



COLORADO
Oil & Gas Conservation
Commission

Department of Natural Resources

1120 Lincoln Street, Suite 801
Denver, CO 80203

February 25th, 2019

Dick Shanor
H&M Petroleum Corporation
PO Box 467
Sidney, NE 69162

Dear Mr. Shanor,

COGCC Staff conducted an assessment and have now decided upon the corrective actions for this location, as we stated was forthcoming in an e-mail communicated on December 6th 2018. The new corrective actions stated below, which will be set forth, are due to the nature of the violation and the fact that without topsoil the location is at much greater risk of failing final reclamation. Please see below for more details.

History of the Topsoil Violation and the Original Variance Request

Correction Action (CA) Inspection - Doc #682504101, 11-8-2018

Initial field conversations with the Reclamation Specialist and representatives of H&M were held during the construction inspection on November 8th, 2018. The Operator indicated that due to underground power lines from the wind farm travelling under the location, H&M was unable to conduct topsoil salvage in accordance with Rule 1002.b. H&M also stated that they had an agreement with the surface owner, and received a waiver from the state allowing H&M to construct the location without conducting topsoil salvage per COGCC rules. Per this inspection:

- Operator was required to submit a detailed reclamation plan (see inspection comments for details).
- Operator was informed that a variance request was required for not salvaging the topsoil. A variance should have been submitted and approved prior to construction of the location
- Operator was informed that stormwater BMPs were required.
- Operator received a CA date of 11-16-2018 for the submittal of a Reclamation Plan, an extension request (Doc #401842156) was granted to 11-23-2018, and an additional extension was requested (Doc#401848355) was denied.

Even in light of the fact that surface owners cannot waive COGCC rules and that the Operator must file and receive an approved variance request prior to not following the rules (in this case the loss of topsoil), it was later determined that H&M had not received a “waiver” from the state. As a result H&M was provided with a corrective action to submit a 502.b variance to waive requirements to COGCC Rule 1002.b. H&M was also required to include the agreement (and related documents) from the surface owner (State Land Board) for the variance documentation. Shortly after it was discovered that that no agreements existed between H&M and the surface owner regarding a waiver to not conduct

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topsoil salvage prior to construction of the location, or the corrective action inspection as indicated by H&M.

On November 27th, 2018 H&M improperly submitted a variance request and an initial reclamation plan via email to COGCC staff, even though the CA statement within the corrective action inspection told the Operator that the variance request and the reclamation plan must be submitted via a Form 4.

On November 29th 2018, COGCC Field Inspection Manager Margaret Ash responded to the Operator. Due to further considerations regarding and responding to the November 27th e-mail to staff, indicated that the variance request could not be approved and the reclamation plan was insufficient. Per Ms. Ash's e-mail, information regarding the issues related to the submittals is listed below:

1. *The information contained in the letter and variance appears to be inaccurate. COGCC Document #2478858 indicates that the drilling and production facility locations were both cleared for the turbine and underground cables by NextEra Energy Resources LLC., and by staff from Peetz Table Wind Energy. Document #2478858 also states that 811 was contacted and the location cleared. Please explain the discrepancy, as it does not appear that the underground utilities were the reason that the topsoil was not salvaged. The COGCC would like to stress that submitted data and even information transferred via telephone needs to have the highest accuracy.*
2. *The demonstration of the variance being protective of public health, safety, welfare and the environment is not adequate.*

The imported material used to cover the topsoil is unlikely to be of comparable quality or even composition as the natural topsoil. It is more likely that this is blow sand/silt that accumulated at a fence row. The variance included no data to support the assertion that topsoil was comparable. Soil sampling might be necessary to document that this material will provide the necessary equivalency.

The submitted reclamation plan is essentially an outline with basic reclamation phases noted with little to no specific information.

The seed per square foot appears to be low and would not be recommended by COGCC staff.

3. *The variance process outlined in Rule 1001.c is for surface owners use when there is a change in land use or change in their reclamation practices. It is not intended to cure an operator's compliance issues.*
4. *Submittal of a surface owner waiver without a signed agreement with the land owners is not acceptable. If the surface owner requested that topsoil not be salvage and not protected, please provide the documentation.*
5. *Your email of November 28, 2018 suggests that submittal of a plan will bring H&M into compliance. However, please note that completion of a corrective action does not preclude enforcement.*

Please review and provide updated information via Form as applicable.

Second Correction Action Inspection - Doc #682504209, 11-27-2018

The operator continued topsoil rule violations, as well as other additional rule violations on the follow up inspection including:

1. 603.f and 1002.f(2).A,B

It was observed that various materials (such as barrels and buckets) have not been properly stored in accordance with good housekeeping or 1002.f(2).A,B; Materials observed were either stored directly upon unprotected topsoil/soil or were stored in an insufficient manner.

2. 1002.b & c

This Inspection provided additional documentation that operator did not intend to salvage, separate, or stabilize the topsoil from location, pit, or the road construction areas. The Operator did not salvage topsoil from location, road or pit in accordance with 1002.b. In addition a variance request and reclamation plan had not been submitted by the time of this inspection.

3. 1002.f

The Operator had been clearly informed in the previous Inspection (682504101) that Stormwater BMPs and stormwater perimeter controls were required prior to construction activities. However, the Operator failed to install stormwater BMPs per the CA.

In response to first corrective action inspection a Sundry Form 4 Doc. #401864014 was officially submitted on 12-6-2018 with a reclamation plan (Doc #401864047) thirteen days after the CA was due. This sundry document was denied due to the reclamation plan being insufficient and it appeared to have inaccuracies. The plan was too general, did not include the requested information asked for in the inspection, did not include agronomic soil testing (910-1 testing is not informative enough on the possible soil inadequacies that would require amendments for reclamation), the seeding rate appeared to be too low and there were other inaccuracies. Additionally, no tables, figures or appendices were attached to the December reclamation plan, yet they were referenced to within the plan. COGCC did not provide any detailed information or conversation regarding the Reclamation Plan submitted by H&M because the burden is on the Operator to provide accurate and appropriate information.

Additionally, COGCC Staff previously held communication and meetings with a 3rd party contractor (LTE) regarding this location's issues. Be advised that the COGCC will not have future communication or meetings with a 3rd party without an official Operator representative present and involved.

Required Corrective Action

To conclude, the COGCC will be submitting a follow-up Corrective Action inspection. The new corrective action inspection will outline COGCC's requirements for H&M Petroleum at this location regarding topsoil and will reference information in this letter to come into compliance.

In lieu of COGCC proceeding to enforcement regarding the topsoil issue, H&M Petroleum will be required to provide an additional financial assurance reclamation bond which would cover the final reclamation of the entire disturbance area. This corrective action has been chosen because there is a risk that the final reclamation will be compromised due to the lack of topsoil or damaged topsoil at the

location. In this case an increase in financial assurance for this Oil and Gas Location is pursuant to the 702 rules, as staff has a reasonable cause to believe that the Commission may become burdened with the costs of fulfilling the final reclamation obligations with a heightened risk due to the lack topsoil or damaged topsoil.

The additional reclamation financial assurance bonding will be for the cost of reclamation performed by a qualified third party contractor specializing in land reclamation.

Reclamation costs for the entire disturbance include the access road, location, and any additional disturbance must include, at the minimum, the following items:

1. Mobilization/demobilization costs
2. Road base/gravel removal
3. Dirt work
 - a. Soil removal (aeolian soils)
 - b. Import minimum of 6" of topsoil of comparable or better quality and composition to the location
 - c. Include soil testing to document equivalency.
4. Compaction alleviation (cross ripping) to a minimum depth of 18 inches
5. Re-contouring / re-grading
6. Soil samples
7. Soil amendments
8. Seeding (Seed + No-till drill application)
9. Erosion control blanket
10. Perimeter fence (Installation and removal)
11. Stormwater/erosion controls (installation, maintenance, and removal)
12. Monitoring (reclamation and stormwater)
13. Weed control (mob/demob, mowing/spraying three times)

COGCC Staff is looking forward and appreciates that H&M will be coming into the compliance with the rules. H&M should immediately begin working on the cost estimate and submit it no later than 3-12-2019. Operator must submit a 3rd party cost estimate and figure(s) that includes the entire disturbed area via a form 4. The figure(s) and costs shall include the additional ~1.3 acres of disturbance area where soil was removed to place on the location. Bonding will be required no later than 45 days after the estimate has been accepted.

Regards,

Denise T. Arthur Ph.D
COGCC Reclamation Supervisor