



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana State Office
5001 Southgate Drive
Billings, Montana 59101-4669
<http://www.blm.gov/mt>

In Reply Refer To:

SDR-922-10-01
3160 (MT9220.WL)

July 19, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DECISION

Mr. Eric H. Olsen)	
JAKE Oil LLC)	
208 N. 29 th Street, Suite 230)	SDR No. 922-10-01
Billings, Montana 59101)	
)	

AFFIRMED

JAKE Oil LLC (JAKE), requested a State Director Review (SDR) of the June 24, 2010, decision of the Miles City Field Office (MCFO) Assistant Field Manager. The decision reiterated a May 19, 2010, written order which required removal of trash and unnecessary equipment, clean up of an oil spill, removal of vegetation, rebuilding of containment dikes, and repair of tanks at Well No. 41-2. The SDR request was considered timely filed on July 2, 2010, in accordance with 43 CFR 3165.3(b) and was assigned number SDR 922-10-01.

BACKGROUND

JAKE is the recognized operator of Well No. 41-2 located in the NENE of Section 2, T. 8 N., R. 24 E. in Musselshell County, Montana on Lease MTM063166. The well was drilled in 1980, and JAKE became the operator of the well in 2005. The well is currently shut-in, and approval for the shut-in was granted by the MCFO until December 1, 2010. Following a routine inspection of the well and facilities, the MCFO issued a written order to JAKE on May 19, 2010.

The written order contained five requirements:

All scattered trash, debris, and unnecessary equipment shall be cleaned-up and immediately removed off location as stated in the approved APD and disposed of in a state approved facility by June 30, 2010.

Oil spill shall be collected and disposed of in a state approved facility by June 30, 2010. Contaminated soil will be removed and sent to a landfarm for treatment. New soil will be brought in to replace contaminated soil.

A certification that contaminated soil was sent to a landfarm shall also be submitted to the Bureau of Land Management (BLM) with Sundry Notice identifying name and location of treatment site.

Facility area shall have all vegetation removed and surfacing material laid within fenced area to address fire and safety concerns as stated in the approved APD and 43 CFR 3162.5-3 by June 30, 2010. Please note that burning or applying herbicide would require a BLM permit.

Earthen dike shall be rebuilt to enclose facility tanks and treated by June 30, 2010. The dike must be a minimum of 2 feet high or designed to contain one day's production, whichever is greater. The dike must be maintained year round. The dike can be covered with gravel or scoria to prevent erosion.

Tanks shall be repaired so they are safe to use for production and inspection by the BLM by June 30, 2010.

In a letter dated June 1, 2010, JAKE responded to the MCFO written order. JAKE stated that there are ownership issues and that JAKE is not capable of moving ahead on any costly repairs to the property. JAKE also addressed each of the requirements in the written order:

“Garbage etc. As mentioned, the scattered debris has been picked up and stored out of sight. Pump jack is a usable unit and has been in place for over ten years even with previous owner to JAKE. The unit is costly to move but will be moved when possible to State battery location. The blue storage units have been on location for an extended period of time as well. These items were addressed with BLM office upon JAKE taking possession of property five years ago. The agreement was to leave them in place as is for storage of miscellaneous items. We take exception that you want us to move them now. They are of use and we would like to have BLM honor our original understanding. We made a huge effort over the first year of ownership to remove tons of unusable material. The site is pristine compared to what we inherited. There is no drill pipe on location. There are several joints of fiberglass pipeline which we will use in field once production is re-established this summer. We see no other action necessary on this lease. For your information, any good and valuable items that are needed for continuance of production need to be stored within the property to minimize delays and cost of transportation. This fenced in area is such a sight for storage and was agreed upon by JAKE and BLM previously.

Oil spill. Upon inspection this past weekend, it was determined that the oil that leaked from the empty tank and spread to the west is only a skim on the surface of the soil. The nature of this waxy crude does not allow it to soak in. In fact the slight depression where oil accumulated was full of rain water and only had a couple of ounces of oil dispersed on top. The best way to handle this is to scrape up and landfarm the small bit of oil on location. The total extent of oil is

estimated to be less than barrel. Not enough to warrant doing anything different. The unexpected discharge emanated from the abandoned water tank which had been previously emptied. The spill was not dealt with until now as the foul weather through winter up to present has not allowed good access to area. We will get this done by June 30 upon your approval to do so.

Overgrown vegetation. As mentioned, partner problems have eliminated funds for continuing with weed control. Hope to have weeds dealt with by June 30. We would like to spray with defoliant such as Roundup if approved by your offices. Where do we get a permit for such.

Earthen dike around facility. Upon review this weekend, there appears to be a dike around tanks which keeps fluid within a border up to pit fence. The berm which is not real visible due to tall grass is in need of some repair. This repair will be done upon startup of operation and will be maintained in the future at the two foot level. JAKE will need a temporary stay or extension until such time. There is no operation moving any fluids at this time.

Production tanks in safe condition. The loss of the lower portion of tin is concern but does not affect safe operation. The recovered tin with new insulation will be replaced when the operation resumes. In the meantime, the remaining tin will be maintained on site until work deems it necessary.”

On June 24, 2010, the MCFO responded to JAKE. The MCFO reminded JAKE that they were the approved operator and therefore responsible for compliance with all requirements associated with operations on the lease. The MCFO also readdressed each of the five requirements:

- Regarding the storage of equipment, the MCFO stated that they could not find any record of an agreement between JAKE and the BLM. They reminded JAKE that all unnecessary equipment such as the pump jack, two tanks, pipe, and blue storage units need to be removed. They also stated that relocating garbage and debris out of site is not acceptable.
- Regarding the oil spill, the MCFO reiterated the need to clean up the spill and dispose of the contaminated soils in an approved facility. They also stated that landfarming on BLM surface would require an approved plan.
- The MCFO reiterated the requirement to remove the vegetation.
- Regarding the dikes, the MCFO stated that the current earthen dike around the facility is not adequate and is to be rebuilt as required by the written order. They also stated that the dike must be maintained year round.
- The MCFO stated that the production tanks that are not maintained in a safe and workmanlike manner to perform operations still need to be cleaned up. Excess tin and insulation torn off the tanks can be replaced with new material or it can be cut and maintained so no excess debris is on location and the tanks are clean and orderly.

The MCFO reminded JAKE that they need to comply with the written order dated May 19, 2010. The letter also reminded JAKE to submit a sundry notice documenting all corrective actions taken after completion of the work required.

JAKE submitted a sundry notice to the MCFO dated June 28, 2010. The sundry notice contained the following:

“JAKE Oil, LLC respectfully requests extension of time of (90) Ninety days to complete necessary work requested by the BLM. Due to inclement weather, the minor oil spill has been partially handled by siphoning off skim of oil and placing oil and water mixture in the northernmost storage tank. Estimated oil volume was 5 gallons collected. Estimated oil remaining to collect is an additional five gallons.

Regarding overgrown vegetation. Vegetation was mowed first part of June. Growth was checked on June 24th with no observed growth. Vegetation growth will be maintained as necessary.

Tin and insulation debris were collected from site. A portion of the tin is stored on site until such time the tin will be used to repair that lost on tank. If not used then, the tin will be hauled to county landfill.

Berms will be improved upon startup of operation.

Fiberglass pipe will be consumed upon startup of operation.”

The MCFO has not yet acted upon the sundry notice.

JAKE filed a request for a SDR which was received on July 2, 2010. JAKE states that the MCFO requests are arbitrary, capricious, and unreasonable and are putting JAKE in a financial predicament. JAKE also states that the property is shut-in with BLM approval and that it is trying to alleviate partner and landowner disputes within the unit. JAKE also addressed the specific requirements of the original MCFO written order and June 24, 2010, follow-up letter.

Regarding the extra equipment, JAKE states that this equipment has been on the location for over ten years. JAKE states that this issue came up with the MCFO two years ago and was dropped by the BLM after explaining the equipment is part of the operation and is included within the fenced secure area. JAKE also states that it would be an extreme financial burden and operational disadvantage to move this to another location. JAKE explains that the existing 100 barrel tank has a hole in it and is bypassed for the moment and the second tank is intended on being put into production when operations resume. The fiberglass pipe is on location as it is to be used to replace a section of flow line when operations resume. JAKE also states that it has not been able to locate any specific references to BLM rules and/or regulations that speak to unnecessary equipment on location. JAKE states that the sections of the APD referred to in the original written order apply to the trash and debris left upon cessation of drilling activity and that

the APD has no language regarding future tank battery setup specifying equipment required. JAKE states that the two blue storage units were moved in for equipment storage at some later date after completion of the well.

Regarding the oil spill, JAKE reiterates that inclement weather has hampered their cleanup. JAKE has siphoned off a majority of the oil floating on the water. The oil which was estimated at five gallons was put into the northernmost oil storage tank and the extent of the oil which has emanated from the abandoned tank is minimal. It is scum on top of the water and the estimated volume is ten gallons. This oil is paraffin based with a high pour point and does not soak into the soil. Therefore, there is very little contamination of soil, and certainly not enough to warrant digging up and hauling to some approved site. JAKE states that it will continue to skim the remaining few gallons of oil from the water and put it in the storage tank. Once the majority of the oil is removed from the water, the area can be reworked with the existing soil as the berm is enhanced. JAKE also states that it would be extraordinary and a financial hardship to even think of excavating any of the soil and going through the expense of hauling it to a distant location. JAKE states that the best way to handle this small bit of oil is to keep it on location and landfarm within the berm area.

JAKE states that the overgrown vegetation has been mowed and will be monitored throughout the summer.

JAKE claims that the earthen dikes are more than adequate to handle all volumes, especially considering the property is shut-in. JAKE states that the dikes will be reconstructed where necessary when operations continue.

JAKE also states that the northernmost production tank did lose a good portion of its tin and insulation. This has all been cleaned up and upon successful startup and operation, will be replaced before winter months. JAKE claims the tank is still very operational and is in a safe and workmanlike condition.

DISCUSSION

JAKE is the recognized operator of this well, and JAKE has not disputed this fact. Although JAKE claims that there are partner disputes and that JAKE sold the property to another company over three years ago, it does not relieve JAKE from fulfilling its obligations as operator of the well. As defined in 43 CFR 3160.0-5, operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof. Since JAKE is the operator of the well, it is responsible for all operations.

Equipment on Location

Jake claims that all of the equipment on the location has been in place for many years. The MCFO does not dispute this claim. However, just because equipment has been on the location

for an extended period of time does not mean it is authorized. JAKE claims that it has an agreement with the MCFO to keep the equipment on the location. JAKE did not provide any evidence of such an agreement. A search of the MCFO files does not indicate any type of agreement was reached regarding the equipment on location.

JAKE claims that Section 7.6 of the Surface Use Plan included in the approved APD only applied to the drilling of the well and that it does not discuss unnecessary equipment or the tank battery setup. JAKE is correct that the Surface Use Plan does not specifically discuss unnecessary equipment or the tank battery setup. However, Section 7.6 states that the wellsite will be cleaned of all trash and debris. This applies to drilling and continued operations of the well.

As for equipment on location, an operator is allowed to utilize the lease for all necessary facilities and equipment. Section 1 of the lease states;

“The lessee is granted the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits, except helium gas, in the lands leased together with the right to construct and maintain thereupon, all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof...”

This right comes from the Mineral Leasing Act. However, the right is limited to surface occupancy reasonably necessary for lease operations. R. L. Hoss, 137 IBLA 193 (1996). Therefore, the question of the equipment on the location boils down to what equipment is reasonably necessary for lease operations.

There appears to be issues regarding four different items on the location; the unused pump jack, two tanks, the blue storage units, and the stored pipe. As stated by JAKE, the unused pump jack has been on the location for over ten years. JAKE claims that it is a usable unit and will be moved when possible to the State battery location. Since the pump jack has been on location for over ten years and is not needed on the well (the well has an operating pump jack on it) on this lease, the pump jack clearly is not reasonably necessary for lease operations and should be removed.

JAKE states that the existing 100 barrel tank has a hole in it and is bypassed for the moment, and the second tank on location is intended on being put into operation when well operations resume. In its June 1, 2010, letter, JAKE refers to one of the tanks as “the abandoned water tank”. It is unclear from the available information how long these two tanks have been on location and not in use. It is also unclear if the tanks were previously used in the operation of this well or were simply brought to the location for storage. If they have been unusable for an extended period of time, they are clearly not reasonably necessary for lease operations, and should be removed from the location. Since the MCFO has requested that the tanks be removed, they deem that the tanks are not necessary for lease operations. However, if JAKE does have plans to utilize these tanks, JAKE could submit a sundry notice to the MCFO explaining the intended use of the tanks, the

repairs necessary on the tanks, and a reasonable timeframe for completing the work on the tanks. The MCFO would evaluate the request and take the appropriate action which may include denying the request, approving the request, or approving the request with certain conditions of approval. Please keep in mind that if the tanks are to be used for the storage and sale of oil, they must meet the requirements of Onshore Oil and Gas Orders 3 and 4.

JAKE states that the blue storage units have been on the location for an extended period of time and are used for storage of miscellaneous items. JAKE claims that they are of use and are part of the operation. It is unclear what is being stored in the units, how often any of the items stored in the units are being used, why it is necessary to store any items for an extended period of time on the location, and why two storage units are necessary. As stated above, only those items reasonably necessary for lease operations are allowed on the location. It is very atypical for storage units to be necessary on Federal well locations. Since the MCFO has requested that the storage units be removed, they deem that the storage units are not necessary for lease operations. If JAKE believes that these storage units are necessary for lease operations, JAKE could submit a sundry notice to the MCFO requesting approval for utilizing the storage units and justifying their continued use. The MCFO would evaluate the request and take the appropriate action which may include denying the request, approving the request, or approving the request with certain conditions of approval.

The last item in question is the pipe stored on location. It is unclear how long the pipe has been stored on the location. If it has been on location for an extended period of time, it has clearly not been reasonably necessary for lease operations. JAKE claims that the pipe will be used to replace a section of flow line when operations resume. Since the MCFO has requested that the pipe be removed, they deem that the pipe is not necessary for lease operations. If JAKE has plans to use the pipe in the near future, JAKE could submit a sundry notice explaining exactly where the pipe is to be used and a reasonable timeframe for installing the pipeline and requesting approval for temporary storage of the pipe. The MCFO would evaluate the request and take the appropriate action which may include denying the request, approving the request, or approving the request with certain conditions of approval.

Oil Spill

It is unclear what relief, if any, JAKE is seeking regarding the oil spill. There clearly is a spill of oil, and JAKE, as the operator is responsible for cleanup. The MCFO has ordered the removal of the oil and has required that the contaminated soil be removed and sent to a landfarm for treatment. JAKE has stated that it would be a financial hardship to excavate and haul the contaminated soil and that onsite landfarming is the best way to handle the soil. The MCFO has told JAKE that a BLM approved plan would be required in order to landfarm at the location.

The MCFO clearly has the authority to require removal and treatment of the oil and contaminated soils. Operators are required to “conduct operations in a manner which protects the mineral resources, other natural resources and environmental quality” and to “comply with the pertinent orders of the authorized officer.” 43 CFR 3162.5-1(a); see also 43 CFR 3162.1. In addition, operators are required to “exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants.” 43 CFR 3162.5-1(c). It

is thus evident that the BLM has the authority under the regulations to order an oil and gas operator to remove oil saturated soil from leased lands. Willard Pease Oil and Gas Company, 89 IBLA 239 (1985).

JAKE apparently has made little progress on cleaning up the spill due to inclement weather. As a prudent operator, JAKE should take whatever actions are necessary to ensure the spill is cleaned up. All liquids, water and oil, could be collected using a vacuum truck. The soil then could be excavated. Landfarming the spill onsite may be an acceptable method to handle the cleanup, but JAKE has not submitted a remediation plan for approval. Therefore, the original order is still applicable as written. JAKE has requested a 90 day extension from the MCFO. The MCFO must still evaluate the request.

Overgrown Vegetation

JAKE has stated in the June 29, 2010, sundry notice that the vegetation was mowed the first part of June and that the growth will be maintained as necessary. The MCFO must evaluate this information to determine if this is an acceptable method of handling the vegetation in this situation.

Earthen Dike

JAKE stated in its June 1, 2010, letter that the berm will be repaired upon startup of operation and will be maintained in the future. The MCFO responded by stating that the berm shall be rebuilt as required by the written order. JAKE indicated in its June 29, 2010, sundry notice that the berms will be improved upon startup of operations.

JAKE indicated that the spill originated from the abandoned water tank and that the siphoned fluid was put into the northernmost tank. It may seem reasonable to wait until operations resume to rebuild the earthen dikes. However, since fluids are being stored in the tanks, there is the potential for another leak or spill. Therefore, the earthen dikes should be repaired as required by the MCFO to contain any potential spills or leaks.

Production Tanks

JAKE states that the production tanks have all been cleaned up, are operational, and in a safe and workmanlike manner. The MCFO must evaluate this information to determine if the tanks are now acceptable.

DECISION

Equipment on Location

The MCFO has deemed that the unused pumping unit, the two tanks, the two blue storage units, and stored pipe are not necessary for lease operations and should be removed. This decision is affirmed. Since the equipment was not removed by the date specified in the written order, the MCFO must issue a Notice of Incident of Noncompliance (INC) giving a new abatement date. Failure to comply with the INC will result in an assessment. However, as discussed above, JAKE could submit a request for approval of the equipment.

Oil Spill

The MCFO required cleanup of the spill and removal of the contaminated soils. This decision is affirmed. Since the spill has not been cleaned up, JAKE is in violation of the written order. JAKE has requested a 90 day extension from the MCFO. The MCFO must still evaluate the request and respond to JAKE's sundry notice.

Overgrown Vegetation

The vegetation has been mowed and needs to be evaluated by the MCFO to determine if this is an acceptable method of handling the vegetation in this situation. Therefore, no decision is necessary at this time. The MCFO will provide a response when JAKE's sundry notice is processed.

Earthen Dike

The MCFO required that the earthen dikes be rebuilt by the date specified in the written order. JAKE has stated that the dikes will be rebuilt when operations resume. Since fluids are still being stored in the tanks, the dikes are necessary prior to resuming operations. Therefore, the decision of the MCFO is affirmed. Since the earthen dikes were not rebuilt by the date specified in the written order, the MCFO must issue an INC giving a new abatement date. Failure to comply with the INC will result in an assessment.

Production Tanks

JAKE has stated that the tanks have been cleaned up, are operational, and are in a safe and workmanlike manner. This needs to be evaluated by the MCFO. Therefore, no decision is necessary at this time. The MCFO will provide a response when JAKE's sundry notice is processed.

APPEAL RIGHTS

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 1). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 4.21, the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay **must** also be submitted to each party named in the Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

/s/ Theresa M. Hanley

Theresa M. Hanley
Deputy State Director
Division of Resources

1 Enclosure

1-Form 1842-1 (1 p)

cc: WO-310, LS, Rm. 501
All BLM State Offices
Miles City Field Office
North Dakota Field Office
Great Falls Oil and Gas Field Office