

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

IN THE MATTER OF THE APPLICATION FOR
A HEARING ON APPROVAL OF OIL AND GAS
LOCATION ASSESSMENT FORM 2A, FOR
OPERATIONS IN WELD COUNTY,
COLORADO OIL AND GAS CONSERVATION
COMMISSION DOCUMENT NUMBER 2093986

Cause No. _____

Docket No. _____

APPLICATION

COMES NOW the applicants listed in **Exhibit A** attached hereto and incorporated herein by this reference, (the "Applicant"), by and through the undersigned counsel, hereby files this Application for a hearing regarding the Oil and Gas Location Assessment, Form 2A, Document Number 2093986, (the "Form 2A") submitted by EnCana Oil & Gas (USA) Inc., ("EnCana") and approved by Colorado Oil and Gas Conservation Commission (the "Commission"). The Applicant applies for a hearing pursuant to Commission Rule 503b(7)B and 503b(10) based on EnCana's failure to comply with the Commission rules in obtaining the Commission's approval of the Form 2A and asks that the Commission withhold its approval of the Form 2A to allow Applicant the opportunity to comment upon the Form 2A. In support of its Application, the Applicant states as follows:

1. The Applicant is the owner of real property in the SW ¼ of Section 33, Township 2 North, Range 68 West, 6th P.M., in the County of Weld, State of Colorado which is legally described in **Exhibit B** attached hereto and incorporated herein, (the "Property"), which Property is affected by the Form 2A.

2. The Applicant also owns minerals underlying the Property and, thus, is entitled to royalties from EnCana's production from the Property.

Non Compliance with Commission Rules

3. On January 5, 2010, EnCana submitted to the Commission an Oil and Gas Location Assessment, Form 2A, seeking the Commission's approval of the location of five wells, four separators, and two oil tanks.

4. When EnCana submitted its Form 2A to the COGCC on January 5, 2010, the Applicant and EnCana were in active negotiations concerning the location of the additional wells, production facilities, and tanks, including a 200 foot by 80 foot tank battery that EnCana sought to construct on the Property. Furthermore, EnCana and the Applicant had a meeting scheduled for January 13, 2010 to discuss the well, production facility, and tank locations.

5. Prior to January 5, 2010, EnCana proposed well locations to Applicant, but these locations were significantly different from those proposed in the Form 2A submitted to the Commission on January 5, 2010.

6. On January 5, 2010, when EnCana submitted the Form 2A to the Commission, EnCana did not provide Applicant with a copy of the Form 2A.

7. EnCana did not provide Applicant a copy of the map showing the locations for which EnCana sought the Commission's approval by the Form 2A until January 12, 2010.

8. When EnCana sent the map to Applicant that showed the proposed well and tank battery locations EnCana did not tell Applicant that EnCana had already submitted the Form 2A to the Commission based on the locations shown in the map.

9. On January 13, 2010, EnCana and Applicant met to discuss the proposed well and tank battery locations that EnCana had provided to Owner only the day before. At this meeting, Applicant clearly advised EnCana that Applicant objected to the locations of the wells and tank battery proposed by EnCana. During this meeting, EnCana **still** did not tell the Applicant that EnCana had submitted a Form 2A to the Commission based on the proposed locations shown in the map provided to Applicant on January 12, 2010.

10. Notwithstanding the Applicant's concerns, EnCana proceeded to complete the Form 2A and, on February 19, 2010, obtained the Commission's approval of the Form 2A.

11. EnCana violated Commission Rule 305.e because when the Commission advised EnCana that the Form 2A was complete, EnCana did not provide the notice to the Applicant that is required by this Rule.

12. Rule 305.e states that an operator making application for approval of an Oil and Gas Location Assessment, Form 2A, shall, upon receipt of a completeness determination from the Director, promptly provide the surface owner with the information set out in Rule 305.e.(1).A, ("Landowner Notice").

13. The Landowner Notice is intended to inform the landowner that the application is complete, that the Form 2A may be reviewed on the Commission website, and that the landowner "may submit comments to the Director" within the timeframes required. The intent of the Landowner Notice is to give the owner of the property the opportunity to comment within a twenty (20) day comment period **before** the Form 2A is approved by the Commission.

14. On March 3, 2010, the Applicant received some of the information required to be provided in the Landowner Notice by letter from EnCana dated March 1, 2010. This letter was sent ten (10) days **after** the Form 2A was approved by the Commission on February 19, 2010. Thus, the Applicant had no opportunity to comment on the Form 2A.

15. According to the Commission Rule 523.c, the Base Fine for a violation of Rule 305 is One Thousand Dollars (\$1,000.00).

Relief From Commission Ruling

16. Applicant seeks relief from the Commission's approval of the Form 2A pursuant to Commission Rule 503.b.(10) because Applicant is and will be directly and adversely affected and aggrieved by the conduct of oil and gas operations by EnCana or an order of the Commission and Applicant's interests are entitled to legal protection under the Oil & Gas

Conservation Act, (the "Act"). Applicant is directly and adversely affected or aggrieved by the conduct of oil and gas operations by EnCana because the drilling plan and facilities proposed by EnCana in the Form 2A overly burden Applicant's Property and do not comply with the Act.

17. Applicant has consistently tried to reach a resolution with EnCana regarding the location of EnCana's wells and facilities on the Property. EnCana and Applicant have been negotiating a surface use agreement for the property for since early Fall of 2009. Applicant continues to contact EnCana to reach a mutually beneficial resolution.

18. The drilling plan proposed by EnCana on January 12, 2010 showed that EnCana seeks to construct almost all of its new facilities in the SE ¼ of the Property. These facilities include three out of four of the new wells, related facilities, and an 80 foot by 200 foot tank battery. If EnCana's proposal is implemented, it will prevent commercial development in most of the SE ¼ of the Property. This is a significant burden on the Property and Applicant because the SE ¼ of the Property is valuable Property and is planned for commercial development which will be beneficial to the surrounding community and the County.

19. Applicant is entitled to protection under the Act because Colorado Revised Statute Section 34-60-127 is a part of the Act. This Section states that an operator shall conduct oil and gas operations in a manner that **accommodates the surface owner** by minimizing intrusion upon and damage to the surface of the land (emphasis added). This Section further provides that "minimizing intrusion upon and damage to the surface" means that the operator must select alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator

20. In response to EnCana's plan to put most of its wells and facilities in the SE ¼ of the Property, Applicant asked EnCana to construct the proposed wells, production facilities and the large tank battery in the NE ¼ of the Property where EnCana has an existing well. EnCana has been unwilling to do this because EnCana seeks to bottomhole two of its four new wells at the southern boundary of the Property. However, it is Applicant's understanding that with the technology that is currently available, EnCana can directionally drill from the NE ¼ to the southern boundaries of the Property. Section 34-60-127 of the Act requires EnCana to use this kind of alternative technology to accommodate the surface owner.

21. EnCana has not complied with Section 34-60-127 of the Act because, throughout the negotiations, EnCana has sought setbacks from wells and facilities that are far in excess of those required by Commission Rules or Weld County. The setbacks required by EnCana do not accommodate the surface owner by minimizing intrusion upon and damage to the surface of the land. In addition, the setbacks requested by EnCana would further unnecessarily encumber the Property and would be an unreasonable burden on Applicant's property.

WHEREFORE, Applicant respectfully requests that the Commission set the Application for hearing, that the Commission fine EnCana One Thousand Dollars (\$1,000.00), and that the Commission revoke its approval of the Form 2A and allow Applicant the opportunity to provide input to the Commission on the Form 2A. Applicant further requests such other relief as the Commission determines to be just and appropriate.

DATED this ____ day of March, 2010.

Respectfully submitted,

FOSTER GRAHAM MILSTEIN & CALISHER LLP

By: _____
Jerri L. Jenkins, Esq. (Atty Reg #23238)
Attorney for Applicant

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EXHIBIT A
LIST OF OWNERS

SMT INVESTORS LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP
NEAL MANAGEMENT, LLC, AN ARIZONA LIMITED LIABILITY COMPANY
SCM-GRP ERIE II, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP
SCM-GOODSIJN, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-LOWRIE, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-HESS MYERS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-NEAL II, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-POG, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-NEAL, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP;
SCM-CAGLE OKC, LLLP; ANC IRREVOCABLE TRUST

EXHIBIT B

LEGAL DESCRIPTION FOR THE PROPERTY

Lots B and C of Amended Recorded Exemption No. 1313-33-3 AMRE-3067,
According to Plat Recorded January 31, 2006 at Reception No. 3359259 being located in the SW
1/4 of Section 33, Township 2 North, Range 68 West of the 6th P.M., County of Weld, State of
Colorado