

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 14323  
ORDER NO. R-13154-A**

**APPLICATION OF CHESAPEAKE ENERGY  
CORPORATION FOR CANCELLATION OF  
A PERMIT TO DRILL (APD) ISSUED TO  
COG OPERATING, LLC, EDDY COUNTY,  
NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on August 20, 2009, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 21<sup>st</sup> day of September, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

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

(2) Chesapeake Energy Corporation ("Applicant" or "Chesapeake") asks the Division to cancel its approval of an Application for Permit to Drill (APD) filed by COG Operating, LLC ("COG") for its proposed Blackhawk 11 Federal Com. Well No. 1 (API No. 30-015-36541) (the proposed well). The proposed well is to be a horizontal well in the Wolfcamp formation, with a surface location 430 feet from the South and West lines (Unit M) of Section 11, Township 16 South, Range 28 East, NMPM, in Eddy County, a point of penetration 426 feet from the South line and 621 feet from the West line (Unit M) of the same section, and a terminus 330 feet from the South and East lines (Unit P) of the same section.

(3) COG plans to dedicate the proposed well to a 160-acre project area consisting of the S/2 S/2 of Section 11, and comprising four adjacent, standard 40-acre spacing and proration units.

(4) Both Chesapeake and COG appeared at the hearing through counsel and presented testimony. The following facts are undisputed:

(a) COG owns working interests in the S/2 of the SE/4 of Section 11, but does not own any working interest in the S/2 SW/4 of Section 11. The only ownership interest that COG holds in the S/2 of the SW/4 of Section 11 is a contractual easement or license to use the surface of the SW/4 SW/4 for a well site and access.

(b) COG intends to complete the proposed well in the Wolfcamp formation in all four quarter-quarter sections of the project area, including the SW/4 SW/4 and SE/4 SW/4 of Section 11.

(c) Oil and gas ownership within the project area has not been consolidated, either by voluntary agreement or by order of the Division.

(5) Chesapeake contends, and the Division concludes, that the Division's approval of the APD should be cancelled by reason of the undisputed facts set forth in Finding Paragraph (4).

(6) Although the Division has no jurisdiction to determine ownership, this case requires no such determination, since ownership is undisputed. The sole question is whether the Division properly approved the APD in view of the undisputed fact that COG owns no oil and gas interest in portions of the area that the drill bit will penetrate.

(7) This case is controlled by the decision of the Oil Conservation Commission ("the Commission") in Order No. R-12343-E, issued in consolidated Cases Nos. 13492 and 13493. In those cases, Chesapeake Operating Inc. obtained approval of an APD for, and proceeded to drill, a vertical Morrow well at a location where it owned no interest. Although it owned an interest in a portion of the 320-acre unit it sought to dedicate to the well, it had not, as COG has not in this case, obtained a voluntary agreement, or compulsory pooling order, consolidating ownership in the 320-acre unit.

(8) In Order No. R-12343-E, the Commission, construing a previous order, stated:

"In *Application of Pride Energy Company, etc.* [Order No. R-12108-C], the Commission found that an operator *could file* an application for permit to drill before it filed a pooling application. It did not find that an operator could actually drill a well on acreage in which it had no interest before the Division or Commission decided a pooling application. [Order No. R-12343-E, Finding Paragraph 30, page 6. Emphasis added.]

(9) In Finding Paragraph 33 of the same Order, the Commission admonished the Division to continue requiring that operators filing APDs certify that they have an ownership interest at the proposed location. The certification of ownership language counseled by the Commission in Order No. R-12343-E is the same language that appears on the form C-102 filed by COG with their APD in this case.

(10) Although Order No. R-12343-E concerned, and the certification language it approved for APDs was drafted with reference to, a vertical well, the same concerns that evidently prompted the Commission's approval of this certification language apply equally to horizontal wells.

(11) COG now has an approved APD which, under applicable Division rules, authorizes it to proceed at any time to drill the proposed well and complete it in all four of the units included in the proposed project area, even though it owns no interest in the oil and gas in two of those units. If COG were to do this prior to obtaining voluntary or compulsory pooling, it would undoubtedly constitute a trespass under applicable property law, and it would pre-empt the Division's authority to determine the configuration of any compulsory pooled unit by confronting the Division with a *fait accompli*.

(12) COG's ownership of an easement or license authorizing its use of the surface location of the proposed well does not distinguish this case from the case decided in Order No. R-12343-E because a surface easement or license does not, and cannot, authorize the drilling and completion of a horizontal well in the subsurface without the approval (actual or compelled) of at least one owner of oil and gas rights in each tract to be included in the project area.

(13) For the foregoing findings the Division's approval of the APD for the proposed well should be cancelled.

(14) This APD was filed with, and approved by, the United States Bureau of Land Management (BLM). The Division has no jurisdiction with respect to the BLM's approval of the APD. However, the Division's action cancelling its approval of the BLM-approved APD does not affect BLM's approval. The proposed well cannot be drilled without the approval of both agencies. The Division's approval could be reinstated in the event that a voluntary or compulsory pooling consolidates ownership in the project area. Presumably BLM's approval remains viable until it expires or BLM takes action to rescind its approval. If the Division were to reinstate its approval while BLM's approval remains in force, the well could be drilled without re-application, unless BLM were to determine otherwise. Accordingly, the Division's lack of jurisdiction over BLM's approval is not an obstacle to the Division's cancellation of its own approval.

**IT IS THEREFORE ORDERED THAT:**

(1) The Division's approval of the APD filed by COG Operating, LLC for its proposed Blackhawk 11 Federal Com. Well No. 1 (API No. 30-015-36541) is hereby

cancelled, without prejudice to its reinstatement in the event of a voluntary or compulsory pooling of the oil and gas interest within the proposed project area.

(2) Jurisdiction of this case 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

A handwritten signature in cursive script, reading "Mark E. Fesmire".

MARK E. FESMIRE, P.E.  
Director