

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE ENVIRONMENTAL BUREAU CHIEF, FOR AN ORDER
DETERMINING THE RESPONSIBLE PARTY OR PARTIES AND ORDERING
THE RESPONSIBLE PARTY OR PARTIES TO COMPLETE AND PERFORM
AN ABATEMENT PLAN PURSUANT TO DIVISION RULE 19; LEA COUNTY,
NEW MEXICO.**

**CASE NO. 13061 (Re-opened)
ORDER NO. R-12280**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 2, 2004, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 28th day of January, 2005, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT;

(1) Due public notice has been given, and the Division has jurisdiction of this case and its **subject matter**.

(2) Division records provide the following background for this case.

(a) In January of 1999, the Environmental Bureau of the Division began an investigation of salt contamination of soils and fresh water within the South **Langlie Jal** Unit, located in Sections 7, 8, 17 & 18, Township 25 South, Range 37 East, Lea County, New Mexico. Division investigation have indicated that ground water in drinking water wells and in monitor wells located on the South **Langlie Jal** Unit, is contaminated with chlorides and total dissolved solids in excess of New Mexico Water Quality Control Commission standards. In addition, there are tank batteries with associated produced water and petroleum spills, an **unlined** flare pit and produced water line leaks located **hydrologically up-gradient** from some of these wells.

(b) The Division required Bristol Resources Corporation ("Bristol"), the operator at the time the investigations commenced, to submit an Abatement Plan for the South **Langlie Jal** Unit to investigate and abate ground water pollution.

(c) After bankruptcy of Bristol, the Division required Chaparral Energy, L.L.C. ("Chaparral") as successor operator, to submit an "Abatement Plan" for the South Langlie Jal Unit to investigate and abate ground water pollution.

(d) On April 25, 2002, the Division administratively approved Chaparral's Stage 1 Abatement Plan proposal and issued an extension of the deadline for submission of a Stage 1 Investigation Report from July 31, 2002 to October 31, 2002. The extension was requested to provide time for Chaparral to negotiate access to the contaminated site in order to conduct the required investigations.

(e) Without submitting the Stage 1 Investigative report, Chaparral, on November 7, 2002, sold the South Langlie Jal Unit to Smith & Marrs, Inc. ("Smith & Marrs").

(f) On January 13, 2003, the Division issued a Notice of Violation pursuant to Rule 19.C(2) to both Chaparral and to Smith & Marrs, and required that they submit a Stage 1 Investigation Report by February 17, 2003. To date, neither of these entities has submitted a Stage 1 Investigation Report.

(3) On March 20, 2003, the Division, through the Environmental Bureau Chief, filed the original application in this case seeking a compliance order to require Chaparral or Smith & Marrs to complete the ordered Stage 1 Abatement Plan and file the required Stage 1 Investigation Report. The application of the Division came for hearing before a Division hearing examiner on July 15, 2003 and the following occurred.

(a) On the day of the hearing, the three parties (Chaparral, Smith & Marrs, and the Division) through their attorneys, negotiated a settlement of the issues raised by the Division's application.

(b) The parties executed a written Settlement Agreement, which was signed by all parties and lastly on behalf of the Division by the Energy, Minerals and Natural Resources Department on November 17, 2003.

(c) After all parties had signed the Settlement Agreement, the case was dismissed. The dismissal was effective December 16, 2003 by Order No. R-12067.

(4) The Settlement Agreement contained the following:

(a) Both Chaparral and Smith & Marrs admitted no fault from their oil and gas operations in polluting drinking waters;

(b) the landowner was not a party to the agreement;

(c) Smith & Marrs specifically agreed to "fully perform the approved Stage 1 Abatement Plan as submitted by Chaparral and approved by OCD, and to file the Stage 1 Investigative Report not later than ninety (90) days after the execution of this Agreement by the last party to execute same";

(d) Smith & Marrs shall "make a good faith effort to negotiate an access agreement with the surface **landowner(s)** as necessary for implementation of the Stage 1 Abatement **Plan**. In the event that Smith & Marrs is unable to obtain an access agreement from the surface **owner(s)** and institutes legal proceedings to secure an injunction authorizing such access for the purpose of performing the Stage 1 Abatement Plan, Smith & Marrs will notify OCD of such filing and of the date, time and place of any hearing"; and

(e) the Division reserves the right to seek civil penalties against Smith & Marrs for any breach of this Agreement.

(5) The Division has now alleged that Smith & Marrs failed to comply with the terms and conditions of the Settlement Agreement, has re-opened Case No. 13061, and seeks an order:

(a) requiring Smith & Marrs to submit a Stage I Investigation Report for approval by the Division by a date fixed in the order; and

(b) imposing civil penalties against Smith & Marrs for failure to comply with Rule 19.C(2) and with the terms of the Settlement Agreement, not to exceed \$1,000 per day from February 15, 2004, to the date of this order.

(6) Chaparral and Smith & Marrs both made appearances in this case. They were both represented at the hearing by counsel, but neither presented witnesses for testimony. No other parties made appearance in this case. The counsel for Smith & Marrs requested a continuance of the case, the request for continuance was opposed by the applicant, and denied by the Examiner.

(7) The Division presented testimony and exhibits as follows.

(a) Smith & Marrs has not performed the Stage 1 Abatement Plan and has not filed the Stage 1 Investigative Report.

(b) Smith & Marrs sent one letter, on two separate dates, to the landowner seeking written permission to enter the property to drill monitor wells. In response to each letter, the landowner wrote to Smith & Marrs and asked to meet with them. A consultant working for Smith & Marrs, with no authority to negotiate an agreement with the landowners, met with the landowners to discuss their concerns. Smith & Marrs had no other contact with the landowners.

(c) Smith & Marrs did not file for **injunctive** relief to obtain authority to enter the property until two days before the hearing in this matter - approximately six and one half months after the compliance deadline provided by the settlement agreement.

(d) Smith & Marrs did not request an extension of the 90-day deadline for compliance provided by the settlement agreement.

(8) After hearing testimony and reviewing the opinions and facts in this case, the Division finds as follows:

(a) Smith & Marrs had opportunity to apply to the courts to obtain access to this site in order to perform the necessary tests, yet delayed by many months to file for this relief.

(b) Since the Settlement Agreement was signed, the Division's Environmental Bureau and Smith & Marrs have not contacted each other concerning this matter. However, the plan of action was already agreed upon and such contact was not required.

(c) Under the terms of the Settlement Agreement, Smith & Marrs agreed to perform the Stage 1 abatement plan pursuant to Rule 19.C(2) and file the Stage 1 Investigative Report not later than ninety days after the execution of the Settlement Agreement. Smith & Marrs further agreed to make a good faith effort to negotiate an access agreement with the surface landowners, and institute legal proceedings for **injunctive** relief if negotiations failed.

(d) Smith & Marrs did not make a good faith effort to negotiate an access agreement with the surface landowners, and took no action to obtain injunctive relief until approximately six and one half months after the Settlement Agreement's compliance deadline.

(e) Smith & Marrs knowingly and willfully violated Rule 19.C(2) by failing to perform the Stage 1 Abatement Plan after assuming that responsibility under the terms of the Settlement Agreement.

(f) Approval of the application of the Division through the Environmental Bureau Chief should be approved and Smith & Marrs should be fined \$1,000 per day from 90 days after the Settlement Agreement was signed by all parties to the date Smith & Marrs filed for injunctive relief to the courts.

IT IS THEREFORE ORDERED THAT:

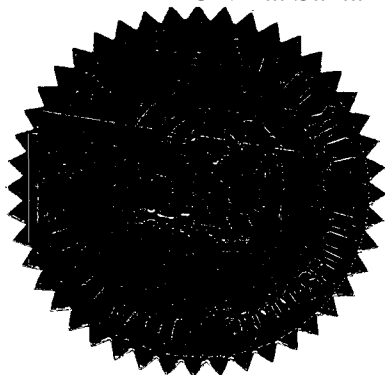
(1) Smith & Marrs Inc. is hereby fined \$197,000 for its knowing and willful failure to comply with Rule 19.C(2).

(2) Smith & Marrs Inc. is hereby ordered to submit an approved Stage I Investigation Report to the Division's Environmental Bureau by May 1, 2005.

(3) In the event of **noncompliance** with ordering paragraph (2) above, Smith & Marrs Inc. shall pay to the Division an ongoing fine of \$1,000 per day beginning May 2, 2005, and payable at the end of each month.

(4) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director