

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 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.

FILED
2008 OCT 8 100

CASE NO. 14186

PRE-HEARING STATEMENT

The Oil Conservation Division submits this 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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APPLICANT'S STATEMENT OF THE CASE

Through this application, the Oil Conservation Division (OCD) seeks both a formal finding of noncompliance and an assessment of penalties against McElvain Oil & Gas Properties, Inc. ("McElvain"). Xeric is the Operator of Record for the following two wells:

- **Wiedemer #7**, Unit letter F, Section 34, Township 27 North, Range 10 West, API # 30-045-34056
- **Wiedemer #6**, Unit letter N, Section 34, Township 27 North, Range 10 West, API # 30-045-34059

On September 11, 2007, OCD Deputy Oil and Gas Inspector Kelly Roberts performed routine inspections of the two referenced wells. Inspector Roberts observed open drilling pits at both locations. Further investigation regarding McElvain's operations in New Mexico in general, and the two subject wells, specifically, revealed the following information:

- a. The pit permits for the Wiedemer #7 and the Wiedemer #6 were both approved on January 12, 2007. Both approvals were contingent on the operator's written confirmation that the pits had been or would be constructed and closed according to NMOCD guidelines. Both pits were specifically identified by the operator in the applications as "drilling" pits.
- b. McElvain submitted a sundry report reflecting that the production casing string had been set and cemented for the the **Wiedemer #7** well (indicating that the drilling process had been completed) on January 27, 2007.
- c. McElvain submitted a sundry report reflecting that the production casing string had been set and cemented for the the **Wiedemer #6** well (indicating that the drilling process had been completed) on February 5, 2007.
- d. On May 11, 2007, the OCD issued a Notice of Violation (NOV 3-07-15) for another matter relating to McElvain's Amacker #1 well, in which one of the violations asserted was a failure to close the pit at the Amacker site within 6 months of cessation of use per Rule 50.
- e. On May 30, 2007, representatives of McElvain attended an administrative conference at the OCD Aztec District Office to resolve the Amacker NOV. At that time, Rule 50 was specifically discussed, including the Division's policy for calculating cessation of use for purposes of enforcement. Further, McElvain was informed of the option of and process for requesting an extension of the 6 month

period of time for pit closure under Rule 50 (as is referenced at p.3, Paragraph 6(h) of the resulting Amacker ACO No. 196).

f. Despite the information provided in the Amacker NOV and during the May 30th administrative conference, McElvain neither proceeded to close the two Weidemer pits within 6 months of the cementing of their respective casings nor submitted a request to the OCD for an extension of time for pit closure for *either* of the two sites.

g. McElvain submitted a Pit Closure C144 form for the **Weidemer #7**, reflecting that the pit at that site was not closed until September 25, 2007. The C144 was approved by the OCD on October 16, 2007.

h. McElvain submitted a Pit Closure C144 form for the **Weidemer #6**, reflecting that the pit at that site was not closed until September 25, 2007. The C144 was approved by the OCD on October 16, 2007.

On January 25, 2008, based on the information gathered in the course of its investigation regarding this operator and these two wells, the OCD issued **Notice of Violation (3-08-02)** to McElvain addressing its failure to timely close the pits at these two sites. Following issuance of the NOV, an administrative conference was conducted which was attended by two representatives of McElvain, Charlie Perrin, OCD District III Supervisor, Brandon Powell District III environmental specialist, and Enforcement Officer Kelly Roberts. An agreement for resolution was reached at the conference, and an Agreed Compliance Order ("ACO") was prepared by the OCD reflecting the agreement negotiated between the parties at the time of the conference. McElvain never ultimately executed the ACO, however, and the Division therefore filed the present Application.

CONCLUSION & REQUEST FOR RELIEF

McElvain failed and refused to close both the Weidemer #6 pit and Weidemer #7 pit within the allotted period of time required by Rule 50.F(1) or to, alternatively, seek and obtain an extension of the 6 month time period permitted for pit closures. [19.15.2.50.F (1) NMAC]. McElvain had full knowledge of its obligations and of the available option for requesting an extension prior to the deadlines for closure of these two pits, and despite this knowledge took almost ten months from the date of cessation of use of each drilling pit to effect closure and at no time took steps to request an extension of time for closure. **McElvain thus knowingly and willfully violated OCD Rule 50.F (1)** [19.15.2.50.F (1) NMAC] by failing to either seek an extension of time for closure as provided under Rule 50.F(1) or close the two pits within the required time period.

The OCD therefore seeks an Order providing the following in this case:

1. Specifically and formally finding that McElvain **knowingly and willfully** violated OCD Rule 50.F (1) [19.15.2.50.F (1) NMAC] by failing to either seek an extension of time for closure as provided under Rule 50.F(1) or close the two pits within the required time period.
2. Requiring that McElvain pay a monetary penalty assessment in an amount of **\$5,000.00**, pursuant to NMSA 1978, Section 70-2-31(A), for its knowing and willful violations of Rules 19.15.2.50.F(1) NMAC no later than **fourteen (14) days** after issuance of the Division's Order.
3. Ordering that if McElvain fails to comply with the deadlines(s) established by this Order, additional penalties against McElvain of not less than \$1,000.00 for each full week of non-compliance with the Order shall be assessed.
4. For such other and further relief as the Director deems just and proper under the circumstances.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:

Charlie Perrin, OCD District III Supervisor
Kelly Roberts, Compliance Officer
Brandon Powell, District III Environmental Specialist
Daniel Sanchez, Compliance Enforcement Manger

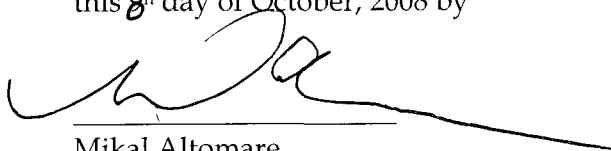
ESTIMATED TIME:

1 hour
30 minutes
30 minutes
30 minutes

PROCEDURAL MATTERS

A Petition was filed by Respondent with the First Judicial District Court to enjoin the OCD from proceeding with the requested Hearing until the New Mexico Supreme Court has issued a decision in *Marbob Energy Corporation v. New Mexico Oil Conservation Commission*, CV-2006-00014, addressing the Division's ability to assess penalties through the administrative hearing process. Counsel for the OCD filed a Motion to Dismiss. The Petition and Motion to Dismiss were heard simultaneously by District Court Judge Hall on September 9, 2008. Judge Hall granted the OCD's Motion to Dismiss and denied Respondent's Petition at that time.

Respectfully submitted
this 8th day of October, 2008 by




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Resources Department
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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed to counsel for McElvain, Mr. Michael Feldewert at MFeldewert@HollandHart.com, this 8th day of October, 2008.



Mikal Altomare