

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

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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST SOUTHWESTERN, INC. FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.3.100.D NMAC, FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.4.201 NMAC, 19.15.1.13.B NMAC, 19.15.3.116.D AS TO ONE WELL, DETERMINING THAT THE VIOLATIONS ARE KNOWING AND WILLFUL AND IMPOSING A PENALTY, REQUIRING OPERATOR TO BRING THE WELL INTO COMPLIANCE AND PROVIDE REQUIRED CONTACT INFORMATION BY A DATE CERTAIN, AND IN THE EVENT OF NON-COMPLIANCE AUTHORIZING THE DIVISION TO PLUG THE WELL, REMEDIATE THE LOCATION AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, LEA COUNTY, NEW MEXICO.

CASE NO. 14007

APPLICATION FOR COMPLIANCE ORDER
AGAINST SOUTHWESTERN, INC.

1. Southwestern, Inc. ("Operator") is a business operating three wells in New Mexico under OGRID 21386. Southwestern, Inc. is not registered as a corporation with the New Mexico Public Regulatory Commission.

2. In 1981 Operator became the operator of record for the State VC #001, API 30-025-03035, in Unit Letter L, Section 36, Township 17 South, 35 East, in Lea County, New Mexico.

3. Operator posted a \$7,500 single-well surety bond, No. A-E-71331-57, through American Employers' Insurance Company to secure its obligation to plug and abandon the State VC #001 well. OneBeacon Insurance Company has taken over bonds issued by American Employers' Insurance Company.

4. Operator has not registered its address or emergency contact information with the Oil Conservation Division (OCD).

5. OCD records show that the State VC #001 well has not reported activity since October 2002, and is neither plugged and abandoned in accord with 19.15.4.202 NMAC nor on approved temporary abandonment status in accord with 19.15.4.203 NMAC.

6. On May 16, 2007, during a routine inspection, OCD inspectors found the equipment at the State VC #1 well to be leaking and contaminating the soil.

7. On May 18, 2007, the OCD placed three phone calls to the Operator regarding the leaking tanks, using the phone number listed for "Southwestern, Inc." in the 2007 Hobbs Names & Numbers phone book, but was unable to contact the Operator. The address listed for Operator in the phone book – 10 W. Carlsbad, Lovington - turned out to be a vacant lot.

8. The OCD issued a notice of violation to Operator instructing the Operator to return the well to production, place it on approved temporary abandonment status or plug it, and to repair or replace the leaking tanks and clean up the contaminated soil. The OCD mailed the notice of violation to P.O. Box 1116, Lovington, NM 88260, the address on Operator's filings and on its bond.

9. The letter of violation was returned "not deliverable, unable to forward."

10. OCD rule 19.15.4.201 NMAC requires an operator to plug and abandon or temporarily abandon a well in accordance with Division rules within 90 days after a period of one year of continuous inactivity.

11. OCD rule 19.15.1.13.B NMAC provides, in relevant part, 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

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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.

12. OCD rule 19.15.3.116.D NMAC provides:

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 of 19.15.1 NMAC.

13. OCD rule 19.15.3.100.C NMAC requires operators to keep the division informed of their current address or record and emergency contact names and telephone numbers.

14. 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.

15. OCD rule 19.15.1.7.K defines “knowingly and willfully,” for purposes of assessing civil penalties, as

the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct’s knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of the law, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct’s knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

16. NMSA 1978, Section 70-2-33(A) defines “person” as used in the Oil and Gas Act to include “any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity.”

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

If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] 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.

WHEREFORE, the Enforcement and Compliance Manager of the Division hereby applies to the Director to enter an order:

- A. Determining that Operator is out of compliance with OCD rule 19.15.3.100.C NMAC by failing to keep the OCD advised of Operator’s address and emergency contact information;
- B. Determining that Operator is out of compliance with OCD rules 19.15.4.201 NMAC, 19.15.1.13.B NMAC, and 19.15.3.116.D NMAC as to the State VC #001;
- C. Determining that Operator’s plain indifference to and reckless disregard of the requirements of OCD rules, and Operator’s pattern of grossly negligent operations make the violations knowing and willful;
- D. Imposing a penalty on the Operator for the knowing and willful violation of 19.15.3.100.C NMAC, and the knowing and willful violation of 19.15.4.201 NMAC, 19.15.1.13.B NMAC and 19.15.3.116.D NMAC as to the State VC #001;

- E. Requiring the Operator to register its address and emergency contact information with the OCD as required by 19.15.3.100.C NMAC, and return the State VC #001 to compliance with 19.15.4.201 NMAC, 19.15.1.13.B NMAC and 19.15.3.116.D NMAC by a date certain;
- F. If the Operator fails to register its address and emergency contact information with the OCD and return the State VC #001 to compliance with 19.15.4.201 NMAC, 19.15.1.13.B NMAC and 19.15.3.116.D NMAC by the date set in the order, authorizing the OCD to
1. plug the State VC #001 in accordance with a OCD-approved plugging program and restore and remediate the location; and
 2. forfeit the applicable financial assurance; and
- G. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED,
this 18th day of September, 2007 by



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Conservation Division

- Case No. 14007. Application of the New Mexico Oil Conservation Division for a Compliance Order against Southwestern Inc. The Applicant seeks an order finding that operator is in violation of 19.15.3.100.C NMAC, and is in violation of 19.15.4.201 NMAC, 19.15.1.13.B NMAC and 19.15.3.116.D NMAC as to one well, determining that the violations are knowing and willful and imposing a penalty, requiring operator to come into compliance by a date certain and authorizing the division to plug said well in the event of non-compliance and forfeit the applicable financial assurance. The affected well is: State VC #001, 30-025-03035, L-36-17S-35E. The well is located approximately eight miles west of Humble City in Lea County, New Mexico.