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POLICY REGARDING THE PERMITTING OF CLASS V WELLS AND FINANCIAL ASSURANCE FOR SUCH WELLS

The question has arisen as to the jurisdiction and authority of the Mississippi State Oil & Gas Board (the "Board") to permit Class V Underground Injection Control (UIC) wells and the type financial assurance, if any, this agency should require from the operators of such wells.

By way of background, the primary jurisdiction and authority to permit and regulate Class V wells in the State of Mississippi is vested in the Mississippi Department of Environmental Quality ("MDEQ") by virtue of a September 1983 delegation of authority from the EPA. That delegation of authority is published in 40 Code of Federal Regulations Part 147.1250.

40 CFR Part 147.1250 states, in part, as follows:

Subpart Z - Mississippi

State-administered program - Class I, III, IV and V Wells

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources [now MDEQ] approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 25, 1983 (48 FR 38461); the effective date of the program is September 26, 1983 * * * *

Should the above delegation of authority from the EPA to MDEQ stand alone, there would be no doubt but that jurisdiction to permit Class V wells in the State of Mississippi rested solely and exclusively with MDEQ. However, that 1983 delegation of authority from EPA does not stand alone.

To the contrary, the Legislature has enacted Miss. Code Anno. Section 53-3-27 (1972), which grants to the Mississippi State Oil & Gas Board jurisdiction and authority to permit stratigraphic test wells "or any well below the freshwater level (other than an oil or gas well or an injection well)." Section 53-3-27 states, in part, as follows:

Application to Commence Drilling of a Stratigraphic Test Well or Well Below the Freshwater Level

Before any person shall commence the drilling of a stratigraphic test well or any well below the freshwater level (other than an oil or gas well or an injection well), such person shall file with the board his application for a permit to drill, accompanied by a fee of six hundred dollars (\$600.00) * * * * If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued promptly by the supervisor. Any such permit * * * shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

Most of the non-stratigraphic test wells which are permitted by the Mississippi State Oil & Gas Board pursuant to the authority of Section 53-3-27 are non-oil and gas wells which fall under this agency's permitting authority solely because they are being permitted below the freshwater level. These wells are classified by the EPA as Class V Underground Injection Control (UIC) wells simply because they do not fall within the definition of either Class I, Class II, Class III, Class IV or Class VI wells. 1/

There is a relatively small number of these Class V wells in the State of Mississippi which are subject to dual permitting requirements. These wells are obviously subject to the primary permitting authority of MDEQ because of that agency's 1983 delegation of authority over such wells by the EPA. These wells are likewise subject to the permitting authority of the Mississippi State Oil & Gas Board under the provisions of Section 53-3-27 in those instances in which they are being permitted below the freshwater level. These wells are not associated with conventional oil and gas E&P activities.

While these Class V wells are obviously subject to dual permitting requirements

by both MDEQ and the Mississippi State Oil & Gas Board, the question arises should these wells likewise be subject to dual financial assurance requirements by these same two (2) agencies.

There appear to be no valid public policy reasons why dual financial assurance requirements should be imposed by both MDEQ and the Mississippi State Oil & Gas Board for the same Class V wells which are dually permitted by the two (2) agencies.

In support of this conclusion, the Mississippi State Oil & Gas Board would state as follows.

First, MDEQ clearly has primary jurisdiction and authority over the permitting, regulating and supervision of all Class V wells in the State of Mississippi (including the timely plugging and abandonment of such wells) by virtue of its 1983 delegation of authority from the EPA. In conjunction with that jurisdiction and authority, MDEQ requires the operators of all Class V wells it permits to file with that agency appropriate financial assurance with respect to such wells in a form and amount acceptable to MDEQ. Any additional financial assurance which might likewise be required for these same Class V wells by the Mississippi State Oil & Gas Board would be duplicative of the financial assurance already on file with MDEQ.

Secondly, the Mississippi State Oil & Gas Board's permitting jurisdiction and authority over these Class V wells under the provisions of Miss. Code Anno. Section 53-3-27 arises solely from the fact that these wells are permitted below the base of the freshwater.

Finally, if in the unlikely event the operator of one of these dually-permitted Class V wells defaults and the well is required to be plugged and abandoned, the primary responsibility to oversee and insure the timely plugging of such well will rest with MDEQ (not the Mississippi State Oil & Gas Board).

Accordingly, effective immediately whenever a permit application is filed with the Mississippi State Oil & Gas Board for one of these Class V wells pursuant to the authority of Miss. Code Anno. Section 53-3-27 (1972), (based solely upon the fact that the well is being permitted below the freshwater level), this agency will require confirmation of the following:

- (1) That the Class V well in question has already been issued a Class V operating permit by MDEQ; and
- (2) That the operator of said Class V well has on file with MDEQ appropriate financial assurance in a form and

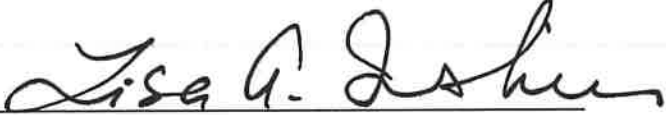
amount acceptable to MDEQ to insure the plugging and abandonment of said well

Further, if it is determined that MDEQ has in fact permitted the Class V well in question and that financial assurance is on file with MDEQ to cover the plugging liability for such well, the Mississippi State Oil & Gas Board will proceed to review and process any Class V permit application for such well in accordance with the requirements of Section 53-3-27, but no separate financial assurance for such Class V well will be required to be filed with this agency.

This policy shall be in force and effect from and after December 21, 2016.

If you have any questions regarding this matter, please contact either Lisa A. Ivshin, the Executive Director, at 1-601-576-4920, or Howard O. Leach, the Board Attorney, at 1-601-576-4921.

MISSISSIPPI STATE OIL AND GAS BOARD

By: 
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Executive Director

1/ See 40 Code of Federal Regulations Part 144.6 ("Classification of Wells").