



Presidents Message

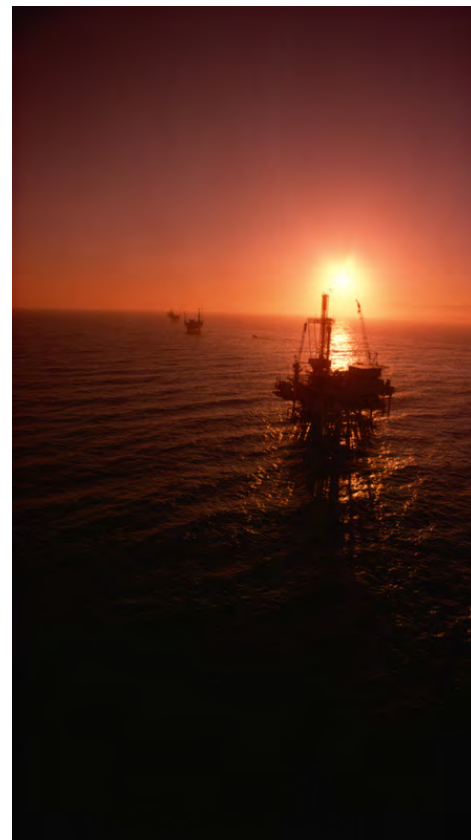
Stephen Harris, Independent

I wish to first thank all of the members of LAAPL who supported the Mickelson Golf Tournament at the Malibu Country Club. Not only did it make money to go to the Pyles Camp, but the attendance was near a record. Secondly, I want to urge LAAPL members that not have signed up yet to this year's annual WCLI, and wish to attend to do so as soon as possible. The event, as you know, is a good event to socialize with other Landmen in California, but also to learn about topics that are pertinent to our job skills. Now, I have the honor for the next few months of addressing this august assemblage of professional land and legal expertise, in my own style. So I begin with a reflection over the past six months of 2010, and how the U.S. Petroleum Industry has changed permanently, and the effects of this year's oil spill will have on all of us in this industry for the foreseeable future.

As I write this message, the BP Macondo Well is in its final stages of plugging and abandonment. The new BOP stack has been installed. The 11 fatalities and

billions of dollars already lost from the clean-up effort have, at times, seemed to jeopardize one of the largest oil companies on the planet. The vitriolic response from main-stream media has been biased, judgmental, false at times, and counter-productive at a minimum. There is an excellent article in the July/August edition of *Landman*, written by a Rancho Palos Verde native, Michael H. Towle, who is a spill response captain dispatched to the Gulf Coast. He gives another view than what the American public is bombarded with from the National media, stating what an incredible job BP has been doing by following its incident command system already in place before the spill and on file with MMS as required by law. Within one day, the first of now 10 recovery vessels were sailing toward the Deepwater Horizon with their primary purpose of skimming, capturing, decanting and off-loading some 4,000 bbls of Louisiana light sweet crude per boat each day. He talks about how BP managed to muster an army of 24,000 workers from hundreds of contractors from around the world; whereas the Federal Government's response is not much more than sending down National Guardsman who are essentially standing around the staging areas in the shade and eating BP's food. Mr. Towle stated he has not seen one guardsman put on any personal protective equipment or even lift a finger.

The explosion and sinking of the Deepwater Horizon rig will be studied for decades forward, but some items have surfaced already, including the failed blowout preventer ("BOP"). BP just released an internal report citing that there was no single event that caused the explosion, but rather a series of complex events, and multiple parties were involved, not just BP. The report



Meeting Luncheon Speaker

Going Horizontal in the LA Basin

Christopher C. Phillips, RPG, has 29 years of experience as a geologist and engineer for Tidelands Oil Production Company, now Oxy USA Inc., in Long Beach, California. He has been involved in all aspects of geology, drilling and well repair for Tidelands, now Oxy. His current responsibilities include 3-D geologic modeling and mapping, well planning and geosteering horizontal wells. He is also responsible for identifying and defining areas of economically productive unrecovered oil. Mr. Phillips has co-authored and made numerous presentations on 3-D deterministic geological modeling and geosteering horizontal wells. Chris has a B.S. in geology from California State University, Long Beach.

Inside This Issue:

~ Click on a topic to take you to that article ~

Presidents Message	1
Luncheon Speaker	1
Editor's Corner	2
Lawyer's Joke of the Month	3
Treasury Report - Absent this issue	3
Scheduled Luncheon Topics	3
Chapter Board Meeting	3
New Members and Transfers	3
2010 - 2011 Officers	6
Educational Corner	7
Case of the Month	8

[Presidents Message](#)
[continued on page 4](#)



Editor's Corner

Joe Munsey, RPL Newsletter Chair

Southern California Gas Company

I contacted, via email, the currently installed Chapter President and offered to continue on as the Newsletter Chair... but have not heard back from him as of today's date. I suspect there is another member of the chapter who has "sweet talked" his/her way into the heart of the Chapter President and has requested to take the helm as the Newsletter Chair. As such, there may well be a ready able bodied person in the wings standing by anxiously to take over the reins of this award winning newsletter.

Yes my fellow members and friends, *The Override* picked up its second award as best newsletter [small chapter category] in Vail, Colorado, during the AAPL's annual shindig. Your Newsletter Chair began smiling wildly upon receiving the call from Joel Miller, who was attending the educational seminar, as he began informing me he had accepted the award on behalf of the chapter. Immediately thereafter we placed a call to Randall Taylor to congratulate him for publishing this professional publication. Of course, and I would be amiss, if we did not acknowledge Cliff Moore for his editorial prudence and all those fine writers who contribute to this fine chapter newsletter.

Let me circle back to the rudderless Newsletter Chair situation for a moment. Until the reigning President appoints a new editor, I, a rude and mutinous chapter member, have seized the printing presses; will continue to do so up and to the time the Chapter President, or the Board of Directors, take hold of the printing apparatus and appoints the 2010 - 2011 Newsletter Chair.

Let us begin as we have always done in the past in the September issue of *The Override* where we engage discussing what took place during the previous year. Since our Chapter President took a long

winded approach, my reflective thoughts will need to be slashed to accommodate, howbeit a wonderful article, his debut message.

To begin with, I am mad as hell and I want all the facts concerning those hidden emails the climate armegondians have been sequestering from our prying eyes regarding the climate change hoax. The uptick of carbon dioxide is not coming from the everyday working class folks out there going about their jobs and daily routines. Those plumes of carbon dioxide releases were coming from the guttural groaning and moaning of Al Gore as he discharged clouds of spent exhaled air in the virgin atmosphere where his tryst with the massage therapist late in the evening was taking place. Furthermore, now that the Gores are separating, I want to see all the hidden emails dealing with the spikes in carbon dioxide funneling its way into the ozone to determine if our problem lies with Al playing cupid with the woman of the night. The boost in carbon dioxide spewing out is caused by something or someone the climate aremgondians gods are not letting us in on.

When did these trysts take place and when did they know about it? Did they goose the data downward to protect Al Gore's nefarious behavior? Better yet, let us see if Al purchased a tree seedling through one of those cap and trade exchange centers each and every time he was doing his "stuff." Inquiring minds need to be on "need to know basis." If not, I am going to be checking out the headlines while in the line at the grocery store when the tabloids start to publish more facts on Al's atmospheric climate change expulsions.

While on the subject of political buffoons, the one and only Henry Waxman, Democrat of Los Angeles, shows his wit and intelligence shortly after the passage of the Obamacare health plan. I do not know if we should laugh or break down in tears about his latest ranting against corporate America. In a recent article in *Forbes*, Waxman took several corporate leaders [Caterpillar/Verizon types] to task for writing down assets due to the anticipated costs of Obamacare. Of course, the accounting department heads were only doing so based upon GAAP [general accepted accounting practice] and to be SOX compliant.

2010–2011 Officers & Board of Directors

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Through a Waxman spokes person, a very bright individual to say the least, also stated it was an attempt by corporate America to embarrass the President over his health care plan. When it was pointed out to Waxman and his gang regarding GAAP, they were befuddled on how GAAP works and why it concerns health care cost. Are you laughing, or are you about to break down in tears? You see, Waxman et al represent America's finest in leadership and responsible fiscal policy handlers.

Guess I strayed a bit off the subject matter on reflecting the past year. Let's see... oops, out of time and space. I pledge, next year we'll have the reflection theme back on track. Meanwhile, we have a wonderful guest speaker for the luncheon on Thursday, September 16th at the Long Beach Petroleum Club. Bring a guest and greet me at the door.

¹ Or my successor.

Lawyers' Joke of the Month

Roger McNitt, Esq.

A lawyer was asked he would like to become a Jehovah's Witness.

He declined, as he had not seen the accident but would still be interested in taking the case.

OUR HONORABLE GUESTS

May's luncheon was another successful LAAPL Chapter luncheon meeting held at the Long Beach Petroleum Club. Our many guests of honor who attended:

- Gerry Tintle – ConocoPhillips
- Pat Pinkerton – Venoco
- David Terry, CPL – Independent (Utah)
- Patrick Daniel – Independent
- Bill Buss – The Termo Company
- Francis Roth – The Termo Company
- Lisa Rupp
- Cliff Moore
- Paul Langland, Esq.

LAAPL RECEIVES AWARD

“The Override,” the official organ of the LAAPL took first place (small chapter category) at the AAPL convention in Vail, Colorado. Attending the ceremony and accepting the award was Joel Miller, acting at the time as our AAPL Region Chairman.

Editors Comments: To a large extent the success of the chapter newsletter depends on the contributing writers each month; and above everything else, Randall Taylor, RPL, of Taylor Land Services, Inc. for all his efforts in publishing “The Override” and giving it the professional appearance.



CHAPTER BOARD MEETINGS

Partial list of issues to be discussed at the next board meeting:

- Initial report on the Annual Mickelson Golf Classic
- LAAPL considering donation to BAPL for hosting the WCLI
- Stephen Harris, Independent, 2010 – 2011 Chapter President conducting the first Board Meeting of the year.

The 2010 – 2011 Board of Directors meet on the third Thursday of the month at 11:00 AM at the Long Beach Petroleum Club. Board meeting dates coincide with the LAAPL's luncheons.

We encourage members to attend and see your Board of Directors in action.

SCHEDULED LAAPL LUNCHEON TOPICS AND DATES

September 16th

Chris Phillips, Chief Geologist
OXY LA Business Unit
“Technical Aspects of Horizontal Drilling”

November 18th

Don Clarke, Geologist
“Urban Operations in the LA Basin”

January 20th

Joint Meeting with
Los Angeles Basin Geological Society

March 17th

Martha Cheshire, CPLTA
Independent
Current Director and Past President
of the
National Association of Professional
Lease and Title Analysts
“Records/Maintenance of Your Oil and
Gas Leases”

May 19th

Steve Stafford
ADR West
Mediation – Alternative Dispute
Resolution

New Members and Transfers

**Our Chapter Board of Directors
welcomes the following new member
to the Los Angeles Chapter:**

James A. Garner
Forest Minerals Corporation
P.O. Box 19902
Reno, NV 89511
775-851-1989
775-851-0911
jgarner@forestminerals.com

Transfers

None to Report

Joel Miller

LAAPL Loses Chapter Stalwart

As of the end of September this year, Joel Miller will be leaving Transamerica Minerals. Unfortunately for our chapter, his leaving Transamerica also means relocation to his home state of New Mexico where he will take on duties with the family's oil and gas properties.

OK – so that is good for Joel and his family but the LAAPL will lose a fine professional landman from its ranks. If you detect a self-interest tenor to the previous statement, well, I admit it. Quite certain the rest of the members feel the same.

Joel Miller first came to the LAAPL chapter as an intern for Transamerica Minerals and never left. The same can be said about his arrival here at LAAPL – he never left, but paramount to the chapter, he plunged into chapter involvement from day one. Moving up the ranks to finally becoming Chapter President; yet during his ascend up the chain of command, Joel was appointed and acted as our AAPL Region VIII Director. Local associations thrive on the character, integrity and zeal of fine members like Joel – they just do not come any better.

We will miss Joel Miller here at the LAAPL; I personally regarded him as a fine leader with sustaining qualities as an officer of the chapter. We sincerely wish Joel and his family the highest of good will when he lands back in his home state. However, there is going to be a missing link here for a long time to come.

Presidents Message
continued from page 1

highlights the well completion was not the issue but hydrocarbons entering from the bottom of the well. The report states there were human errors, poor judgments and ignored pressure readings. There have been other articles written regarding who was in charge, and even the top official at Transocean, which owned the rig and leased it to BP, was unaware of the chain of command. There are inquiries into the actual well design, particularly the lack of sufficient centralizers (six were used when a normal cement job for the casing program in the Macondo well should have required at least 21 centralizers). Another area which bears thorough investigation is the fact, as now understood, that the rubber annular, or Hydril as some call it, which encloses around the drill pipe for pressure testing and is a back-up for the BOP rams, had been heavily damaged according to testimony. It is known that the day before, an employee hit the joy stick on the control panel in the rig floor causing the drill pipe to move up while the rubber annular was pressured up against the drill pipe, resulting in "chunks" of rubber circulating up out of the hole.

Having been in a 1982 blowout myself in Louisiana on a deep high pressure / high temperature discovery well, I saw firsthand what happens when the Hydril rubbers fail, as within 20 seconds the rig I had contracted blew out over 5,000 bbls of 55 degree condensate all over the location, tree line and crew. After millions of dollars of repair on that particular well, we came to a conclusion the incident was simply an uncontrolled gas blowout that the existing BOP failed to prevent.

Rigs burn down, platforms sink, supply ships capsize, hurricanes wipe out facilities, crew boats sink, tornadoes throw rig derricks to the ground, lightning strikes derricks, earthquakes cause un-planned frac jobs on wellbores and break-up tank farms, and so on. Now, Anadarko Petroleum, who has a 25% Working Interest in the Macondo well

is asserting that BP was grossly negligent and acted in a willful and reckless manner. This is an extremely dangerous business, which could never be unionized as death and injury are never far from the minds of the rig crews and owners. Even last week, there was another rig explosion with the Mariner Challenger rig in shallow GOM waters. However the mainstream media had little to sensationalize as the entire crew survived and apparently no oil was lost at sea.

What strikes me the most though, besides the fact that any disaster with loss of life and grave environmental damage is always upsetting, is the Macondo blowout in the Gulf of Mexico has generated unprecedented rage and vindictiveness among both the public and elected officials toward not only the involved companies but the deepwater oil and gas industry as a whole. United States Presidents, being fleckless and unprincipled sometimes, have had conflicts with industry leaders before, particularly in time of war, but none have ever uttered words like our current President did calling for an executive to be fired and threatening to "kick some ass."

There are four major deepwater regions in the world: the Gulf of Mexico, offshore Brazil, Angola and Nigeria, which collectively account for 90% of the deepwater offshore production in the world. This fact should temper the severity of new regulations that nevertheless, could, add \$5 - \$10.00 / bbl to the price of oil if unchecked. A recent article in the Oil and Gas Journal reminded the industry of four previous disasters (Exxon Valdez, Ocean Ranger, Ocean Odessey and Piper Alpha) and the difference in how these incidents were handled without personal confrontations involving national leaders.

The Exxon Valdez supertanker spilled approximately 260,000 to 750,000 bbls of oil into Prince William Sound. There was harsh criticism of Exxon at that time, but nothing like what BP is experiencing. Following that disaster, Congress passed the Oil Pollution Act

of 1990 that among other things, scheduled a gradual phase-in of double hulled tankers. Ironically, a double hulled tanker would not have prevented the Valdez from rupturing after it struck the Bligh Reef on March 24, 1989, but might have reduced by 60% the amount of the oil that spilled.

The Ocean Ranger was a semisubmersible rig that sank in a storm off Newfoundland waters where it was drilling an exploratory well in the Grand Banks area on February 15, 1982. All 84 workers aboard perished. The rig was built to withstand harsh conditions, including 100 knot winds and 110 foot waves. However, breakage of a unique porthole window in one of the rig's columns 28 feet above mean sea level during 100 knot winds and 65 feet waves caused severe listing. As the crew attempted to escape, some were washed overboard and others were thrown into the water when their lifeboats broke apart. Without survival suits, they all died before the Ocean Ranger sank some 90 minutes later. The Ocean Ranger disaster led to several improvements in offshore safety, including a new method for launching lifeboats, special training for ballast control operators, and the requirement for survival suits in areas of frigid waters. Last week's Mariner explosion in the GOM generated pictures of all of the crew members floating in the GOM with special survival suits on to prevent hypothermia.

The Ocean Odyssey was one of the most advanced semis of its day (built in 1983), designed to work on high-pressure wells in harsh environments off Alaska and in the North Sea. On September 21, 1988, drilling was curtailed due to loss of circulation. The Arco company man decided against pulling out of hole to regain circulation. Shortly afterward, there was an explosion, and the four remaining workers on the rig floor headed for the lifeboats with the rest of the crew that had been ordered to evacuate. The well was not completely shut in by the lower rams on the BOP,

Presidents Message
continued on page 5

Presidents Message
continued from page 4

and within a few minutes a catastrophic choke hose failure released large quantities of gas that fueled fires both on the rig and the sea surface beneath it. Only the off duty radioman died of smoke inhalation, but due to the seriousness of the North Sea blowout and the apparent lack of special training, the UK effectively banned drilling in areas with anticipated reservoir pressure in excess of 10,000 psi.

The deadly explosion of the Piper Alpha platform in the North Sea on July 6, 1988, was the worst disaster ever with respect to loss of life in the offshore industry. It began with routine maintenance of a safety pressure valve on a backup propane condensate pump in the processing area. Unable to complete the work, the workers sealed the tube with a plate to resume work the next day. The next day's group of workers was unaware that a vital part of the machine was removed, and gas blew through the hole left by the valve at high pressure and exploded, blowing through the firewalls, then blowing up oil storage tanks. The automatic deluge system was not activated because it was turned off. The 62 crew members that disobeyed an order to remain in the "fire-proof" cabin and leapt into the sea survived, and the other 81 men died of smoke inhalation in the crew quarters. The UK Government ordered the "Cullen Report" commissioned which led to British operators completing \$7.5 billion in upgrades to offshore installations to improve safety.

In the UK, the Health and Safety Executive uses a goal-setting approach to safety, requiring companies to manage all risks but allowing them the flexibility to choose the best methods or equipment available. This differs from the prescriptive style favored by US legislators and regulators in which they dictate a fixed check list of things that must be done to meet a statutory requirement. Most operators favor the British approach as it enables them to use the best available control technology out in the market.

The Macondo spill will almost certainly bring a host of technologies and procedures into more common use, such as liner drilling. There will most certainly be BOP's upgraded to having two shear rams, placed at least 4 feet apart, along with acoustic control valves or else a remotely operated underwater vehicle always hooked to the BOP to close manually. The point is, the Petroleum industry worldwide will learn many things about how the BP oil spill occurred and will adopt new safety standards appropriate for deepwater drilling. This will be done in spite of our imbecilic political leaders and their grandstanding.

On to a more refreshing topic, this is the subject matter of our esteemed speaker this week. As one of the senior geologists with OXY, Chris has extensive experience in the horizontal drilling techniques in California. As a lot of you may know, the tremendous increase in drilling California shale is due to the technical advances developed in other shale provinces in the U.S. California has a very long history of shale production, which started in 1909, making California the largest cumulative producer of shale hydrocarbons in the world. Over the past decade, horizontal drilling and multistage fracturing have burst ultralow-permeability shale formations wide open and the estimated recoverable reserves are tremendous: 4.3 billion bbls of oil in the Bakken Shale, as much as 500 trillion cubic feet of gas in the Marcellus and up to 300 Tcf in the Haynesville Shale. Most of these areas are in mature basins. As to the Miocene-age oil-bearing, Monterey Shale in California, this is a world class source rock covering large areas onshore and offshore Southern California.

The Monterey, offshore California and onshore in the San Joaquin Valley and Salinas Valley onshore, is exceptionally thick, measuring thousands of feet in thickness compared to 60 – 80 feet in thickness of the Bakken Shale. There are 27 California fields identified that have each produced over 1 million barrels from the shale. The estimated ultimate recovery from these fields is

2.3 billion barrels. Like other productive shales, the organic-rich Monterey acts as both a hydrocarbon reservoir as well as an active source rock generating hydrocarbons that can migrate to other zones. Currently, about 1-5% of the original-oil-in-place ("OOIP") is recoverable, but not unlike the success of the heavy oil projects in California, it is predicted that a 30 -40% recovery of the OOIP will be prevalent over time. As in the non-shale Kern County formations, it was unheard of when the discoveries came in to obtain a 30% recovery of the OOIP. Today, the oil companies are routinely recovering 60-70% of the OOIP from the Kern County heavy oil fields.

California Shale development is a technology driven play and pay identification is one of the technologies that enable economic development of the Monterey. With some formations 4,000 feet thick, there are many different lithologies and 10 or more zones to test before and after stimulation. As in other shale plays, hydrocarbon migration and production is dependent on natural fractures creating flow pathways, but the Monterey geology is fracture-dominated in some parts and matrix-dominated in other parts. Some zones producer at high rates and others do not. Some zones require acid stimulation, while others require hydraulic fracturing. Therefore completion options are numerous, and sometimes a vertical well can recover just as much as a long-lateral horizontals with multi-stage propped fracs.

As landmen, we need to know the decisions where to drill new wells may be based upon many factors, such as coring and geological modeling. It may take quite a few wells to zero in on the best formations. So with that said, I hope that our LAAPL members and guests enjoy Chris Phillip's discussion about the newer horizontal completions which will be quite prevalent for the foreseeable future in California, as in the rest of the country.



LAAPL ELECTION FOR 2010 - 2011 OFFICERS


At our May luncheon, the LAAPL members voted in for office:

OFFICE	ELECTED CANDIDATE
President ¹	Stephen T. Harris, Independent
Outgoing President ²	Thomas G. Dahlgren, Land Manager, Warren E & P Inc.
Vice President	Joseph D. Munsey, RPL, Senior Land Agent, Southern California Gas Company
Secretary	Jennifer D. Evans, Vice President, Aeneas, Inc.
Treasurer	Sarah Downs, Independent
Director	Randall Taylor, RPL, President, Taylor Land Services, Inc.
Director	L. Rae Connet, Esq., Managing Partner, PetroLand Services
Region VIII AAPL Director ³	Randall Taylor, RPL, President, Taylor Land Services, Inc.

¹Per Section 7(3) the Vice President shall succeed to the office of the President after serving his or her term as Vice President and shall hold the office of President for the next twelve (12) months.

²Per Article 8 (2) the outgoing President shall serve as director.

³Not an elected position and not a member of the LAAPL Board – by Board appointment for a two year period. Randall Taylor, RPL, was appointed in 2010 to fill the term of Joel Miller who resigned his appointment.



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Gary L. Plotner
President
BAPL President 1985-86 & 2003-04
AAPL Director 1988-90 & 2002-03 & 2004-07
Serving the Western United States since 1983

APPOINTMENT OF NEW AAPL REGION CHAIRMAN

Joel Miller of Transamerica Minerals after the AAPL annual seminar respectfully submitted his resignation as the AAPL Region Chairman.

Randall Taylor, RPL, of Taylor Land Services, Inc. came forward and submitted his name to the LAAPL's Board of Directors to act as the AAPL Region Chairman. We are please to announce the board accepted and appointed Randall as the AAPL Region Chair, he will fill out the remainder of Joel's term.

2010 Mickelson Classic

Joel Miller

On August 27th LAAPL hosted the 2010 Mickelson Classic at the Malibu Country Club. 48 golfers attended the charity golf tournament to help raise money for the R.M. Pyles Boys Camp. Afterwards we have 52 people attend the dinner and awards ceremony.

The 1st place team was Brent Davenport, Steve Layton, Carl Glatz, and Mike McCaskey. Mike McCaskey also won the longest drive and Mike McPhetridge won closest to the pin. Steve Layton also won the raffle Grand Prize which was a Golf Certificate for 4 players at the Malibu Country Club.

Most importantly our tournament raised \$7,069.50 for the R. M. Pyles Boys Camp which is a 101% increase from our donation in 2009. Thanks to those who attended and those who sponsored the tournament.



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EDUCATIONAL CORNER

Need continuous education credit? You can generally earn them by attending our luncheons based upon speaker and subject matter. Listed below are continuous educational courses available for the third and fourth quarter of 2010.

Horizontal Drilling from an Operator's Perspective

Presented by the Los Angeles Association of Professional Landmen

When: September 16, 2010

Where: Long Beach, CA [L.B Petroleum Club]

RL/RPL Continuing Education Credits: 1.0

CPL Recertification Credits: 1.0

West Coast Land Institute – BAPL Host

When: September 22, 2010 – September 24, 2010

Where: Pismo Beach, CA

RL/RPL Continuing Education Credits: 9

CPL Recertification Credits: 9

(Includes 1 Ethics, 1 ESA)

HalfMoon Seminars

Agreements in Disputes in Oil and Gas Production

When: October 21, 2010

Where: Bakersfield, CA

RL/RPL Continuing Education Credits: 6

CPL Recertification Credits: 6

Oil & Gas Land Review & CPL/RPL Exams

When: September 28 – October 1, 2010

Where: Denver, CO

RL/RPL Continuing Education Credits: 8

CPL Recertification Credits: 8

(Includes 1 Ethics, 1 ESA)

Gulf Coast Land Institute

When: October 14 - 15, 2010

Where: Lafayette, LA

RL/RPL Continuing Education Credits: 10

CPL Recertification Credits: 10

Texas Land Institute

When: November 4, 2010

Where: Houston, TX

RL/RPL Continuing Education Credits: 7

CPL Recertification Credits: 7

CPL/RPL Exams

When: November 9 - November 12

Where: Fort Worth, TX

RL/RPL Continuing Education Credits: 18

CPL Recertification Credits: 18

(Includes 1 Ethics, 1 ESA)

For information regarding speakers, topics and cost please go to www.landman.org.

BAPL Chapter to Host 2010 West Coast Land Institute

The BAPL Officers have confirmed we are headed back to Shell Beach and the revered Cliff Resort as the venue to hold the 28th West Coast Land Institute in Shell Beach.

When: September 22th – 24th, 2008

Where: The Cliffs Resort
Shell Beach, CA
805-773-5000

Speaker and Topics

An Operator's Relationship with DOGGR and Assembly Bills 1960 & 2354 [Pending]

Jack Quirk, Esq.

Bright and Brown

Overview of Fracing and Addressing Landowner's Concerns

Halliburton

Local Land Use Regulations [Oil/Gas Operations]

John Harris, Esq.

Meyers Nave

Assembly Bill 32 [Greenhouse Gases/Climate Change]

Michael Mills, Esq. & Tom Henry, Esq.

Stoel Rives LLP

OCS Update 2010

Tony Marino, Esq.

Slattery, Marino & Roberts

Common Transactional Pitfalls in Acquisitions of Oil/ Gas Properties

Julie Carter, Esq. & Carlin Yamachika, Esq.

Day Carter & Murphy LLP

Legislative Update

Rock Ziemann,

California Independent Petroleum Association

Seismic Permitting & the BLM Programmatic Process

Larry Sasla,

Bureau of Land Management

Global Industry Overview

Dave Kilpatrick, President

Kilpatrick Energy

Ethics and Professionalism



CASE OF THE MONTH

APPLICATION OF THE CALIFORNIA CONSTRUCTION STORM WATER GENERAL NPDES PERMIT TO OIL AND GAS PROJECTS

By

Gregory J. Newmark, Esq.

John J. Harris, Esq.

Meyers, Nave, Riback, Silver & Wilson

I. Introduction

The NPDES “General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities” (“Construction General Permit”), adopted by the State Water Resources Control Board (“State Water Board”) in September 2009 as Order 2009-0009-DWQ, became effective on July 1, 2010. Anyone conducting “construction activity” after July 1, 2010 which results in a land disturbance of one acre or more, or less than one acre but part of a larger common plan of development or sale, is required to electronically file Permit Registration Documents. “Construction activity” includes clearing, grading, excavation, stockpiling, and reconstruction of existing facilities involving removal and replacement. Historically, most oil and gas exploration and production activities have been statutorily exempted from the permit requirements of the Clean Water Act.

However, as a result of a 2008 decision by the federal Ninth Circuit Court of Appeals, California’s new Construction General Permit now applies more broadly to oil and gas drilling or construction activities (such as pipeline construction). According to the State Water Board, now oil and gas construction activities that disturb one acre or more, discharge sediment, and contribute to violation of a water quality standard in a receiving water must apply for coverage under the Construction General Permit.

II. Prior Regulation of Oil and Gas Construction Storm Water

Although the Clean Water Act as we know it today was enacted in 1972, it only began to have a regulatory impact on storm water with the 1987 amendments. In the Water Quality Act of 1987, Congress amended the Clean Water Act to regulate certain storm water discharges with National Pollutant Discharge Elimination System (“NPDES”) permits. The 1987 amendments added Clean Water Act Section 402(p) (33 U.S.C. § 1342(p)), which regulates municipal and industrial storm water under NPDES permits, and US EPA regulations adopted in 1990 categorize construction projects as subject to NPDES permit regulation. (40 C.F.R. § 122.26(b)(14).)

The 1987 amendments also included another new section, Section 402(l) (33 U.S.C. § 1342(l)), which exempted oil and gas “operations” from having to get an NPDES permit if the discharge is not contaminated by contact with “overburden, raw material, intermediate products, finished product, byproduct or waste products.” However, the US EPA asserted that under its 1990 regulations, oil and gas construction activities (as distinguished from “operations” of existing facilities) still required an NPDES permit.

Next, when Congress enacted the 2005 Energy Policy Act, it amended the definitions section of the Clean Water Act to provide that oil and gas “operations” also include related construction activities. (33 U.S.C. § 1362(24).) This basically broadened the Section 402(l) NPDES permit exemption for uncontaminated oil and gas operations storm water discharges to include construction activities.

Then, in 2006, the US EPA adopted a new regulation based on the statutory exemptions for oil and gas projects. (40 C.F.R. § 122.26(a)(2)(ii).) The new regulation provided that storm water discharges from oil and gas construction activities that are contaminated only with sediment were exempt from NPDES permit requirements – even if the discharge contributes to a violation of water quality standards. (Water quality standards are regulations that describe the maximum amount of pollution allowed in a water body, e.g., no more than 50 nephelometric turbidity units.)

*Case of the Month
continued on page 9*

III. The Rules Change – NRDC v. US EPA

A. Ninth Circuit Court of Appeals Decides NRDC v. US EPA in 2008, Vacating Prior Regulatory Exemption

Within weeks of the effective date of the US EPA's 2006 regulation, environmental groups led by the Natural Resources Defense Council ("Environmental Groups") sued the US EPA in the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"). The Environmental Groups argued that the US EPA's 2006 regulation exempting oil and gas construction projects from the NPDES permit was an impermissible interpretation of the Clean Water Act statutes the rule was based upon.

In a May 2008 opinion, the Ninth Circuit agreed with the Environmental Groups and vacated the 2006 regulation. (*Natural Resources Defense Council v. United States Environmental Protection Agency* (9th Cir. 2008) 526 F.3d 591.) In a nutshell, the Ninth Circuit invalidated the 2006 regulation because it conflicted with the US EPA's prior position in its 1990 regulations, which provided that sediment discharges from oil and gas construction activities needed an NPDES permit. Because of these "inconsistent and conflicting" positions, the Ninth Circuit vacated the 2006 regulation as arbitrary and capricious.

B. The State Water Board Asserts Oil and Gas Construction Projects Must Obtain Permit Coverage – If The Project Contributes To a Violation of Water Quality Standard

In the wake of the NRDC v. US EPA decision, the State Water Board considered how the new ruling would affect its regulation of storm water from oil and gas construction activities. Initially, in the first page of a February 2009 memorandum, the State Water Board's Office Chief Counsel stated that discharges from oil and gas construction activities contaminated only with sediment require an NPDES permit. (*Memorandum: Impact of Natural Resources Defense Council v. US EPA . . . on the Regulation of Storm Water Discharges of Sediment from Oil and Gas Construction Activities*, February 18, 2009, p. 1.)

The State Water Board's Office of Chief Counsel then issued another memorandum in May 2010, which superseded the February 2009 memorandum. The May 2010 memorandum was revised to "clarify that . . . oil and gas construction activities that discharge storm water contaminated only with sediment require an [NPDES] permit if the discharge contributes to a violation of a water quality standard." (*Memorandum: Impact of Natural Resources Defense Council v. US EPA . . . on the Regulation of Storm Water Discharges of Sediment from Oil and Gas Construction Activities*, May 18, 2010, p. 1, italics added.)

The May 2010 memorandum summarized the State Water Board's position as follows in the conclusion:

If discharges of storm water runoff from oil and gas exploration, production, or treatment operations or transmission facilities, including field activities or operations that may be considered construction activity

- (1) are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products;
 - (2) are only contaminated by or only come into contact with sediment; and
 - (3) pursuant to 40 C.F.R. § 122.26(c)(1)(iii), do not contribute to a violation of a water quality standard,
- then the operator of the facility is not required to be covered by the Construction General Permit. All three factors must be satisfied to avoid coverage under the Construction General Permit. If discharges of sediment from the foregoing oil and gas activities contribute to a violation of a water quality standard and the size of the construction project is one acre or greater, the operator must immediately apply to be covered by the Construction General Permit.

(May 18, 2010, Memorandum, p. 6.) As of September 1, 2010, the May 2010 memorandum did not appear to be available on the State Water Board's web site. A copy may be viewed at the following location:

http://www.meyersnave.com/mn.pl?p=resource_summary&s=resources &t=app&rn=1283385140uku&rc=Briefs_and_Opinions&y=resourcebase.html

IV. The 2009 Construction Storm Water General Permit Imposes New Obligations on Oil and Gas Development Projects

The Construction General Permit, with attachments, is 285 pages long. A complete description is beyond the scope of this article. Instead, some particularly important provisions for oil and gas projects are highlighted below.

A. Will The Project Contribute To a Violation of a Water Quality Standard?

As the May 2010 State Water Board memorandum makes very clear, one of the most critical issues for oil and gas operators evaluating the impact of the Construction General Permit is whether a construction project could cause a discharge of sediment that would contribute to a violation of a water quality standard. This is a complicated determination that will require careful analysis for each site. A few general observations can be made, however. First, if the project would discharge to a water body already recognized as exceeding water quality objectives for sediment, the likelihood of permit coverage is greater. For example, because most of Calleguas Creek in Ventura County is listed as impaired by sediment, oil and gas construction projects on the Oxnard Plain may require closer analysis. On the other hand, if the project is in a desert area far from any surface waters, the likelihood of permit coverage is lower.

Second, deployment of storm water runoff controls at the site may lessen the likelihood that runoff would contribute to a violation of a water quality standard. These runoff controls, known as “Best Management Practices,” or BMPs, can range from placement of straw wattles to “Active Treatment Systems,” which use chemical or electrical processes to reduce turbidity. In general, the more robust the BMPs, the lower the likelihood of contributing to a violation of water quality standards.

B. Permit Covers Projects That Disturb More Than One Acre

Another important issue to determine whether an oil and gas construction project is subject to the Construction General Permit is whether the project results in a land disturbance of equal to or greater than one acre. While many infill drilling projects in the Los Angeles area may not trigger this threshold, projects taking place on undeveloped land could easily disturb more than an acre just to facilitate drilling rig access. The Construction General Permit indicates that the scope of the project will be determined by reference to the grading and/or building permits issued by local jurisdictions. (Construction General Permit, p. 9.)

C. Risk Level Categories Trigger More Stringent Requirements

The Construction General Permit includes a complex methodology to determine the water quality “Risk Level” for a construction project. The two primary factors that determine the Risk Level are: 1) the project sediment risk, meaning the relative amount of sediment that can be discharged from a site in light of its location and characteristics like slope, soil type and soil cover; and, 2) the receiving water risk, which depends on whether the receiving water is sediment-sensitive or not. Based on these factors, the project is categorized as Risk Level 1, 2 or 3.

The Risk Level of a project is important because higher risk projects are subject to more stringent permit requirements. Risk Level 1 projects will have effluent limitations based only on Best Management Practices, and discharge monitoring is by visual observation. Risk Level 2 projects must comply with all the Risk Level 1 requirements plus “Numeric Action Levels” and the requirement monitor the discharge by sampling and analysis. Numeric Action Levels are numeric benchmark values for pH and turbidity which, if exceeded, require the discharger to evaluate the effectiveness of its pollution control measures. Risk Level 3 projects include all the requirements for Risk Levels 1 and 2 plus Numerical Effluent Limitations for pH and turbidity and an obligation

Case of the Month
continued from page 10

to monitor the receiving waters. Numerical Effluent Limitations are compliance benchmarks for pH and turbidity; an exceedance of the Numerical Effluent Limitation is a violation of the permit.

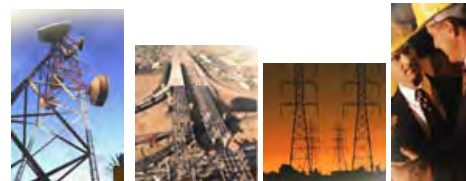
As with an evaluation of the potential for a project to contribute to a violation of water quality standards, determining a project's Risk Level can be complicated. Projects on steep slopes nearby sediment-sensitive water bodies may have a higher Risk Level.

D. When Is the Construction Project Over?

Another question raised by the Construction General Permit for oil and gas operations relates to when coverage under the permit can be terminated. The permit provides that a Notice of Termination must be filed "when construction is complete and final stabilization has been reached." (Construction General Permit, p. 12.) Unlike a subdivision construction project, where the roads will be paved and lots will be landscaped, many oil and gas leases may continue operations with exposed areas for years. Oil and Gas Operators will have to address "final stabilization" in their permit documents in a way that hopefully will avoid perpetual permit coverage.

E. Electronic Reporting And Increased Likelihood of Enforcement

Under the new Construction General Permit, all projects must electronically file Annual Reports documenting compliance (or noncompliance) with the permit. The data from these reports will be posted in a publicly available Storm Water Multi-Application and Report Tracking ("SMARTs") system. Experience from other NPDES programs with similar publicly available databases indicates that the accessibility of this data will increase enforcement activity. Both the State Water Board and citizen plaintiffs, such as environmental groups, will be able to search the SMARTs system to identify self-reported violations. Defending against enforcement actions from the State or from citizen plaintiffs can be a costly proposition. Under the Clean Water Act, citizen plaintiffs can seek up to \$37,500 in civil penalties per day of violation. As such, maintaining compliance with the Construction General Permit is a serious matter.



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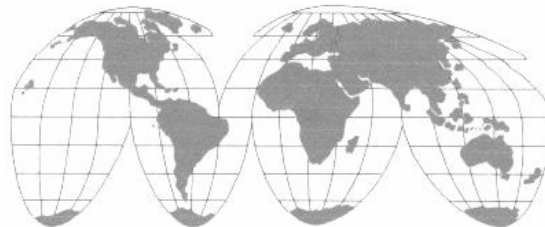
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