



State of New Mexico
Environment Department
Energy, Minerals and Natural Resources Department



Michelle Lujan Grisham
Governor

James C. Kenney
Cabinet Secretary, Environment Department

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Cabinet Secretary, Energy, Minerals
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June 29, 2023

VIA UPS

Jason M. DeLorenzo
Douglas E. Swanson Jr.
Managing Partners
ENCAP INVESTMENTS
9651 Katy Fwy
Sixth Floor
Houston, Texas 77024

Re: Significant Regulatory Problems with Ameredev Upstream Operations in New Mexico

Mr. DeLorenzo and Mr. Swanson,

We write on behalf of the State of New Mexico to express our alarm at the operational practices of one of EnCap Investments' portfolio companies – Ameredev II, LLC and Ameredev Operating, LLC (collectively "Ameredev").

Today, the New Mexico Environment Department ("NMED") and the New Mexico Energy, Minerals and Natural Resources Department ("EMNRD") announced significant enforcement actions against Ameredev. These actions are based on alleged violations that show, at a minimum, an ignorance of applicable state rules, or at worst, a flagrant and willful disregard for state rules. Such rules exist to keep New Mexicans healthy and safe, and Ameredev's alleged violations appear to put these values at risk. While our agencies will address these alleged violations directly with Ameredev management, it is our position that these concerns must be also brought to EnCap Investments' attention as they raise questions about the adequacy of the resources provided to Ameredev in support of their operations and necessary institutional controls.

Please note, both NMED and EMNRD continue to evaluate Ameridev's compliance with applicable state rules, which evaluation may result in additional violations in the future. The current actions taken by NMED and EMNRD are briefly summarized below.

NMED's Air Quality Bureau issued an Administrative Compliance Order (the "Order") and proposed a civil penalty of \$40,336,818 to Ameridev for numerous alleged air quality violations at five of Ameridev's facilities. In sum, Ameridev actively extracted oil and natural gas without any means to transport it, resulting in excess emissions of over 7.5 million pounds of hydrogen sulfide, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compound emissions. These pollutants are known to cause serious health issues, including respiratory issues, disorientation, impaired cognition, convulsions, and even death. In addition, Ameridev's excess emissions contribute to rising ozone levels in the Permian Basin, an area which the U.S. Environmental Protection Agency has indicated may require stricter air quality permitting thresholds in both New Mexico and Texas. Alleged violations addressed in the Order include:

- **Violation 1.** General Construction Permit-6 ("GCP-6"), General Condition B101.A and General Construction Permit-Oil & Gas ("GCP-O&G"), Specific Condition A100: Failure to construct or modify and operate the Amen Corner, Azalea, Firethorn, Nandina, and Red Bud CTBs in accordance with representations in each facility's GCP-6 or GCP-O&G Registration Form;
- **Violation 2.** GCP-6, General Condition C101.D(1) and GCP-O&G, General Condition C101.C(1): Failure to obtain an individual construction permit before making changes to equipment and/or operations that prevented each facility from meeting its GCP-6 or GCP-O&G requirements;
- **Violation 3.** GCP-O&G, Specific Condition A209.A: Failure to operate and control tank emissions with the vapor recovery unit as represented in the GCP-O&G #8189 for the Nandina CTB;
- **Violation 4.** GCP-O&G, Specific Condition A209.A: Failure to complete and/or record vapor recovery unit inspections at the Azalea CTB;
- **Violation 5.** GCP-6, Specific Condition A107.A: Failure to complete and/or record monthly vapor recovery unit inspections of the vapor recovery units used to control air emissions from the Amen Corner CTB vapor recovery towers;
- **Violation 6.** GCP-6, Specific Condition A100.D and GCP-O&G, Specific Condition A106.C: Failure to limit the pound per hour and ton per year emissions from flare, unit FL-1, to its authorized GCP-6 emission limits at the Amen Corner, Azalea, Firethorn, Nandina, and Red Bud CTBs;
- **Violation 7.** GCP-6, Specific Condition A108.A and General Condition B101.A – Legal; and GCP-O&G, Specific Condition A207.B: Failure to comply with operational requirements and representations made in permit registrations for flare, unit FL-1, at the Amen Corner, Azalea, Firethorn, Nandina and Red Bud CTBs;
- **Violation 8.** GCP-6 and GCP-O&G, General Condition B110.B(1) – General Reporting Requirements: Failure to submit notifications of the anticipated date of initial start-up no less

than 30 days prior to the date is a violation at the Amen Corner, Azalea, Firethorn, Nandina, and Red Bud CTBs.

Ameredev has 30 days to respond to NMED's Order and pay the penalty or request a hearing.

In a separate action, EMNRD's Oil Conservation Division ("OCD") issued a Notice of Violation ("NOV") and proposed civil penalty of \$2,412,000 dollars to the S Big Oak Tree 26 36 31 Federal Com #128H (30-025-49256) well (the "Facility") for a host of violations of OCD's rules. Most notably, Ameredev failed to file required production (Form C-115) or natural gas waste (Form C-115B) reports; filings that are a critical component of Ameredev properly reporting its production and demonstrating compliance with OCD's waste rules, which themselves are a key component of New Mexico climate change policy. Other required reports were submitted but were unacceptably late. A preliminary review of Ameredev's other facilities suggests that there may be similar problems across the company's portfolio. OCD's NOV requires:

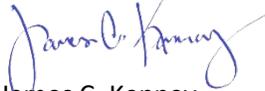
- 1) Immediate correction of the issues identified at the Facility;
- 2) Payment of a civil penalty; and
- 3) Ameredev to undertake an audit of its other facilities to identify any similar issues.

The NOV also signals that if a division or commission order is issued because of the NOV, OCD intends to then review whether it should revoke Ameredev's authority to transport given its significant compliance issues. Finally, OCD notes that its rules permit the denial of operatorship to another entity if "...an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC," 19.15.9.8(B)(2).

While Ameredev is directly responsible for responding to the allegations, it is critical for EnCap Investments, as its owner, to be apprised of the gravity of Ameredev's compliance issues. At this time, both NMED and EMNRD recommend EnCap Investments notify all oil and natural gas operators in its portfolio of Ameredev's compliance issues and that you encourage such operators to conduct regulatory self-audits and disclose any potential violations to our agencies.

If you have questions regarding this letter, please contact Michelle Miano, Environmental Protection Division Director, NMED, at michelle.miano@env.nm.gov or (505) 479-2596 or Dylan Fuge, Oil Conservation Division Director, EMNRD, at dylan.fuge@emnrn.nm.gov or (505) 490-2551.

Sincerely,


James C. Kenney
Cabinet Secretary
Environment Department


Sarah Cottrell Propst
Cabinet Secretary
Energy, Minerals and Natural Resources Department