

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR AN ORDER AGAINST McELVAIN OIL & GAS PROPERTIES, INC [OGRID 22044], FINDING THAT OPERATOR KNOWINGLY AND WILLFULLY VIOLATED RULE 50.F(1) [19.15.2.50(F)(1) NMAC] AS TO TWO WELLS AND ASSESSING MONETARY PENALTIES FOR THOSE VIOLATIONS PURSUANT TO NMSA §70 -2-14(B), AND FURTHER ORDERING THAT IN THE EVENT McELVAIN FAILS TO COMPLY WITH THE DIVISION'S ORDER, ASSESSING ADDITIONAL PENALTIES, SAN JUAN COUNTY.

CASE NO. 14186

McELVAIN'S AMENDED PRE-HEARING STATEMENT

McElvain Oil & Gas Properties, Inc. submits this amended pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

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RESPONDENT

McElvain Oil & Gas Properties

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McELVAIN'S STATEMENT OF THE CASE

On September 11, 2007, Inspector Kelly Roberts observed drilling pits at two well sites located in San Juan County: The Wiedemer #6 and the Wiedemer #7. Ten days after his inspection, Mr. Roberts notified McElvain of his findings and requested closure of the pits. Both pits were closed by September 25, 2007, under Division approved closure forms.

Four months later, on January 28, 2008, the Division's district office issued a Notice of Violation contending McElvain violated Rule 50(F)(1) by failing to close these pits within six months of the time that the production casing string was set and cemented. Upon receipt of the Notice of Violation, McElvain alerted the Division to the fact that it continued to use the pits during the well completion process and that these pits were closed within six months of the cessation of use. Indeed, Division records reflect the following:

For the **Wiedemer #7** well:

- A. A sundry report stating that the production casing string was set and cemented on January 27, 2007.
- B. A sundry report stating that casing pressure tests, fracing operations and perforation operations were conducted between March 12 and March 22, 2007;
- C. A sundry report stating tubing was run in the well and set on March 29, 2007;
- D. A sundry report stating the well was completed and ready to produce on March 30, 2007.

For the **Wiedemer #6** well:

- A. A sundry report stating that the production casing string was set and cemented on February 5, 2007.

- B. A sundry report stating that casing pressure tests, fracing operations, and perforation operations were conducted between March 13 and March 22, 2007;
- C. A sundry notice stating tubing was run in the well and set on April 5, 2007;
- D. A sundry notice stating that the well was completed and ready to produce on April 6, 2007.

Accordingly, McElvain closed these pits within three days of being contacted by the Aztec district office and within six months of the cessation of the use of these pits. Nonetheless, the Division seeks a \$5,000 monetary fine based solely on the grounds that these pits were not closed within six months of the time that the production casing string was set and cemented.

Since McElvain closed these pits “within six months after cessation of use” there has been no violation of Rule 50(F)(1), much less a knowing and willful violation. The Division’s reliance on when the casing string is set and cemented to suggest McElvain was outside the six month time frame is not supported by the language in Rule 50, has not been the subject of any public disclosure, and is arbitrary and capricious. Moreover, McElvain does not believe the Division has the statutory authority to pursue a finding of a knowing and willful violation or a penalty through an administrative process.

APPLICANT’S PROPOSED EVIDENCE

<u>WITNESS:</u>	<u>ESTIMATED TIME:</u>
John Steuble, Land Specialist	1 hour
Art Merrick, Engineer	10 minutes
Michael Bratcher, Compliance Specialist District 2, Artesia, New Mexico	1 hour

PROCEDURAL MATTERS

The authority of the Division to proceed with an administrative hearing on this type of matter is currently being reviewed by the New Mexico Supreme Court in the case styled *Marbob Energy Corporation v. New Mexico Oil Conservation Commission*, CV-2006-00014. Rather than wait for the Supreme Court to decide this legal issue, as Judge James A. Hall recently suggested would be the most prudent course, the Division has opted to proceed with its request for the imposition of a monetary fine.

In addition, the Division quashed McElvain's Second Document Subpoena without a hearing or without otherwise providing McElvain with an opportunity to respond to the Division's Motion to Quash. McElvain's Second Document Subpoena was issued after:

- (a) receipt of the Division's Prehearing statement indicating for the first time an intent to rely upon conversations that allegedly took place at a May 30, 2007 conference with the district office; and
- (b) failure by the Division to produce the district files in response to McElvain's first subpoena.

Since entry of the order quashing McElvain Second Documents Subpoena, counsel for the Division has nonetheless been diligently attempting to provide McElvain with all of the documents responsive to the Second Document Subpoena. McElvain understands the responsive documents will be produced on October 15th.

Respectfully,

Holland & Hart, LLP



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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I certify that on October 14, 2008, a copy of the foregoing document was hand
delivered to the following counsel of record:

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Michael H. Feldewert