

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

2005 JUN 8 PM 2 49

IN THE MATTER OF THE APPLICATION
OF SAMSON RESOURCES COMPANY,
KAISER-FRANCIS OIL COMPANY AND
MEWBOURNE OIL COMPANY FOR
CANCELLATION OF A DRILLING PERMIT
AND APPROVAL OF A DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE NO. 13492

**REPLY PURSUANT TO MOTION TO ENFORCE
SUBPOENA DUCES TECUM AND FOR SANCTIONS**

Kaiser-Francis Oil Company, (Kaiser-Francis), for its Reply pursuant to its Motion To Enforce Subpoena Duces Tecum, states:

Chesapeake continues to defy the Division's Subpoena Duces Tecum. Further, recent independently obtained information confirms that Chesapeake has purposefully withheld responsive information and materials. It appears that Chesapeake is attempting to conceal or at least delay the disclosure of certain conduct with respect to its ongoing drilling operations. On June 6, 2007, it was discovered that Chesapeake had altered its original drilling program and is now in the process of moving the bottom hole location for the KF "4" State Well No. 1 to a new unit. Chesapeake did not inform the other parties of its plans to do so. Further, Chesapeake made an affirmative decision to disobey the subpoena.

This dispute was triggered by Chesapeake's trespass onto Kaiser-Francis's lease acreage and the drilling of the KF "4" State Well No. 1. In view of the circumstances precipitated by Chesapeake's conduct, Kaiser-Francis has made clear that it is imperative Chesapeake provide the data specified in the subpoena while drilling operations are under way. The May 5, 2005 Subpoena Duces Tecum accordingly specified: "*These subpoena items are ongoing and you*

have the obligation to supplement the production of documents and materials responsive hereto as new documents and materials become available." This provision, entirely appropriate under the circumstances, was not objected to by Chesapeake.

On May 4, 2005, Kaiser-Francis first sought the voluntary production of Chesapeake's drilling reports. (See, page 3 of Exhibit B to Motion To Enforce.) On May 24, 2005, the Division entered Order No. R-12343-A denying Chesapeake's Motion To Quash. Also on May 24, 2005, counsel for Kaiser-Francis again sought Chesapeake's cooperation on (1) providing daily drilling reports and (2) producing the remainder of the documents pursuant to the subpoena and the order. (See, Exhibit B to Motion To Enforce.) As previously indicated, Kaiser-Francis delayed the filing of its motion while awaiting Chesapeake's compliance.

On May 26, 2005, Kaiser-Francis asked Chesapeake to provide the subpoena materials, including daily rig reports, daily mud logs and land data. (Affidavit of James T. Wakefield, ¶ 5,6, Exhibit 1, attached.) On May 26th, Chesapeake began providing summarized versions of daily drilling reports to Kaiser-Francis only. *Id.*, at ¶ 5. On June 1, 2005, Kaiser-Francis again requested Chesapeake's compliance with the subpoena, followed with another request on June 2nd. *Id.*, at ¶ 9, 10.

In the June 2, 2005 conversation, Chesapeake's landman, Lynda Townsend said that Chesapeake's legal department had made a decision that Chesapeake would withhold all other documents responsive to the subpoena duces tecum. *Id.*, at ¶ 11 . As of June 3rd, Chesapeake had still not complied and consequently, Kaiser-Francis proceeded to file its Motion To Enforce. Chesapeake did not provide the mud logs and open hole logs until the afternoon of June 3rd, after the motion was filed. *Id.*, at ¶ 13.

On June 6, 2005, a review of one of the rig reports seemed to indicate Chesapeake was attempting a substantial deviation of the bore hole away from the bottom hole location that had been approved on Chesapeake's original March 10, 2005 APD.¹ (*Id.*, 14.) A check of the Division's well file confirmed that on June 2, 2005, Chesapeake prepared and filed with the Division's District I office amended C-101 and C-102 forms reflecting a new bottom hole location in a different unit (unit W), 688' FSL and 1,947' FEL of Section 4. The District I office approved the amended C-101 and C-102 on June 3, 2005. (Exhibits 2, and 3, attached.)

As indicated by the Affidavit of Mr. Wakefield, Chesapeake did not inform Kaiser-Francis or any of the other parties of the plans to change the well location and Chesapeake provided no other documentation of the change. (Affidavit of James T. Wakefield, ¶ 12, Exhibit 1.) Pursuant to the Subpoena Duces Tecum, Chesapeake would have been obliged to provide documentation of the deviation in response to items 7 (drilling plan) and 11 (permits).

As a consequence of Chesapeake's conduct, the parties are now forced to contend with a substantially deviated wellbore implicating an array of technical completion and production risks that were not attendant with the straight-hole completions originally contemplated for both the KF "4" State Well No. 1 and the Osudo "4" State Com Well No. 1.

This surprising development is directly at odds with Chesapeake's representations that it has "timely and cooperatively provided information to Kaiser[.]" (See, Response Of Chesapeake Operating, Inc. To Motion To Enforce, pg. 3.)

Chesapeake has no excuse for its concealment. Further, Chesapeake's response brief is devoid of any explanation why it was prevented from complying with the Division's subpoena.

¹ 660' FSL & 990' FEL, Section 4, T-21-S, R-35-E

Absent such an explanation, the Division may reasonably conclude that Chesapeake's compliance was not prevented.

Chesapeake's delays in disclosing its activities further underscores the need for the Division to compel Chesapeake's immediate obedience to the agency's subpoena. Additionally, there is an evidentiary basis for the Division to find that Chesapeake's violation of its discovery obligations has been willful.

The Division's power to require the production of documents is set forth in the Oil and Gas Act, NMSA 1978, § 70-2-1, *et seq.*, § 70-2-8 of the Oil and Gas Act states, in part, as follows:

70-2-8. Subpoena power; immunity of natural persons required to testify. *The commission, or any member thereof, or the director of the division or his authorized representative, is hereby empowered to subpoena witnesses, to require their attendance and giving of testimony before it, and to require the production of books, papers and records in any proceeding before the commission or the division.*

See, also, 19 NMAC 15.14.1211 A.

The Division also has the option of seeking judicial enforcement of its subpoenas:

70-2-9. Failure or refusal to comply with subpoena; refusal to testify; body attachment; contempt. *In case of failure or refusal on the part of any person to comply with any subpoena issued by said commission or any member thereof, or the director of the division or his authorized representative, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this state, or any judge thereof, on application of said commission or division, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the commission or division and produce such documents and give his testimony upon such matters as may be lawfully required, and such court or judge shall have the power to punish for contempt as in case of disobedience of a like subpoena issued by or from such court, or a refusal to testify therein.*

See, also, 19 NMAC 15.14.1211.A.

Moreover, the agency has often pointed to its general authority under NMSA 1978 § 70-2-11 to fashion appropriate relief under an array of circumstances:

“ A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.”
(emphasis added.)

As is the case with the courts, this agency should assume it has the inherent authority to enforce its orders and to sanction parties for failure to obey those orders. See *Gonzales v. Surgidev Corp.*, 120 N.M. 151, 899 P.2d 594 (1995). Additionally, Rule 1-037(D), NMRA states that:

[I]f a party fails to obey an order under Rule 1-026, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;²

(c) an order . . . dismissing the action or proceeding, or any part thereof . . .

Rule 1-037(B) NMRA 2001. (Emphasis added.) The sanction of dismissal is specifically authorized when the party's action is willful. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231, *appeal dismissed and cert. denied*, 451 U.S. 901, 101 S.Ct. 1966, 68 L.Ed.2d 289 (1981); *Medina v. Foundation Reserve Ins. Co., Inc.*, 117 N.M. 163, 870 P.2d 125 (1994). "A willful violation occurs when there is a conscious or intentional failure to comply." *Medina* at 166. See also, *State ex rel. New Mexico State Highway and Transp. Dept. v. Baca*,

² The Division has implemented such restrictions in the past. See NMOCC Case No. 13085, Application of EGL Resources, Inc. and Robert Landreth for Pool Extension, etc.; Case No. 13048, Application of Devon Energy Production Company, L.P. for Compulsory Pooling, Application of EGL Resources, Inc. for Compulsory Pooling, Lea County, New Mexico, (consolidated), Acting Division Director's March 18, 2004 letter ruling on Joint

120 N.M. 1, 5, 896 P.2d 1148, 1152 (1995) (trial courts must be able to command and enforce compliance with discovery orders); *Sandoval v. Martinez*, 109 N.M. 5, 780 P.2d 1152 (Ct. App. 1989); *Newsome v. Farer*, 103 N.M. 415, 417, 708 P.2d 327, 329 (1985) (trial court's dismissal based on plaintiff's deliberate failure to follow court-ordered discovery procedures upheld).

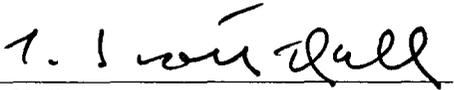
To our knowledge, disobedience of the agency's subpoenas and discovery orders on the scale practiced by Chesapeake here is unprecedented. Further, it has been Chesapeake's low regard for the agency's administrative processes, beginning with its unreasonable and opportunistic manipulation of the Division's APD approval process that has led to the present situation. Under these circumstances, stern action by the Division is warranted in order to deter similar conduct by Chesapeake in the future.

At a minimum, the Division should enter an order (1) requiring Chesapeake to immediately deliver all documents, materials and information responsive to the subpoena, (2) further requiring Chesapeake to immediately supplement its production as soon as new documents, materials and information are generated, (3) requiring Chesapeake to warrant to the Division on an ongoing basis that its compliance is complete and current, and (4) providing for such other relief the Division deems appropriate.

Respectfully submitted,

MILLER STRATVERT P.A.

By:


J. Scott Hall
Attorneys for Kaiser-Francis Oil Company
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Objections to Subpoena Duces Tecum. See, also, Ruling of the Commission; Case No. 10211; *Application of Santa Fe Energy Operating Partners, L.P. for Compulsory Pooling, Lea County, New Mexico.*

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 8th day of June, 2005, as follows:

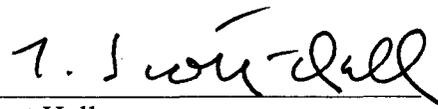
Thomas Kellahin, Esq.
Post Office Box 2265
Santa Fe, New Mexico 87504
(505) 982-2047/Facsimile

Gail MacQuesten, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87504
(505) 476-3462/Facsimile

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2151/Facsimile

J. E. Gallegos, Esq.
460 St. Michaels Drive, Suite 300
Santa Fe, New Mexico 87505
(505) 983-6686

Earl E. Debrine, Jr., Esq.
Modrall Sperling Roehl Harris & Sisk P.A.
Post Office Box 2168
Albuquerque, New Mexico 87103
(505) 848-1891/Facsimile



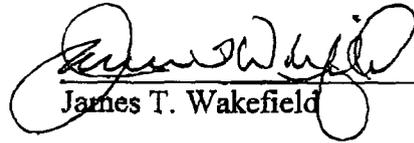
J. Scott Hall

6. I further requested of Ms. Townsend on May 26, 2005 that Chesapeake release all reports and other documents as specified in the Subpoena Duces Tecum, including daily rig reports, daily mud logs, and land data.
7. On May 31, 2005 Chesapeake per my request of May 26 added Samson to the distribution of their daily rig reports.
8. On June 1, I called Ms. Townsend in regard to their failure to release the daily rig reports, and she advised the rig reports had been sent to Samson on May 31, 2005. KFOC obtained copies of the daily rig report on June 1 from Samson.
9. I again requested in my June 1 conversation with Ms. Townsend that Chesapeake completely comply with the Subpoena Duces Tecum.
10. On June 2, 2005, Ms. Townsend called in regard to the progress of settlement, and I again requested that Chesapeake provide KFOC, Mewbourne, and Samson with all of the documents and materials specified in the May 5, 2005 Subpoena Duces Tecum, and in particular the daily mud log reports, and the open hole logs ran by Halliburton when Chesapeake chose to set 7" casing at a depth of 10,275' on May 31, 2005. I further stated that KFOC would not negotiate with Chesapeake for a settlement of the issues in this matter until such time as Chesapeake released the information requested in the Subpoena Duces Tecum.
11. Ms. Townsend indicated in our June 2 phone conversation that Chesapeake's legal department had made the decision to withhold all the remaining subpoenaed materials not currently released. Further, Ms. Townsend did not indicate there were any factors that would prevent Chesapeake from complying with the Subpoena Duces Tecum other than Chesapeake's legal department's decision to not comply.
12. At no time during my conversation with Ms. Townsend on June 2, 2005 did she indicate that Chesapeake had filed an amended APD to deviate the KF 4 State No. 1 well to a different bottom hole location than that specified in the pending hearing on the spacing issues for Section 4-21S-35E. Please note that Ms. Townsend and Chesapeake have not provided any documents related to the amended APD nor explained what well problems have caused them to change their drilling plan.
13. Chesapeake forwarded mud logs and open hole logs attributed to the KF 4 State No. 1 well on the afternoon of June 3rd following my request for such information on June 2nd. Further, Chesapeake added KFOC, Mewbourne, and Samson to the daily distribution list for the mud log reports that we continue to receive. Note that receipt of the mud logs and open hole logs was after Kaiser-Francis Oil Company filed the motion with the NMOCD on the morning of June 3 to Enforce

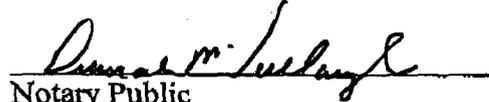
the Subpoena Duces Tecum that Ms. Townsend indicated that Chesapeake's legal department had said they would ignore.

14. On June 6, 2005, I reviewed Chesapeake's daily drilling reports and noticed that the wellbore was being deviated away from the bottom hole location previously approved by the NMOCD at 660' FSL and 990' FEL of Section 4-21S-35E as stated on Chesapeake's original APD dated March 10, 2005 which is the subject of a pending contested spacing hearing at the NMOCD. KFOC confirmed via the NMOCD web site that Chesapeake had prepared and filed amended C-101 and C-102 forms on June 2, 2005 reflecting a new bottom hole location 688 FSL and 1947 FEL of Section 4, and such forms were approved by the NMOCD District I office on June 3, 2005. At no time did Ms. Townsend or any one else from Chesapeake inform me or other parties at KFOC that the well was being deviated in spite of conversations with Ms. Townsend on June 1st and June 2nd.
15. The representations in Lynda Townsend's affidavit that Chesapeake has been in frequent communication with KFOC to keep KFOC, Mewbourne and Samson informed of the activity at the KF 4 State No. 1 well and Chesapeake's drilling plan for this well are false. Rather the information received by KFOC in regard to the drilling of the KF 4 State No. 1 wellbore as requested in KFOC's Subpoena Duces Tecum have been obtained only after numerous requests by myself to Ms. Townsend for her to obtain permission from the legal department and management of Chesapeake to comply with the NMOCD Order No. R-12343-A denying Chesapeake's Motion to Quash. Nor is it true that KFOC failed to request in writing or by phone the information requested in the Subpoena Duces Tecum. Additionally, it is not true that Chesapeake has been working diligently to comply with the NMOCD's order. Rather Chesapeake has chosen to delay the release of information set out in the Subpoena Duces Tecum which has been and remains readily available by simply including KFOC, Mewbourne and Samson to daily email distribution lists, and has now added complexity to an already difficult legal situation by deviating the KF 4 State No. 1 well to a completely new bottom hole location that was not part of their initial drilling plan and for which there is no mechanical or geologic reason to deviate the wellbore.
16. Other than my conversations with Ms. Lynda Townsend, the only contacts between Chesapeake and myself have been via emails from David Godsey distributing open hole logs, and mud logs, and emails from Stephanie Duggan distributing daily reports to myself. However, David Jones from Chesapeake's drilling department called Drew Tyler of KFOC's drilling department on May 27th to discuss Chesapeake's decision to set 7" casing at 10,275'. Mr. Tyler informed Mr. Jones that KFOC would not give them advice in the matter, but that well conditions would dictate the need to set 7" casing. Otherwise there has not been any contact between KFOC and Chesapeake personnel since the filing of the Subpoena Duces Tecum on May 5, 2005.

Further affiant sayeth not.

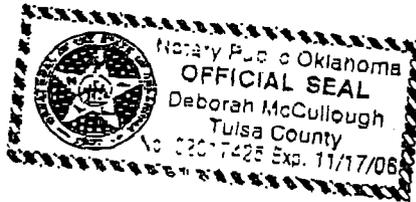

James T. Wakefield

Subscribed, sworn to and acknowledged before me on this 8th day of June 2005,
by James T. Wakefield.


Notary Public

My commission expires

11-17-06



District I
1625 N. French Dr., Hobbs, NM 88240
District II
1301 W. Grand Avenue, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Form C-101
May 27, 2004

Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505

Submit to appropriate District Office

AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

¹ Operator Name and Address Chesapeake Operating, Inc. P. O. Box 11050 Midland, TX 79702-8050		² OGRID Number 147179
³ Property Code 34679		⁴ API Number 30-025-37129
⁵ Property Name KF 4 State		⁶ Well No. 1
⁷ Proposed Pool 1 Osudo;Morrow,South(Gas) 82200		⁸ Proposed Pool 2

Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/Westline	County
X	4	21S	35E		660	South	990	East	Lea

Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/Westline	County
W	4	21S	35E		688	South	1947	East	Lea

Additional Well Information

¹¹ Work Type Code Amend Drlg Permit	¹² Well Type Code Gas	¹³ Cable/Rotary Rotary	¹⁴ Lease Type Code State	¹⁵ Ground Level Elevation 3621
¹⁶ Multiple	¹⁷ Proposed Depth 12100	¹⁸ Formation Morrow	¹⁹ Contractor Patterson	²⁰ Spud Date 04/27/2005
Depth to Groundwater 150'		Distance from nearest fresh water well 1000		Distance from nearest surface water 1000
Pit: Liner: Synthetic <input checked="" type="checkbox"/> 12 milst thick Clay <input type="checkbox"/>		Pit Volume: 12139 bbls		Drilling Method: Fresh Water <input checked="" type="checkbox"/> Brine <input type="checkbox"/> Diesel/Oil-based <input type="checkbox"/> Gas/Air <input type="checkbox"/>
Closed-Loop System <input type="checkbox"/>				

Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17.5	13.375	48	450	500	0
12.25	9.625	40	5350	1300	0
8.75	4.5	13.5	12100	650	4000 9500

²² Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.
The 4 1/2" casing cement is as follows: Lead: 500 sx of Interfill H + additives; Tail: 150 sx of Super H + additives

Permit Expires 1 Year From Approval Date Unless Drilling Underway
Horizontal



²³ I hereby certify that the information given above is true and complete to the best of my knowledge and belief. I further certify that the drilling pit will be constructed according to NMOCD guidelines a general permit , or an (attached) alternative OCD-approved plan .

OIL CONSERVATION DIVISION

Approved by:

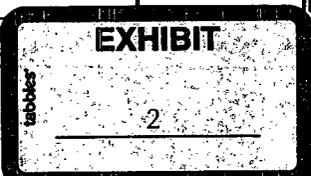
[Signature]
PETROLEUM ENGINEER

Printed name: Brenda Coffman
Title: Regulatory Analyst

Approval Date: JUN 03 2005 Expiration Date:

E-mail Address: bcoffman@chkenergy.com

Date: 6-2-05 Phone: (432)687-



Approval Attached

DISTRICT I
1625 N. French Dr., Hobbs, NM 88240

DISTRICT II
811 South First, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Artesia, NM 87410

DISTRICT IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised March 17, 1999

Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

OIL CONSERVATION DIVISION

2040 South Pacheco
Santa Fe, New Mexico 87504-2088

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number 30-025-37129	Pool Code 82200	Pool Name Osuda, Marrow South Gas
Property Code 34679	Property Name KF "4" STATE	Well Number 1
OCED No. 147179	Operator Name CHESAPEAKE OPERATING INC.	Elevation 3621'

Surface Location

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
X	4	21 S	35 E		660	SOUTH	990	EAST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
W	4	21 S	35 E		688	SOUTH	1947	EAST	LEA
Dedicated Acres 320	Joint or Infill	Consolidation Code	Order No.						

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

LOT 12 - 40 AC.	LOT 11 - 40 AC.	LOT 10 - 40 AC.	LOT 9 - 40 AC.
LOT 13 - 40 AC.	LOT 14 - 40 AC.	LOT 15 - 40 AC.	LOT 16 - 40 AC.

Paint of entry @ 11,400' (marrow)

Lat.: N32.5025°
Long.: W103.3688°
(NAD 27)

Lat.: N32.5025°
Long.: W103.3667°
(NAD 27)

MARCH 10, 2005

Date Surveyed
Signature & Seal of Professional Surveyor
7912
W.G. No. 5286
Certificate No. Gary L. Jones 7977

OPERATOR CERTIFICATION
I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.
Brenda Coffman
Signature
Brenda Coffman
Printed Name
Reg Analyst
Title
6-2-05
Date

SURVEYOR CERTIFICATION
I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision and that the same is true and correct to the best of my belief.

EXHIBIT