

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.

CASE NO. 14186

APPLICATION FOR ORDER FINDING NON-COMPLIANCE & ASSESSING
MONETARY PENALTY

PARTIES & JURISDICTION

1) McElvain Oil & Gas Properties, Inc. ("McElvain" or "Operator") is a domestic limited liability Corporation doing business in New Mexico, registered with the Public Regulation Commission under number 1574441. McElvain is an active entity with a principal address at 1050 17th St., Suite 1800, Denver, Colorado 80265. Its registered agent for service of process in New Mexico is John Catron, 2006 Botolph Road, Santa Fe, New Mexico, 87505. McElvain's OGRID is 22044, and its address of record as registered with the New Mexico Oil Conservation Division ("OCD") is 1050 17th Street, Suite 1800, Denver, CO 80265.

2) McElvain is the Operator of Record for the following wells:

Application for Order Finding Non-Compliance & Assessing Penalty
McElvain Oil & Gas Properties, Inc. (OGRID 22044)

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

APPLICABLE RULES/LAW

3) OCD Rule 50.F (1) [19.15.2.50.F (1) NMAC] requires that "a pit or below grade tank ... be properly closed within six months after cessation of use."

4) OCD Rule 50.F(1) further provides that Operators may seek a six-month extension of the period of time for closure, but the operator must make a showing of good cause to justify the extension for such a request to be granted by the Division.

APPLICATION OF THE DIVISION

5) On September 11, 2007, OCD Deputy Oil and Gas Inspector Kelly Roberts performed a routine inspection at the McElvain Wiedemer #7 and the Wiedemer #6 wells. Inspector Roberts observed open drilling pits at both locations.

6) Further investigation regarding the Wiedemer #7 and Wiedemer #6 revealed the following:

- a. The pit permits for the Wiedemer #7 and the Wiedemer #6 were approved on January 12, 2007. Both such permits were specifically approved based on the fact that the operator had attested that both 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. For the **Wiedemer #7** well, the OCD received a sundry from the operator reporting that the production casing string had been set and cemented (indicating that the drilling process had been completed) on January 27, 2007.
- c. For the **Wiedemer #6** well, the OCD received a sundry from the operator reporting that the production casing string had been set and cemented (indicating that the drilling process had been completed) on February 5, 2007.
- d. McElvain submitted a Pit Closure C144 form for the **Weidemer #7**, noting that the pit at that site was not closed until September 25, 2007. The C144 was approved by the OCD on October 16, 2007.
- e. McElvain submitted a Pit Closure C144 form for the **Weidemer #6**, noting that the pit at that site was not closed until September 25, 2007. The C144 was approved by the OCD on October 16, 2007.
- f. McElvain **did not** submit a request to the OCD for an extension of time for pit closure for *either* of the two sites, per Rule 50.F(1)

[19.15.2.50.F (1) NMAC], seeking additional time to complete the closure of these two pits.

7) As a result of its investigation, on January 25, 2008, the OCD issued **Notice of Violation (3-08-02)** to McElvain regarding the two Wiedemer sites.

8) 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. The ACO was never executed, however, and the Division has therefore filed the present Application seeking an Order of compliance and appropriate penalties based upon the referenced violations and pursuant to NMSA 1978, §70-2-31(A).

9) McElvain failed to close both the Weidemer #6 pit and Weidemer #7 pit within the allotted period of time required by Rule 50.F(1) [19.15.2.50.F (1) NMAC]. Rule 50.F(1) provides that an operator has a maximum time period of six-months from the cessation of use of the drilling pit when no extension is sought and/or granted for good cause shown. *Id.* In contrast, McElvain took almost ten months from the date of cessation of use of each drilling pit to effect closure. McElvain therefore 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.

10) Rule 50 and McElvain's obligations regarding the construction, use, maintenance and closure of pits had previously been brought to McElvain's attention when the OCD issued Notice of Violation (3-07-15) on May 11, 2007, with regard to the Amacker #1 site, located at Unit Letter L, Section 22, Township 23 North, Range 1 West, Sandoval County, New Mexico, API #30-043-21013. Although that site also involved other violations, one of the violations cited was a failure to timely close a pit as required by OCD Rules. Both the NOV, and the resulting ACO, specifically noted McElvain's failure to close the Amacker #1 drilling pit within six months of cessation of use *based upon the date of the cementing of the casing*. McElvain acknowledged the Amacker #1 pit violation by executing **ACO 196** (which was fully executed by both a representative of McElvain and the Division on September 25, 2007).

11) By executing ACO 196, McElvain was fully informed regarding its obligations under Rule 50.F(1) and the OCD's enforcement thereof with regard to pit construction, use, maintenance and closure because the ACO contained express language putting McElvain on specific notice as to Rule 50.F(1) with regard to:

- a. the requirement that operators close drilling pits within six months of cessation of use;
- b. that operators can, for good cause shown, request and obtain a six month extension for the time period to close a pit; and
- c. that the date that the casing string is set and cemented is considered by the OCD to be the date of cessation of use of the drilling pit.

12) Prior to the deadline for closure of these two pits, McElvain was therefore aware that:

- a. It was required to close drilling pits within six months of cessation of use;
- b. A six-month extension could be requested and obtained, upon a showing of good cause, for the closure of the pit; and
- c. The setting and cementing of the casing string was the date used by the OCD for purposes of calculating date of cessation of use of a drilling pit.

13) NMSA 1978 Section 70-2-31(A) provides in relevant part, “[a]ny 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.” *Emphasis added.*

14) NMSA 1978, section 70-2-33(A) defines “person” in relevant part as “any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity....”

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

- A. Finding that McElvain **knowingly and willfully** violated Rule 50.F(1) as to both the Weidemer #7 and the Weidemer #6 because it failed to close the drilling pit for these sites within six months of cessation of use of each as required by OCD Rules, and did not otherwise seek an extension as provided by the Rules.
- B. Ordering that McElvain be required to pay a penalty assessment in the amount of **\$5,000.00** no later than fourteen (14) days after issuance of the Division's Order .
- C. 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;
- D. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED, this 20th
day of August, 2008 by:



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Conservation Division

CASE NO. 14186. 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.

- The wells at issue in this Application is identified as follows:
 - a. **Wiedemer #7**, Unit letter F, Section 34, Township 27 North, Range 10 West, API # 30-045-34056
 - b. **Wiedemer #6**, Unit letter N, Section 34, Township 27 North, Range 10 West, API # 30-045-34059

The subject wells are located approximately 15 miles Southeast of Bloomfield, NM, approximately 4 miles to the East of State Route 550 in San Juan County, New Mexico.