

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE) CAUSE NO. 1V
RULES AND REGULATIONS OF THE COLORADO OIL)
AND GAS CONSERVATION COMMISSION BY OXY) DOCKET NO. 1004-OV-03
USA WTP LP, GARFIELD COUNTY, COLORADO)

NOTICE OF HEARING

On August 24, 1994, the Director (“Director”) of the Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”) approved an Application for Permit-to-Drill (“APD”), Form 2, for the Cascade Creek #605-1 Well (the “Well”) (API No. 05-045-06897) located in the SE¼ NW¼ of Section 5, Township 6 South, Range 97 West, 6th P.M., submitted by Oxy USA, Inc. (Oxy USA, Inc., Operator #66561, and Oxy USA WTP LP, Operator #66571, are subsidiaries of Occidental Petroleum Corporation and are collectively referred to as “OXY”). Subsequently, OXY submitted a re-filing of the APD, and on August 3, 1998, the COGCC Director approved the re-filing.

On August 21, 1998, OXY spud the Well and completed it on October 25, 1998.

Water produced in association with hydrocarbons (“produced water”) from the Well was placed in a lined pit located on the Well pad – the pit was placed into operation at or around the date of completion (October 25, 1998) and was approximately 20 feet square and eight feet deep, yielding a capacity of approximately 400 barrels with two feet of freeboard. The pit on the Well pad was continually used as a production pit from the date of well completion until at or around OXY’s response to the discovery of the release (June 17, 2008) due to a torn liner.

a. Pre-April 1, 2009 rules (2 CCR 404-1, “Rules” or individually, “Rule”), that were in effect when the production pit on the Well pad was constructed required production pits in sensitive areas to be permitted (former Rule 903.a.(1)B).

b. During this period of time the Rules defined sensitive area as “an area vulnerable to potential significant adverse groundwater impacts, due to factors such as the presence of shallow economically usable groundwater or pathways for communication with deeper economically usable groundwater; proximity to surface water, including lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, and wetlands.” 100-Series Rules.

c. The production pit on the Well pad was located in an area vulnerable to potential significant adverse ground water impacts and therefore it was located in a sensitive area based on the following criteria:

- i. The production pit was located in close proximity (approximately 270 feet) to Rock Springs, and Rock Springs is the source of water for an unnamed tributary to Crystal Creek, which is a perennial stream.
- ii. Shallow groundwater was impacted by a release of produced water and condensate from a pit, which indicates that pathways for communication between the ground surface and groundwater exist.
- iii. The water discharged at Rock Springs is shallow economically usable groundwater, which was used by ranchers for watering livestock and by wildlife.

d. The permitting of pits is an essential component of the COGCC regulatory scheme to ensure best management practices by operators to protect public health, safety, and welfare and the environment, including soil, waters of the state, and wildlife, from significant adverse environmental, public health, or welfare impacts from exploration and production (“E&P”) waste.

On June 16, 2008, a rancher who leases grazing land from OXY, notified OXY of a potential impact to two springs (“Rock Springs”) in close proximity to the Well pad. The rancher noticed that the water discharging from Rock Springs had, what he described as, a “sulfuric” odor. OXY personnel inspected the springs in the evening of June 16, 2008, but they were unable to collect water samples because of darkness.

Rock Springs is located in Section 5, Township 6 South, Range 97 West, 6th P.M., approximately 270 feet southwest and 20 feet below the location of the former lined production pit on the Well pad. Rock Springs is referred to by OXY as the North and South Springs. The spring waters discharge into a small pond that, in turn, discharges into an unnamed tributary. The unnamed tributary joins Crystal Creek in Section 6, Township 6 South, Range 97 West, 6th P.M., and Crystal Creek joins Deer Park Gulch in Section 12, Township 6 South, Range 98 West, 6th P.M. All of Section 6 has been designated as sensitive wildlife habitat by the Colorado Division of Wildlife for the benefit of the greater sage grouse.

On June 17, 2008, OXY had water samples collected from the North Spring and surface water in the unnamed tributary of Crystal Creek and submitted them for laboratory analyses.

On June 19, 2008, OXY had water samples collected from the North Spring and surface water in the unnamed tributary of Crystal Creek and submitted them for laboratory analyses. OXY attempted to isolate waters from the North Spring from the unnamed tributary of Crystal Creek by installing a series of soil filled bastions referred to by OXY as the North Spring dam, which detained waters discharging from the North Spring.

On June 20, 2008, OXY began pumping water from the North Spring impoundment into an above-ground storage tank (frac tank).

On June 21, 2008, OXY observed what appeared to be an oily sheen on the surface of the water discharging from the South Spring; whereupon, OXY collected a water sample for laboratory analysis. OXY attempted to isolate South Spring from the unnamed tributary of Crystal Creek by installing a series of soil filled bastions referred to by OXY as the South Spring dam which detained waters discharging from the South Spring.

On June 23, 2008, OXY observed a sheen on the water in the unnamed tributary of Crystal Creek; whereupon, OXY installed a third series of soil filled bastions, referred to by OXY as the Lower Pit, below both North and South Springs. Water was removed from this impoundment and pumped to the frac tank on the Well pad. To maintain flow and to avoid additional potential surface water contamination in the unnamed tributary of Crystal Creek, flow upstream from Rock Springs was captured and diverted through a 6-inch pipe around the North and South Springs and released back to the unnamed tributary below the Lower Pit. OXY installed fencing around Rock Springs and the retention ponds to prevent access by livestock and wildlife to the water.

On June 26, 2008, COGCC Staff issued OXY a Notice of Alleged Violation (“NOAV”) #200191518 for its operations at the Well pad which impacted waters at the Rock Springs. The NOAV cited violations of the following COGCC rules:

a. Rule 209, which requires operators to exercise due care in the protection of coal seams and water-bearing formations, with special precautions taken in drilling wells to guard against any loss of artesian water from the stratum in which it occurs and the contamination of fresh water by objectionable water, oil, or gas;

b. Rule 324A.a., which requires operators to take precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety and welfare and to prevent the unauthorized discharge of oil, gas or E&P waste;

c. Rule 324A.b., which provides that no operator, in the conduct of any oil or gas operation shall perform any act or practice which shall constitute a violation of water quality standards or classifications established by Colorado Department of Public Health and Environment, Water Quality Control Commission (“CDPHE-WQCC”) for waters of the state;

d. Rule 902.a., which requires that a pit used for E&P shall be constructed and operated to protect public health, safety, and welfare and the environment, including soil, waters of the state, and wildlife, from significant adverse impacts from E&P waste;

e. Rule 906.a., which provides that spills/releases of E&P waste, including produced fluids, shall be controlled and contained immediately upon discovery to protect the environment, public health, safety, and welfare, and wildlife resources, and that impacts resulting

from spills/releases shall be investigated and cleaned up as soon as practicable;

f. Rule 906.b.(3), which provides that spills/releases of any size which impact or threaten to impact any waters of the state shall be verbally reported to the COGCC Director as soon as practicable, but not more than twenty-four (24) hours, after discovery;

g. Rule 907.a.(1), which provides that operators shall ensure that E&P waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications; and

h. Rule 907.a.(2), which requires that E&P waste management activities shall be conducted, and facilities constructed and operated, to protect the waters of the state from significant adverse environmental impacts from E&P waste.

Said NOAV required OXY, by July 14, 2008, to provide written descriptions of: (1) any pits constructed or used on the Well pad, including size, volume, and whether or not the pit was lined, (2) all fluids (water, drilling, completion, and frac fluids, flowback, etc.) placed in the pit, including volumes, dates, etc., and provide haul tickets for all fluids brought from offsite to the pit(s), (3) whether condensate was observed in the pit(s) during flowback or completion; and (4) tanks or other containers that were used at this site to manage fluids and any spills/releases that occurred. Further, OXY was to submit: (1) a Form 27, *Site Investigation and Remediation Workplan*, for COGCC review, and (2) all analytical data collected to date. OXY was also to consult with COGCC and mitigate impacts to the springs, including, (1) fencing impacted surface water to restrict access by livestock and wildlife, and (2) providing a supply of water for livestock.

COGCC records reveal that the pit was never legally permitted for use as a production pit (nor was application made by OXY to permit said pit); consequently, OXY used the pit on the Well pad to manage produced water from on or around the date of well completion (October 25, 1998) through the date the release was discovered (June 17, 2008), a period of 3,523 days, without an approved Form 15 pit permit, as required by Rule 903.a. (formerly Rule 903.a.(1)B.).

Rule 523. specifies a base fine of One Thousand dollars (\$1,000) for each day of violation of Rules 324A.a., 324A.b., 902.a., 903.a., 907.a.(1) and 907.a.(2). Rule 523.a.(3) specifies that "the maximum penalty for any single violation shall not exceed ten thousand dollars (\$10,000) regardless of the number of days of such violation," unless the violation results in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 324A.a.** because it placed produced water and condensate in a lined production pit on the Well pad, but the pit liner was torn which allowed fluids to percolate into the underlying bedrock and impact groundwater, and by so doing, OXY failed to take precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety and welfare and to prevent the unauthorized discharge of oil, gas or E&P waste. COGCC Staff allege that this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 324A.b.** because it placed produced water and condensate in a lined production pit on the Well pad, when the liner was torn, which allowed fluids to percolate into the underlying bedrock and impact groundwater, and by so doing, OXY performed an oil and gas related act or practice which constituted a violation of the water quality standards or classifications established by CDPHE-WQCC for waters of the state. COGCC Staff allege that this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 902.a.** because it placed produced water and condensate in a lined production pit on the Well pad, when the liner was torn which allowed fluids to percolate into the underlying bedrock and impact groundwater, and by so doing, OXY failed to construct and operate an E&P pit to protect public health, safety, and welfare and the environment, including soil and water from significant adverse impacts from E&P waste. COGCC

Staff allege that this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 903.a.** because it used an unpermitted pit to manage produced water from on or around the date of well completion (October 25, 1998) through the date the release was discovered (June 17, 2008), a period of 3,523 days. COGCC Staff allege this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 907.a.(1)** because it placed produced water and condensate in a lined production pit on the Well pad when the pit liner was torn, which allowed fluids to percolate into the underlying bedrock and impact groundwater, and by so doing, OXY failed to ensure that E&P waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications. COGCC Staff allege that this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

OXY should be found in violation of **Rule 907.a.(2)** because it placed produced water and condensate in a lined production pit on the Well pad when the pit liner was torn, which allowed fluids to percolate into the underlying bedrock and impact groundwater, and by so doing, OXY failed to conduct and operate E&P waste management activities in a manner which ensured the protection of the waters of the state from significant adverse environmental impacts from E&P waste. COGCC Staff allege that this rule violation resulted in a significant adverse impact on public health, safety or welfare or the environment.

NOTICE IS HEREBY GIVEN, that the Oil and Gas Conservation Commission of the State of Colorado, pursuant to the above, has scheduled the above-entitled matter for hearing on:

Date: Thursday, April 29, 2010
Friday, April 30, 2010

Time: 9:00 a.m.

Place: Suite 801, The Chancery Building
1120 Lincoln Street
Denver, Colorado 80203

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Pursuant to said hearing in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Commission will enter such orders as it deems appropriate to protect the health, safety and welfare of the public and to prevent the waste of oil and gas, either or both, in the operations of said field, and to carry out the purposes of the statute.

In accordance with Rule 509., any interested party desiring to protest the granting of the application or to intervene on the application should file with the Commission a written protest or intervention no later than April 15, 2010, briefly stating the basis of the protest or intervention. Such interested party shall, at the same time, serve a copy of the protest or intervention to the person filing the application. An original and 13 copies shall be filed with the Commission. **Anyone who files a protest or intervention must be able to participate in a prehearing conference during the week of April 19, 2010.** Pursuant to Rule 503.f., if a party who has received notice under Rule 503.b. wishes to receive further pleadings in the above-referenced matter, that party must file a protest or intervention in accordance with these rules. In accordance with the practices of the Commission, should no protests or interventions be filed in this matter by **April 15, 2010, the Applicant may request that an administrative hearing be scheduled during the week of April 19, 2010.** In the alternative, pursuant to Rule 511., if the matter is uncontested, the applicant may request, and the Director may recommend approval on the basis of the merits of the verified application and the supporting exhibits.

IN THE NAME OF THE STATE OF COLORADO

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By _____
Carol Harmon, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
March 30, 2010