



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR 07 2013

CERTIFIED MAIL  
RETURN RECEIPT

Gayle McKeachnie  
McKeachnie Law Offices, P.C.

Vernal, Utah 84078

Re: Proposed Debarment of Eddy Dwane Courtright, DOI Case No. 12-0017-01

Dear Mr. McKeachnie:

This is to provide you with my written decision as Debarring Official for the U.S. Department of the Interior (DOI) regarding the proposed debarment of Eddy Dwane Courtright (Mr. Courtright). Upon consideration of all information contained in the official record, I conclude that debarment of Mr. Courtright from Federal procurement and nonprocurement activities is presently not warranted.

I. Brief Procedural History.

DOI proposed to debar Mr. Courtright by Notice dated June 14, 2012, under the provisions of 2 C.F.R. Part 180, implemented by DOI at 2 C.F.R. Part 1400. The Notice proposed debarment from Federal non-procurement and procurement program activities for a three (3) year period. The Notice relied upon information provided in an Action Referral Memorandum (ARM) from the DOI Office of Inspector General (OIG) transmitted to Mr. Courtright with the Notice.

Mr. Courtright timely contested the Notice of Proposed Debarment, by brief letter, dated June 28, 2012, and received by DOI on July 9, 2012. By email dated July 25, 2012, David Sims, DOI's Debarment Program Manager established an initial case schedule for proceeding on the matter. By reply email on the same day Mr. Courtright requested an oral presentation of matters in opposition (PMIO) as a part of his contest of the DOI Notice. Mr. Courtright subsequently provided written argument in opposition to debarment, by email dated August 8, 2012.

By email on October 23, 2012, you advised us that Mr. Courtright retained you to represent him in the proceedings. By memorandum dated November 7, 2012, Mr. Stanley Stocker, the DOI Office of Inspector General case representative provided a written response to Mr. Courtright's written arguments in opposition to the Notice.

A. The Conduct Basis.

The information providing the basis for the ARM described serious misconduct, in essence a perpetration of an act of concealment to avoid compliance with DOI regulatory requirements in connection with procedures for measurement of oil production in volume to properly calculate royalties due to the government. The asserted facts set forth in the ARM indicated the existence of cause for debarment under 2 C.F.R. §§ 180.800 (b) (3) and/or (d).

The ARM contained information which indicated Mr. Courtright participated in, or was aware of, the improper conduct. However, the information presented in response to the Notice, and in particular the information elicited during the PMIO shows that Mr. Courtright did not participate in, know of, or condone, the disabling of the equalizer valves at the BPC wells by BPC employees. Mr. Courtright did not learn of the tampering until notified by a DOI Bureau of Land Management (BLM) employee of the valve tampering. The record contains in addition to his own statements, an employee interview statement of Mr. Kary Eldredge, a subordinate of Mr. Courtright and the perpetrator of the valve tampering, that Mr. Courtright was not told of the tampering prior to its detection. Following the BLM notification, he promptly and fully cooperated with DOI in the investigation and ensuing replacement of the disabled valves.

Mr. Courtright stated to investigators during his June 2007 interview that he was responsible for the installation of the disabled valves. However, it is evident from his answers to questioning at the PMIO, that he intended by his statement to mean that as a construction superintendent at BPC he accepted ultimate responsibility for the action of BPC employees in tampering with the valves. It is also clear from the PMIO that when asked during a June 1, 2007 OIG interview if he knew the name of the employee who installed the disabled valves, Mr. Courtright did, following a brief call to his superior management, disclose the name during the continuation of the interview. Accordingly, the information of record upon completion of proceedings establishes that cause for debarment of Mr. Courtright under 2 C.F.R. §§ 180.800 (b) (3) and/or (d) does not exist.

B. The Affiliation Base.

Under 2 C.F.R. § 180.625(b) debarment may be extended to affiliates of entities proposed for debarment. By separate Notice DOI had proposed the debarment of Berry Petroleum Corporation (BPC) based on the improper valve modifications, The ARM indicated that Mr. Courtright was a manager of BPC and that, consequently, he was an affiliate of BPC within the meaning of 2 C.F.R. §§ 180.625(b) and 180.905. Accordingly, the DOI Notice also proposed debarment of Mr. Courtright under the affiliate provisions of 2 C.F.R. 180.

Affiliation is a present point of time concept. The ARM and its attachments documented that at the time of the valve tampering, BPC employed Mr. Courtright as a manager. However, the information presented by Mr. Courtright in contesting the Notice establishes that he is no longer

Following completion of scheduling, the requested PMIO took place on December 5, 2012. Mr. Courtright personally participated by telephone conference connection. Finally, pursuant to a request made during the PMIO, OIG, after securing release clearance, provided for the record a copy of an OIG report of interview of Mr. Courtright, dated October 16, 2007. Upon review of the record, the information provided does not raise a genuine dispute over the facts material to cause for debarment that would necessitate additional fact-finding proceedings. The matter is ready for final decision.

## II. Discussion.

Debarment is an administrative action taken to shield the Government from individuals and entities who, because of waste, fraud, abuse, non-compliance or poor performance, threaten the integrity of Federally-funded procurement and non-procurement activities. Debarment addresses present responsibility. Debarment, both by its nature and as a matter of regulation, is not an automatic result of establishing the existence of cause of debarment. The remedy is used to protect government procurement and non-procurement program interests only where truly warranted, rather than additional punishment for past misconduct.

Essentially there are two basic decision components in determining upon completion of the administrative record whether imposition of debarment is necessary. Cause for debarment must continue to exist. But even where cause in the form of past misconduct is found to exist, since the analysis is one of present responsibility, the Debarring Official considers along with the seriousness of the past misconduct any information presented by a Respondent persuasively indicating mitigating factors, altered circumstances, remedial measures, or other actions taken that address present responsibility.

### A. Cause for Debarment.

The presence of past misconduct is the requisite starting point for evaluation. The ARM's information presented a clear and rational basis for concern. The information in the ARM indicated improper conduct by Mr. Courtright, as a production superintendent, in the disabling of oil tank equalizer valves for over 150 oil wells operated by Berry Petroleum Company (BPC). Sections II – IV of the ARM indicated that he made modifications to remove the equalizer valves' internal ball with the consequence that even when the valves appeared to be closed they in fact remained open. DOI regulations require tank valves to be closed at the time of oil sale or transfer to permit the proper measurement for royalty payment calculation purposes of oil production removed or sold from federal leases. The BPC wells are located in the Brundage Canyon area on or near the Uintah and Ouray Indian Reservations in Utah.

employed by BPC. He is presently employed as a Production Superintendent by Newfield, Inc., a company unrelated to BPC. Accordingly, irrespective of the ongoing debarment action for BPC, Mr. Courtright is not now an affiliate of BPC thereby obviating the Notice's §§ 180.625(b) and 180.905 action basis.

Debarment, both by its nature as a remedy, and as a matter of regulation, is not an automatic result even where cause for debarment is established. Debarment is used to protect government procurement and nonprocurement program interests only where truly warranted, rather than additional punishment for past misconduct. Consequently, the Debarring Official also considers information presented by Respondent persuasively indicating mitigating factors, altered circumstances, remedial measures, or other actions taken that address present responsibility.

Having concluded, as described above, that cause for debarment does not exist, I need not reach all arguments advanced by counsel in opposition to the DOI Notice nor engage in a mitigating factors and remedial measures analysis. I observe, however, Mr. Courtright's remarks during the December 5th PMIO and the evident sincerity with which he made them, indicates an understanding of the seriousness of the nature of the misconduct at BPC as well as an acceptance as a manager for the actions of those supervised. It is also apparent that Mr. Courtright has in his current supervisory position at Newfield used the BPC experience as a learning experience basis to enhance commitment to compliance with DOI oil and gas regulatory compliance measures, as well as training and frequent coordination with BLM. Moreover, the record as presented indicates that Mr. Courtright in the course of his business career before and after the events at BPC has not been the subject of any other suspension, debarment, or judicial proceedings.

### III. Conclusion.

Based upon the information presented for the record in this proceeding, the debarment of Mr. Courtright to protect government procurement and nonprocurement program interests is not warranted. Accordingly, the debarment action initiated by the DOI June 14, 2012 Notice of Proposed Debarment is now terminated.

Sincerely,



Debra E. Sonderman, Director  
Office of Acquisition and Property Management

cc: David M. Sims, PAM  
Jim Weiner, SOL  
Lori Vassar, OIG  
Stanley Stocker, OIG  
Official Case File