13.1104 NMAC].

31) The general rule regarding pool segregation is that wells are to be "completed, cased, maintained and operated so as to prevent communication within the wellbore with any other pool." OCD Rule 303.A [19.15.5.303.A NMAC]. However, the Rules provide that certain pools or areas may be pre-approved by the Division for commingling, and that Operators can then apply for permission to commingle production in wellbores within such "pre-approved pools" by submitting an Application to Downhole Commingle pursuant to OCD Rule 303.C.3(b) [19.15.5.303.C.3(b) NMAC].

32) Although the Rules do permit that Operators may submit certain Federal forms in lieu of OCD forms when reporting certain information to the federal government regarding wells located on federal lands, OCD Rule 303.C.3(b) provides specific filing requirements for the purpose of filing a Down-Hole Commingle Application, and specifically requires the Operator to "**send a copy of the division form C-103** to...the bureau of land management for wells in spacing units containing federal lands using sundry notice form 3160-5." OCD Rule 303.C.3(b)(vii) [19.15.5.303.C.3(b)(vii) NMAC]. Thus, in order to apply for a Down-Hole Commingle, even for a well on federal land, the Operator **must** submit a form C-103 to the Division.

33) As a long-standing operator in this state, Caulkins should have known its obligations with regard to submitting an Application for Down-Hole Commingle.

V. ORDER AND CIVIL PENALTY

34) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling **Two Thousand Dollars (\$2000.00)** against Caulkins.

35) The civil penalty is based on violations of OCD Rule 1104 by producing the Sanchez #8 well without an allowable being assigned by the OCD pursuant to an approved C-104, OCD Rule 303.A,C, and C.3.(b) by producing the Sanchez #8 well without Downhole Commingling approval.

36) The civil penalty shall be paid at the time Caulkins executes 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.

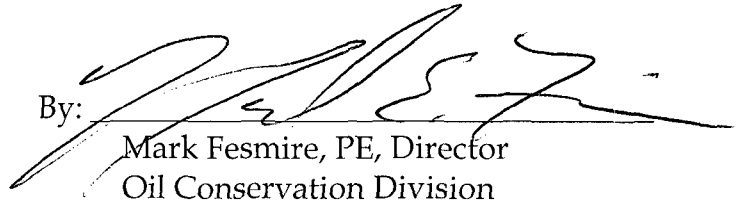
37) By signing this Order, Caulkins expressly:

- a. acknowledges the authority of the Oil Conservation Division to render the Findings, Conclusion and Order contained herein;
- b. agrees to comply with the Order and Civil Penalty outlined by Section V;
- 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 Division entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act;
- 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 Caulkins in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for Caulkin's violation of the penalty provisions of this Order.

38) Nothing in this Order relieves Caulkins 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 Caulkins of its responsibility for compliance with any other federal, state or local laws and/or regulations.


Done at Santa Fe, New Mexico, this 13th day of February 2008.

By: 
Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

Caulkins Oil Company (OGRID No. ^{to}3424) Operator of the Sanchez #8, API 30-039-29418, Section 24, Township 26 North, Range 06 West. Rio Arriba County, New Mexico hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the order.

Caulkins Oil Company

By: 
Title: Vice Pres
Date Feb 5, '08