

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

NMOCD-06-128

**IN THE MATTER OF COULTHURST MANAGEMENT
AND INVESTMENT, INC.**

Respondent.

AGREED COMPLIANCE ORDER

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended (hereinafter, "Act"), and the rules promulgated under the Act, the Director of the Oil Conservation Division of the Energy Minerals and Natural Resources Department of the State of New Mexico (hereinafter, "OCD") issues this Order to **Coulthurst Management and Investment, Inc.**, (hereinafter "Coulthurst") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

I. FINDINGS

- 1) The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
- 2) Coulthurst is a foreign for Profit Corporation doing business in New Mexico, registered with the Public Regulatory Commission Secretary of the State, under number 2326023. Coulthurst is an active entity with a principal address at 1990 Marin Avenue, Berkeley, California 94707. Its registered agent for service of process in New Mexico is UCC Search Inc., 1012 Marquez Place, Ste. 106-B, Santa Fe, New Mexico 87505. Coulthurst's business address is 5319 Broadway Ter., Apartment 305, Oakland, California 94618-1404. Coulthurst's OGRID is 5337.
- 3) Coulthurst operates the Erin #2, Unit Letter C, Section 33, Township 18 North, Range 03 West, API #30-043-20862.
- 4) On February 7, 2006, New Mexico Oil Conservation Division (hereinafter, "OCD") Deputy Oil and Gas Inspectors Kelly Roberts and Denny Foust were doing well inspections in the Torreon area. An inspection at the Coulthurst Management and Investment, Inc. (hereinafter, "Coulthurst Management") Erin #2 found three active, unlined, earthen production pits containing oil at the well site. An above ground separator open topped tank also contained about two inches of oil.
- 5) An OCD investigation found that the OCD has no record of a pit permit for this well site.
- 6) All New Mexico production pit operators were required to submit permits for these pits to the OCD by June 15, 2004.

- 7) OCD Rule 50.A [19.15.2.50.A NMAC] prohibits the discharge into, or construction of, any pit or below-grade tank absent possession of a permit issued by the OCD, unless the OCD has granted an exemption from the permit. The OCD has no record of a pit permit for this well site.
- 8) Rule 50.C(2)(e) [19.15.2.50.C(2)(e) NMAC] states in relevant part, "No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit."
- 9) Coulthurst violated OCD Rule 50.A by failing to obtain a permit to operate production pits in use at the Erin #2.
- 10) Coulthurst violated OCD Rule 50.C(2)(e) by allowing crude oil to accumulate on the surface of the three production pits on the Erin #2 well site.
- 11) As a result of its investigation, the OCD issued Notice of Violation (3-06-14) to Coulthurst, alleging one violation of Rule 50.A. and one violation of Rule 50.C(2)(e).
- 12) NMSA 1978, §70-2-31(A) provides that "[a]ny person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation."
- 13) NMSA 1978, §70-2-33(A) defines person as "any individual estate, trust receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity."
- 6) John Coulthurst requested the Administrative Conference on this matter be waved, but presented the following information:
 - a. In response to the Notice of Violation sent to Coulthurst, the company does not wish to contest the fine that was assessed for Civil Penalties in the amount of Two Thousand Dollars (\$2,000.00).
 - b. Coulthurst is closing three production pits on the Erin #2.
 - c. Coulthurst has excavated the hydrocarbon-contaminated soils to OCD approved closure standards.
 - d. Coulthurst is remediating the contaminated soils by biopiling onsite.

II. CONCLUSION

- 1) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 2) Coulthurst is a person as defined by NMSA 1978, § 70-2-33(A) that may be subject to civil penalties under NMSA 1978, §70-2-31(A).

- 3) Coulthurst is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Erin #2 for one knowing and willful violation of OCD Rule 50.A. and one knowing and willful violation of Rule 50.C(2)(e).

III. ORDER AND CIVIL PENALTY

- 1) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Coulthurst totaling **Two Thousand Dollars (\$2,000.00)** for one violation of Rule 50.A. and one violation of Rule 50.C(2)(e).
- 2) The civil penalty shall be paid at the time Coleman executes this Order. Payment shall be made by check payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention: Director, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.
- 3) Coulthurst shall submit a C-144 for pit closure with supporting analysis after the biopiles are remediated to standards
- 4) By signing this Order, Coulthurst expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with Ordering paragraphs 2 and 3;
 - c. waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order;
 - d. agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order of the Division entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act;
- 5) Nothing in this Order relieves Coulthurst of its liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment. In addition, nothing in this Order relieves Coulthurst of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico, this 5th day of ~~May~~ ^{July} 2006.

By: _____

Mark Fesmire, P.E.
Director, Oil Conservation Division

ACCEPTANCE

Coulthurst Management and Investment, Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

Coulthurst Management and Investment, Inc.

By: John Coulthurst

Title: President

Date: 6/15/06