

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

CASE NO. 14008  
ORDER NO. R-12930

APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION FOR A  
COMPLIANCE ORDER AGAINST YESO  
ENERGY, INC., LEA AND ROOSEVELT  
COUNTIES, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 29, 2007, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 7<sup>th</sup> day of April, 2008, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) In this Application, the Division alleges that Yeso Energy, Inc. ("Yeso" or "Operator") has violated Division Rule 1115 by failure to timely file production reports, and has violated Division Rules 1104, 804.A and 701 by continuing to operate producing or injection wells after the Division has suspended its permits for those wells by reason of its earlier reporting infractions.

(3) The Division seeks an order assessing civil penalties, both for operator's failure to file production reports and for operation of the wells while its permits were suspended, and further seeks an order requiring filing of amended or supplemental

production reports and requiring Operator to make information available to the Division for purposes of an audit.

(4) At the hearing, the Division appeared through counsel and offered testimony and exhibits as follows:

(a) Yeso was the operator of record, from November 20, 2006 until June 1, 2007, of the following 18 wells (the subject wells):

|                            |              |
|----------------------------|--------------|
| Courtland Myers Unit No. 1 | 30-025-11194 |
| Courtland Myers Unit No. 2 | 30-025-11195 |
| Courtland Myers Unit No. 4 | 30-025-11198 |
| Courtland Myers Unit No. 5 | 30-025-11199 |
| Jamison No. 1              | 30-025-11188 |
| Jamison No. 3              | 30-025-11189 |
| Knight No. 1               | 30-025-11186 |
| Knight No. 2               | 30-025-11191 |
| Knight No. 3               | 30-025-11187 |
| Knight No. 4               | 30-025-11190 |
| Knight No. 9               | 30-025-20352 |
| Knight No. 10              | 30-025-20351 |
| Knight No. 11              | 30-025-20350 |
| Las Cruces B No. 3         | 30-025-00236 |
| Las Cruces B No. 4         | 30-041-00237 |
| State BPA No. 1            | 30-041-00188 |
| State BPA No. 2            | 30-041-00189 |
| State No. 1                | 30-041-20600 |

(b) The testimony refers to 19 wells. However, the Division's witness did not identify the 19 wells, but only described them as those 19 of the 24 wells identified in the application that were producing at the time. The only production information offered in evidence was Exhibit E, which identifies the above-named 18 wells.

(c) Yeso failed to file production reports (Form C-115) that were accepted by the Division for the month of May, 2006, and possibly for other months for which production reports were due prior to November 20, 2006.

(d) The Division notified Yeso by e-mail on September 7, 2006, of its failure to file an acceptable Form C-115 for the month of May, 2006, and that, if an acceptable Form C-115 were not received within 120 days of the original due date (June 15, 2006), the Division would cancel Yeso's authorization to transport

from or inject into all wells operated by it. Yeso received and acknowledged this e-mail notification on September 8, 2006.

(e) The Division notified Yeso by letter dated November 20, 2006 that its authority to transport from or inject into its wells was terminated "effective immediately," and further notified Yeso that it had also failed to file acceptable C-115s for the months of June, July and August, 2006. Yeso received this letter, and acknowledged as much by e-mail to the Division on November 27, 2006.

(f) Effective June 1, 2007, Yeso transferred operatorship of all of the subject wells to Kerns Petroleum, Inc.

(g) The Division has never reinstated Yeso's authority to transport or inject, at least not prior to June 1, 2007.

(h) According to Division records, the following activity occurred with respect to the above identified wells between December 1, 2006 and June 1, 2007:

|                            |   |
|----------------------------|---|
| Courtland Myers Unit No. 1 | produced oil and gas all months                   |
| Courtland Myers Unit No. 2 | water injected all months                         |
| Courtland Myers Unit No. 4 | produced oil and gas Jan through May 2007         |
| Courtland Myers Unit No. 5 | water injected all months                         |
| Jamison No. 1              | produced oil and gas all months                   |
| Jamison No. 3              | produced oil all months                           |
| Knight No. 1               | produced oil all months                           |
| Knight No. 2               | produced oil all months                           |
| Knight No. 3               | produced oil all months                           |
| Knight No. 4               | produced oil all months                           |
| Knight No. 9               | water injected all months                         |
| Knight No. 10              | water injected all months                         |
| Knight No. 11              | water injected all months                         |
| Las Cruces B No. 3         | produced oil Dec 2006                             |
| Las Cruces B No. 4         | produced oil all months and gas Dec 06 and Jan 07 |
| State BPA No. 1            | produced oil all months and gas Dec 06 and Jan 07 |
| State BPA No. 2            | produced oil all months and gas Dec 06 and Jan 07 |
| State No. 1                | produced oil all months and gas Dec 06 and Jan 07 |

(5) Yeso appeared at the hearing through counsel, and presented testimony from its principal, Eugene Lee, to the effect that:

(a) Yeso never operated any of the above-identified wells, and the document in the Division's file by which Yeso assumed operation of those wells, which purports to bear Mr. Lee's signature (and which neither party offered in evidence), was forged.

(b) Although Yeso did not operate any of the subject wells, it did operate other wells in May of 2006 for which it attempted to file production reports on Form C-115. The Division rejected the attempted filing because it did not include the subject wells.

(c) When Yeso received the notification that its authority to transport and inject had terminated, it immediately shut in the wells that it actually operated, which did not include any of the subject wells because Yeso did not operate those wells.

(d) Mr. Lee, through a separate corporation he owns, performed some consulting services on some of the subject wells for Aleanna Resources, Inc., which, according to Mr. Lee, operated the subject wells during the relevant time period.

(e) Mr. Lee informed David Bradshaw, and perhaps other Division employees, by telephone and e-mail, that the Division was erroneously attributing operatorship of the subject wells to Yeso, and that Aleanna Resources, Inc. was the actual operator, and should be shown as the party responsible for those wells.

(6) Yeso also presented the testimony of Richard Quintana, who testified that he did some work on the subject wells at Mr. Lee's request for Aleanna Resources, Inc. during the relevant time period, and that the well signs on the wells identified the previous operator, Whiting Oil, as operator.

The Division concludes as follows:

(7) Yeso was the operator of one or more wells in New Mexico during the month of May, 2006, and was accordingly required to file a production report (Form C-115) for those wells.

(8) Yeso did not file a C-115 for its wells that was accepted by the Division for the month of May, 2006, either on or before June 15, 2006, as required by Division Rule 1115, or at any time thereafter through and including November 29, 2006.

(9) Yeso received actual notice that the Division had not accepted any C-115 it attempted to file for the month of May, 2006, and that its authorization to transport or inject terminated on or before November 20, 2006, as provided in Division Rule 1115.C.

(10) Yeso was the operator of the subject wells during the time period from November 20, 2006, until June 1, 2007. This conclusion is based on the following:

(a) The Division's records regarding operation of wells and changes of operator are *prima facie* evidence that the operator so identified is the operator and person responsible for the wells that it operates according to Division records. However, this inference is rebuttable.

(b) The testimony offered by Yeso that the subject wells were transferred to it fraudulently, without its knowledge, if accepted, would rebut the inference or presumption arising from the Division's records. However, in this case there are several circumstances that tend to undermine the credibility of that testimony.

(c) An e-mail communication from Mr. Lee to David Bradshaw of the Division dated November 27, 2006, includes the following statement:

I thought that the lady in Midland, TX was filing all the C115's and just found out that she was filing only on the Whiting Pet wells transferred to Yeso for Aleanna Resources, Inc.

This bland acknowledgment that wells were transferred to Yeso for Aleanna Resources, Inc. seems inconsistent with the contention Yeso now makes that the transfer was made fraudulently and without its knowledge.

(d) Yeso failed to produce any written evidence that it ever called the attention of anyone associated with the Division to its contention that the attribution to it of responsibility for the subject wells was erroneous and fraudulent, at any time prior to the filing of its pre-hearing statement in the case.

(e) Mr. Lee testified that he sent e-mails on this subject to David Bradshaw and possibly to other Division personnel, and that although he did not have copies of these e-mails with him at the hearing, he could produce them.

(f) Subsequent to the hearing, the Division Hearing Examiner wrote to the attorneys in this case, and invited them to submit for inclusion in the record copies of any alleged e-mails that had not been available at the hearing. None was submitted.

(g) According to Mr. Lee's testimony, when he received the Division's notice of termination of Yeso's authority to transport and inject, he shut in wells owned and operated by Yeso in compliance with that notice. He offered no explanation of why Yeso would submit to the loss of revenues from wells it admittedly operated due to this alleged identity theft, without filing any written protest for almost two years.

(11) Yeso violated Division Rule 1115 by failing to file production reports on all of the wells that it operated in May, 2006. Such failure was knowing and willful, at least for the period from September 8, 2006, when Yeso acknowledged receipt of the Division's September 7, 2006 notice, through November 29, 2006, when, accordingly to the testimony of the Division's witness, Mr. Sanchez, Yeso did not cure this default as promised in Mr. Lee's e-mail of November 27, 2006.

(12) The record does not establish that Yeso's knowing and willful violation of Rule 1115 continued after November 29, 2007. Mr. Sanchez, when asked if Yeso submitted the reports after November 29, said, "No, not to my knowledge." However, the record does not establish that Mr. Sanchez would necessarily have had knowledge of when, or on whose behalf, production reports were filed. Counsel for the Division suggested in opening statement that the production reports which obviously were filed, as evidenced by production data on the subject wells that was admitted in evidence, were filed by the subsequent operator, Kerns Petroleum, Inc. However, no witness so testified.

(13) A civil penalty in the amount of \$3,000 should be assessed against Yeso for its knowing and willful violation of Rule 1115, representing \$1,000 for each month, or partial month, from September 8, 2006 to November 29, 2006.

(14) Because, on November 20, 2006, Yeso was in default for more than 120 days in filing production reports for May, 2006 and the Division had given Yeso the sixty-day notice required by Division Rule 1115.C, Yeso's authority to transport from or inject into all wells it operated terminated on that date by operation of Rule 1115.C, and was not reinstated at any time on or prior to June 1, 2007. However, Rule 1115.C does not require an operator to do or refrain from doing anything. It merely operates to terminate authority that may or may not be required by other rules. Hence, the Division cannot conclude that Yeso violated Rule 1115.C, or assess any civil penalty for violation thereof.

(15) Similarly, Rule 1104 merely describes the prerequisites for the Division to assign an allowable for a newly completed or re-completed well, and does not require an operator to do or refrain from doing anything. Hence, the Division cannot conclude that Yeso violated Rule 1104, or assess any civil penalty for violation thereof.

(16) The Division cannot conclude on this record that Yeso violated Rule 804.A. That rule deals only with "transportation of crude oil or lease condensate by motor vehicle." There is no evidence in this case that anything was transported by motor vehicle, and the Division cannot infer that such transportation occurred from evidence of production in the absence of evidence of whether or not there existed any pipeline connection that would have allowed removal of produced oil by pipe line.

(17) In a compliance proceeding such as this case, pursuant to Rule 1227.C, the Division cannot find, or assess penalties for, a violation of any statute or rule not cited in

the application. Accordingly, the Division need not consider whether production from the subject wells subsequent to November 20, 2006 violated any other statute or rule.

(18) Yeso knowingly and willfully violated Division Rule 701 by injecting into Courtland Myers Wells No. 2 and 5 and the Knight Wells No. 9, 10 and 11, in each of the months of December 2006 and January through May, 2007. Rule 701 provides that "the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the division . . . ." The termination of Yeso's injection authority pursuant to Rule 1115.C effectively cancelled any order of the Division authorizing injection of water into these wells, and, accordingly, injection subsequent to November 20, 2006 violated Rule 701.

(19) A civil penalty in the amount of \$30,000 should be assessed against Yeso for its knowing and willful violation of Rule 701, representing \$1,000 per well, per month of unlawful injection.

(20) Since the record in this case does not show for what wells, or for what periods of time, if any, Yeso has not now filed required production reports, the Division's application for an order directing Yeso to file such reports should be dismissed.

(21) To resolve the many uncertainties surrounding the facts described above, the Division should be authorized to review and audit any and all production, transportation or sales records in the possession of Yeso, or accessible to it, relating to any production or oil, gas or water from any wells actually or purportedly operated by Yeso in the State of New Mexico from May 2006 to the present time.

**IT IS THEREFORE ORDERED THAT:**

(1) The authority of Yeso Energy, Inc. (OGRID 221710) to transport from or inject into all wells that it operates in the State of New Mexico was properly terminated by the Division effective November 20, 2006, and was not reinstated at any time on or prior to June 1, 2007.

(2) A civil penalty in the amount of \$3,000 is assessed against Yeso Energy, Inc. on account of its knowing and willful failure to file production reports (Form C-115) for all wells operated by it for the month of May, 2006. This penalty is assessed by reason of Yeso's failure to file such reports at any time during the period from September 8, 2006 through and including November 29, 2006.

(3) A civil penalty in the amount of \$30,000 is assessed against Yeso Energy, Inc. on account of its knowing and willful injection of water without a valid permit into the Courtland Myers Well No. 2 (API No. 30-025-11195), Courtland Myers Well No. 5 (API No. 30-025-11119), Knight Well No. 9 (API No. 30-025-20352), Knight No. 10 (API No. 30-025-20351, and Knight No. 11 (API No. 30-025-20350), for the period from December 1, 2006 through May 31, 2007.

(4) Yeso shall pay the total penalty herein assessed (in the amount of \$33,000) by certified or cashier's check or money order payable to the New Mexico Oil Conservation Division, and delivered to the Division, to the attention of Daniel Sanchez, Compliance and Enforcement Manager, at 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, before 5:00 P.M., Mountain Daylight Time, on the thirtieth day after the issuance of this order, or, if such day is a Saturday, Sunday or legal holiday, on the first day thereafter on which the Division's offices are open for business.

(5) If the penalty herein assessed is not paid as above provided, the Division may re-open this case to secure an order finding Yeso in default as provided in Division Rule 40, and/or the Division may bring suit in District Court to recover the penalty assessed.

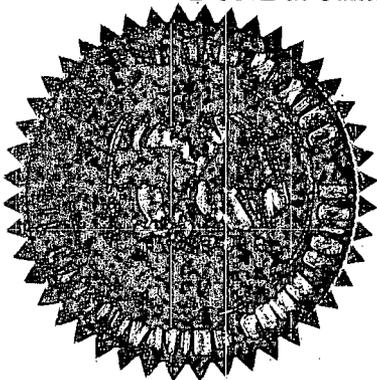
(6) The record in this case having not established for what dates and wells, if any, Yeso Energy, Inc. is now in default for failure to file required production reports, the request of the Division for an order requiring Yeso to now file supplemental and/or corrected production reports is dismissed.

(7) Without limiting the generality of the Division's investigative authority under NMSA 1978 Section 70-2-12.A, or other statutes or rules, Yeso Energy, Inc. is hereby ordered to make available to the Division, at such times and places as the Division shall direct, any and all records, reports or other data, in whatever form and however compiled or maintained, in its possession or accessible to it, relating to production, transportation or sale of oil, gas or water from, or injection of water into, any wells actually or purportedly operated by it in the State of New Mexico, relating to the time period from May 1, 2006 to the present.

(8) All relief requested by the Division that is not granted in this order is hereby denied.

(9) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read 'Mark E. Fesmire', written over a horizontal line.

MARK E. FESMIRE, P.E.  
Director