

BEFORE THE ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE)	CAUSE NO. 1V
RULES AND REGULATIONS OF THE COLORADO)	
ENERGY AND CARBON MANAGEMENT COMMISSION)	DOCKET NO. 240600136
BY DAVID MESSER , FREMONT COUNTY, COLORADO)	
)	TYPE: ENFORCEMENT

NOTICE AND APPLICATION FOR HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

Pursuant to Rule 523.d, the Colorado Energy and Carbon Management Commission ("Commission" or "ECMC") Staff hereby applies to the Commission for an Order Finding Violation ("OFV") against **David Messer** (Operator No. 57005) ("**Messer**"). The Commission has scheduled this matter for hearing before an ECMC Hearing Officer at the date, time, and location stated below. This Notice and Application is being served to adjudicate the allegations made in the below-described Notices of Alleged Violation ("NOAV"), the allegations of which are incorporated herein.

On September 22, 2022, January 18, 2024, and April 18, 2024, ECMC Staff issued NOAV Nos. 403175825, 403659083, and 403760411, respectfully, to Messer for violations of the following Commission Rules of Practice and Procedure, 2 C.C.R. § 404-1 ("Rule" or "Rules"):

Rule 205.c. and Rule 702.b.

ECMC Staff requests that the Commission: (1) find that Messer is in violation of the Rules cited above; (2) order Messer to return to compliance; (3) assess a penalty pursuant to Commission Rule 525; and (4) impose other necessary and appropriate relief as authorized by law; and (5) require the Director to take the following actions if Messer fails to pay the penalty and/or return to compliance within 35 days of the mailing of the Order:

- a. Suspend Messer's Forms 10, Certificates of Clearance, for Messer's well(s), and withhold the issuance of any new drilling or oil and gas location permits, unless and until Messer demonstrates to the satisfaction of the Director that Messer has brought all violations cited in this matter into compliance and that any penalty assessed has been paid;
- b. Terminate Messer's Operator Number (Operator No. 57005), rescind Messer's Form 1 (Doc. No. 2540361), and revoke Messer's right to conduct oil and gas operations in Colorado, until Messer demonstrates at a hearing conducted pursuant to Rule 503.c. that Messer has brought all violations cited in this matter into compliance, any penalty assessed has been paid, and that re-instating Messer's Form 1 will not threaten to or actually create adverse impacts to public welfare or the environment;
- c. Foreclose Messer's existing financial assurance (Surety ID No. 2000-0011, \$5,000) and claim both the principal and any accrued, but undisbursed, interest that may exist and use those funds to remediate conditions that threaten to cause, or that actually cause, significant environmental impacts at non-federal and non-tribal wells and locations formerly operated by Messer. To the extent Staff has already expended Energy and

Carbon Management Cash Fund at non-federal and non-tribal wells and locations formerly operated by Messer, foreclosed financial assurance can be used to repay those funds; and

- d. Require Messer, and its successors or assigns, to comply with a final Order in this matter and repay any funds expended by the Commission from the Energy and Carbon Management Cash Fund for any work undertaken by ECMC Staff.

If Messer fails to pay the penalty and/or return to compliance within 35 days of the mailing of a final Order in this matter, the Commission authorizes (but does not require) the Director to take any or all of the following actions:

- a. Declare Messer's wells "Orphaned Wells", as defined in the 100-Series Rules;
- b. Use funds from the Energy and Carbon Management Cash Fund to investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, significant adverse environmental impacts at non-federal and non-tribal wells and locations formerly operated by Messer;
- c. Claim all equipment, saleable product, and appurtenances related to Messer's oil and gas operations at its wells as property of the Commission, provided that any proceeds from the disposition of the assets will be credited to the cost of plugging and abandonment of the Well and/or the Energy and Carbon Management Cash Fund; and
- d. At the Director's request, Messer will assign equipment, saleable product, and appurtenances related to Messer's oil and gas operations to the Commission or a third party to be determined by the Director.

In the event the Director determines, in the Director's discretion and consistent with the Director's independent determination of operational priorities, that there is a need to use the Commission's Emergency Response appropriation (Long Bill), which is funded by the Oil and Gas Conservation and Environmental Response Fund, to remediate conditions that threaten to cause, or that actually cause, significant environmental impacts at wells or locations formerly operated by Messer, the Director will confer with the Commission regarding expenditure of these funds at the earliest practical opportunity.

NOTICE IS HEREBY GIVEN, pursuant to: 1) the general jurisdiction of the Energy and Carbon Management Commission of the State of Colorado under the Oil and Gas Conservation Act, C.R.S. § 34-60-105 (the "Act"); 2) specific powers granted pursuant to C.R.S. § 34-60-106; 3) the Colorado Administrative Procedure Act, C.R.S. § 24-4-105; and 4) the Commission's Series 500 Rules at 2 C.C.R. 404-1, that the Commission has scheduled this matter for hearing before a Hearing Officer at the following date, time, and location (subject to change):

Date: September 11, 2024

Time: 9:00 a.m.

Place: Colorado Energy & Carbon Management Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

At the hearing, the Hearing Officer will enter appropriate orders to protect public health, safety, and welfare, including the environment and wildlife resources, and to carry out the purposes of the Act and Commission rules, orders, or permits.

DEADLINE FOR AFFECTED PERSONS TO PETITION: August 12, 2024

Any Affected Person who wishes to participate formally as a party must file a written petition with the Commission no later than the deadline provided above. The above-named Operator is considered a party to this matter, and therefore is not required to file a petition. Please see Commission Rules 507, 509, and 510 at <https://ecmc.state.co.us/#/home>, under "Regulation," then select "Rules." Please note that, under Commission Rule 510.I, the deadline for Affected Persons to participate is not necessarily continued even if the hearing is continued beyond the date that is stated above.


Any Affected Person wishing to file a petition must register with the ECMC's eFiling system online at <https://oitco.hylandcloud.com/DNRCOGExternalAccess/Account/Login.aspx>, and select "Request Access to Site." Additional guidance regarding the registration and use of the eFiling system is available online in the Commission's "eFiling Users Guidebook" at https://ecmc.state.co.us/documents/reg/Hearings/External_EfilingSystemGuidebook_2023_FIN_AL.pdf.

Anyone who files such a petition must be able to participate in a prehearing conference during the week of **August 12, 2024**, if a prehearing conference is requested by Staff, the Operator, or by any person who has filed a petition.

Additional information regarding this matter can be found on our "Hearing eFiling System Document Search" page at <https://oitco.hylandcloud.com/DNRCOGPublicAccess/index.html>. Select "Search for Docket Related Documents" from the pull-down menu, use the above "Docket Number," and select "Search."

Please contact Margaret Humecki at Dnr_ECMC_Hearings_Unit@state.co.us prior to the hearing if any party requires special accommodations as a result of a disability. Special accommodations will be provided in accordance with the Americans with Disabilities Act.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By 
Elias J. Thomas, Commission Secretary

Dated: June 6, 2024

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