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**FILED**

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**SECRETARY, BOARD OF  
OIL, GAS & MINING**

*Attorneys for Utah Division of Oil, Gas and Mining*

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

IN THE MATTER OF THE NOTICE OF AGENCY ACTION BY THE UTAH DIVISION OF OIL, GAS AND MINING SEEKING AN ORDER: (1) AUTHORIZING THE DIVISION TO SEEK PENALTIES AGAINST SPENCER K. BARTON IN A CIVIL PROCEEDING; (2) FORFEITING RECLAMATION BOND PROVIDED BY SPENCER K. BARTON FOR THE ACADEMY #1 WELL; AND (3) AUTHORIZING THE DIVISION USE THE AMOUNT FORFEITED TO PLUG AND RECLAIM THE WELL SECURED BY THIS SURETY WHICH IS LOCATED IN EMERY COUNTY, UTAH, TOWNSHIP 20S RANGE 7E, SECTION 15.

**NOTICE OF AGENCY ACTION**

Docket No. 2019-026

Cause No. 007-15

The Utah Division of Oil, Gas and Mining (“Division”) submits this Notice of Agency Action (“NOAA”) seeking an Order from the Board of Oil, Gas and Mining (“Board”) (1) forfeiting the cash collateral bond provided to the Division, held by the State Treasurer, provided to guaranty the plugging and restoration of the gas well operated by Spencer K. Barton, d/b/a Empire Energy, identified as Academy #1 (the “Subject Well”); (2) authorizing the Division to

use the forfeited funds to plug the Subject Well and reclaim the surface; (3) authorizing the Division to collect penalties in an amount the court deems appropriate, up to \$5000 per day, through a civil court action against Mr. Barton; and (4) authorizing the Division to take any and all additional actions, including filing a civil court action against Mr. Barton, as necessary to recover the costs of plugging and reclaiming the Subject Well to the extent the amounts forfeit are insufficient to complete the work.

### **BACKGROUND**

This matter addresses the single well owned and operated by Mr. Spencer K. Barton. The Subject Well was initially drilled on May 30, 2017, and reached a final depth of 1690 feet on June 1, 2019. The Subject Well has never produced any hydrocarbons and has remained shut-in without Division approval since June 14, 2017. Numerous efforts have been made by the Division over the last two years requiring Mr. Barton to bring the Subject Well into compliance with his permit provisions and Utah Admin. R. 649-1 *et seq.*, the Oil and Gas Conservation General Rules (the “Rules”), which govern the Subject Well. Despite these efforts, Mr. Barton has never produced from, or plugged and abandoned, the Subject Well. Mr. Barton has also failed to follow permit stipulations, failed to file multiple reports, logs and sundries required by Rule, and failed to maintain a field presence and proper site conditions as also required by Rule. Mr. Barton failed to timely respond to multiple notices of violation from the Division, so the Division eventually issued a Division Order to plug and abandon the Subject Well by June of 2019. Despite receiving the Division Order, Mr. Barton continued to ignore the Division’s efforts to have the Subject Well plugged and abandoned.

The Division files this NOAA with the Board to forfeit the collateral bond to obtain funds to plug the well and restore the surface. The bond in place for the Subject Well totals

\$15,000. The Division seeks an Order under Administrative Code Rules 649-3-36 and 649-3-1.16.1 forfeiting the cash collateral bond for the well, requiring payment to the Division in the full amount, and authorizing the Division to use all of the funds to plug, abandon, and restore the wells in accordance with the Rules.

Due to Mr. Barton's history of disregard and failure to comply with the Rules, his permit, and a Division Order, the Division also seeks an Order authorizing the Division to seek civil penalties in district court against Mr. Barton in accordance with Utah Code § 40-6-11(4)(a).

### **JURISDICTION AND PROCEDURE**

1. The Division brings this matter to the Board under the Utah Oil and Gas Conservation Act (the "Act"), Utah Code §§ 40-6-1 to -19 and the Utah Administrative Code R. 649-1 *et. seq.*
2. The Act gives the Board "jurisdiction over all persons and property necessary to enforce this chapter" and authority to regulate "all operations for and related to the production of oil or gas" which includes well plugging and well site reclamation. *Id.* § 40-6-5.
3. This proceeding affects the property or financial interests of Spencer Kent Barton d/b/a Empire Energy, the owner and operator of the Subject Well, and Academy Farms Corporation who is believed to be the owner of real property where the Subject Well is located. Each is a "respondent" as defined by Utah Administrative Code Rule R. 641-100-200. However, Academy Farms Corporation is a named respondent based solely on its property interest, and the Division is not seeking an order against them.
4. If they choose to respond, respondents must file and serve a written response within 20 days of the mailing date of this NOAA. Utah Admin. Code R. 641-104-141. If no response is filed with the Board or a party does not participate at the hearing, the Board may enter an order of default against that party. Utah Admin. Code R. 641-104-151, Utah Code § 63G-4-209(1).

5. This proceeding is to be conducted formally in accordance with the Utah Administrative Code R. 641, and with sections 63G-4-204 to -209 of the Utah Code.
6. Unless otherwise ordered by the Board, the hearing on this matter will be held on December 11, 2019 at 10 a.m. in the auditorium of the Utah Department of Natural Resources building, 1594 West North Temple, Salt Lake City, Utah.

**FACTUAL BACKGROUND**

7. Empire Energy is a Utah DBA Sole Proprietorship of Mr. Spencer K. Barton, registered with the Utah Division of Corporations and Commercial Code on October 26, 2016. Mr. Barton is listed as the sole owner and registered agent of the entity.
8. Mr. Barton's business registration is listed as active with the Utah Division of Corporations at the date of filing this NOAA.
9. Mr. Barton is the operator of record for the Subject Well located in Township 20S, Range 7E, Section 15 in Emery County, Utah:

<b><u>API No.</u></b>	<b><u>Well Name</u></b>
43-015-50005	Academy #1

10. Mr. Barton does not own or operate any other state-permitted wells in Utah.
11. The Subject Well is located less than one-half mile southeast of the town limits of Ferron, Utah.
12. The Subject Well is located on land owned by Academy Farms Corporation.
13. Mr. Barton paid a cash bond to the Division, held by the State Treasurer, to guarantee the plugging and abandonment of the Subject Well up to \$15,000.

**History of the Subject Well**

14. On February 10, 2017 Mr. Barton filed an application for a permit to drill (“APD”) the Subject Well.
15. A permit to drill the Subject well was issued on May 2, 2017.
16. It appears that initial drilling took place on May 30, 2017 but no Entity Action Form reporting the spudding of the well was ever filed with the Division, as is required by Rule and Mr. Barton’s permit.
17. Over the next two weeks Mr. Barton deepened the Well from 960 feet to 1690 feet in an effort to make the well productive, but production did not occur.
18. The Subject Well has not ever produced any hydrocarbons and has remained on shut-in status without Division approval from June 14, 2017 until the date of filing this NOAA.

#### **Enforcement History**

19. On October 19, 2017, the Division issued Mr. Barton his first Notice of Violation (“NOV”) for failure to post proper identification of the well site as required by Utah Admin. Code R. 649-3-5.
20. Compliance with the NOV was required by November 16, 2017, however it is unclear if Mr. Barton received notice of this NOV as the registered mail notice came back to the Division as unclaimed.
21. Throughout 2018 Mr. Barton failed to file sundry notices or communicate with the Division in any capacity.
22. On June 14, 2018 Mr. Barton began violating Utah Admin. Code R. 649-3-36 as the Subject Well had been shut-in for twelve months and Mr. Barton had failed to file a sundry notice demonstrating site safety, well integrity, and a request to keep the well on shut-in status.

23. On February 28, 2019, the Division sent Mr. Barton a second NOV for several violations of Rules and Mr. Barton's permit. Mr. Barton, or his agent, signed for and received notice of this second NOV on March 4, 2019, via certified mail.
24. First, the Division notified Mr. Barton that the Subject Well was in violation of Utah Admin. Code R. 649-3-36 because the Well had been shut-in for over twelve months and Mr. Barton did not file a Shut-In or Temporary Abandon extension request.
25. Second, the Division notified Mr. Barton that he violated Utah Admin. Code R. 649-3-6 by failing to file a report notifying the Division of the spudding of the Well within 24 hours on approximately May 31, 2017.
26. Third, the Division notified Mr. Barton he violated Utah Admin. Code R. 649-3-21 by failing to file a well completion report within 30 days of completion of the Subject Well on June 14, 2017.
27. Fourth, the Division notified Mr. Barton he was in violation of Utah Admin. Code R. 649-3-18 for violating the stipulation formed in the predrill evaluation to close the site's reserve pits within six months of well completion. This stipulation was required to be fulfilled by December 14, 2017.
28. Finally, the Division notified Mr. Barton he was in violation of Utah Admin. Code R. 649-3-15 for his failure to maintain a safe and workmanlike manner due to a failure to maintain a presence at the site and excess weeds and other fire hazards around the Subject Well.
29. Compliance with this second NOV was required by April 1, 2019.
30. By May 17, 2019, Mr. Barton had failed to remedy the violations noticed in the two NOV's issued by the Division.

31. On May 17, 2019, the Division issued a Division Order requiring Mr. Barton to immediately plug and abandon the Subject Well in accordance with Utah Admin. Code R. 649-3-36 and - 24.
32. The Division Order notified Mr. Barton of his opportunity to file an appeal the Division's requirement to plug and abandon the well with the Secretary of the Board within 30 days in accordance with Utah Admin. Code R. 649-10-6.
33. On June 17, 2019, Mr. Barton filed a sundry requesting authorization to perform a nitrogen drop on the Subject Well sometime in August of 2019.
34. A second sundry was filed on the same day by Mr. Barton with photos of the site in an attempt to show the well was in compliance with the portions of the prior NOV's requiring identification of the well site and eliminating weeds around the Subject Well.
35. The two June 17, 2019, sundries included a letter from Ms. Sandra Barton, on behalf of Mr. Barton, describing the issues with making the Subject Well productive and complying with the Division's NOV's and Order. These issues included inadvertently drilling a crooked well and Mr. Barton being subject to criminal and civil penalties from the Utah Securities Commission for the unlawful marketing and sale of security interests in the Subject Well. The letter concluded with a request for the Division to allow Mr. Barton to move forward with the Subject Well by approving a nitrogen drop.
36. On September 18, 2019, the Division denied the request as Mr. Barton had failed to file sundry notices describing the shut-in Well's status, including downhole integrity, as required by Utah Admin. Code R. 649-3-36. Therefore, the Subject Well was still under the Division Order to plug and abandon.

37. As of the date of this filing, Mr. Barton has failed to file an appeal of the Division Order with the Board.
38. The Division has not had any further correspondence or information from Mr. Barton since September 18, 2019.
39. Mr. Barton has failed to comply with the Division Order requiring the site be plugged and abandoned.
40. Additionally, since Mr. Barton has failed to provide any information regarding downhole integrity and field presence the Division cannot ensure that the Subject Well does not present a threat to public health, safety, or the environment.

#### **CAUSES OF ACTION**

##### *Cause I: Refusal or Inability of Operator to Conduct Necessary Reclamation*

41. The Rules require the Division to take action to have the Board forfeit an operator's bond where the operator "refuses or is unable to conduct plugging and site restoration." Utah Admin. Code R. 649-3-1.16.1.1.
42. After proper notice and opportunity for a hearing, the Board may order the Division to collect the forfeited bond and use the forfeited funds to plug and restore the wells to which the bond applies, or to contract for the plugging and restoration work with the surety, the operator, or another party capable of performing the necessary work. *Id.* R. 649-3-1.16.4.
43. If the amount of the forfeited bond is not sufficient to plug and restore a well, the Division may complete the plugging and restoration and may recover all costs in excess of the forfeited funds from the operator. *Id.* R. 649-3-1.16.5.



44. Mr. Barton has demonstrated his refusal or inability to conduct plugging and site restoration of the Subject Well by his refusal to respond to or take action to comply with the May 17, 2019, Division Order to immediately plug and abandon the Subject Well.
45. Mr. Barton continues to allow the Subject Well to be in violation of a number of Rules, including being on shut-in for over twelve months without submitting reports demonstrating well integrity, Utah Admin. Code R. 649-3-36.1, and failure to maintain a field presence, *id.* R. 649-3-15.
46. As a result, the Subject Well does not have authorization from the Division to continue to be shut-in and must be plugged and reclaimed.
47. In sum, Mr. Barton has either refused, or is unable, to plug and reclaim the Subject Well and the Board should forfeit the cash bond and allow the Division to use the funds to plug the Subject Well and reclaim the well site.

*Cause II: Failure to Comply with Conditions of the Permit to Drill*

48. The Rules require the Division to take action in front of the Board to forfeit an operator's bond where the operator is in "[n]oncompliance as to the conditions of a permit issued by the division." Utah Admin. Code R. 649-3-1.16.1.2.
49. Mr. Barton is in violation of numerous terms of his permit to drill from the Division.
50. Specifically, Mr. Barton's permit violations include failure to comply with the permit's requirement to comply with the Rules, failure to maintain continuous operation of the Subject Well within twelve months as required by Utah Admin. Code R. 649-3-36, failure to notify the Division prior to spudding the Well, failure to provide various required reports to the Division, and failure to notify the Division of suspension of operations.

51. Since Mr. Barton is in violation of Utah Admin. Code R. 649-3-1.16.1.2, the Board may order the Division to collect the forfeited bond and use the forfeited funds to plug and restore the wells to which the bond applies, or to contract for the plugging and restoration work with the surety, the operator, or another party capable of performing the necessary work after proper notice and opportunity for a hearing. *Id.* R. 649-3-1.16.4.
52. If the amount of the forfeited bond is not sufficient to plug and restore a well, the Division may complete the plugging and restoration and may recover all costs in excess of the forfeited funds from the operator. *Id.* R. 649-3-1.16.5.
53. In sum, Mr. Barton is in violation of a number of terms of his permit to drill, has either refused, or is unable, to plug and reclaim the Subject Well and the Board should forfeit the cash bond and allow the Division to use the funds to plug the Subject Well and reclaim the well site.

*Cause III: Penalties for Violations of the Permit, Rules, and Division Order*

54. Utah Code § 40-6-11(4)(a) provides that after an adjudicative proceeding where the Board determines a person has “violated any provision of this chapter, or any permit, rule, or order made under the provisions of this chapter, that person is subject, in a civil proceeding, to a penalty not exceeding \$5,000 per day for each violation.”
55. Mr. Barton continues to be in violation of his permit, multiple provisions of the Rules, and a Division Order.
56. Specifically, Mr. Barton violated his permit with his failure to maintain continuous operation of the Subject Well by March 2, 2018, failure to notify the Division prior to spudding the Well, failure to provide various required reports to the Division, and failure to notify the Division of suspension of operations.

57. Mr. Barton has violated numerous Rule requirements including shutting in the well for more than twelve months without providing assurances of downhole integrity and site safety under Utah Admin. Code R. 649-3-36, failing to file various required reports, and failure to maintain a field presence under, *id.* R. 649-3-15.
58. Mr. Barton violated a Division Order by failing to immediately plug and abandon the Subject Well on May 17, 2019.
59. If the Board determines in this adjudication that these actions were in violation of Mr. Barton's permit, the Rules, or the Division Order, the Board may authorize the Division to bring a civil proceeding against Mr. Barton to collect penalties in an amount to be determined by the district court, up to \$5000 per day for each day of violation.
60. In sum, the Board should use the authority granted by the Act to direct the Division to bring a civil action to recover penalties up to \$5000 per day for Mr. Barton's violations of the Rules, his permit, and a Division Order.

## Relief Requested

Based on the factual allegations above, the Division asks the Board to enter an Order as follows:

1. Order Mr. Barton's interest in the \$15,000 cash collateral bond held by the State Treasurer be forfeited and released to the Division to plug the Subject Well.
2. Authorize the Division to use the forfeited funds to complete the plugging and restoration of the Subject Wells as permitted by Utah Admin. Code R. 649-3-1.16.
3. Authorize the Division to take court action as necessary enforce the terms of the Board Order.
4. Authorize the Division to seek civil penalties in district court in an amount the court deems appropriate, not to exceed \$5000 per day for each day of violation and;
5. Grant further relief that the Board deems just and proper.

Respectfully submitted on the 28th day of October, 2019.

UTAH OFFICE OF THE ATTORNEY GENERAL



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*Addresses Required by Rule:*

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Ruland J. Gill, Jr.

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## CERTIFICATE OF SERVICE

I certify that I caused to be served the above **Notice of Agency Action**, Cause No. 007-15:

Docket No. 2019-026 to the following parties on the 31<sup>st</sup> day of October 2019.

*By Personal Service and Certified Mail:*

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