

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

NMOCD - OGA 04-__

IN THE MATTER OF XXXXX,

Respondent.

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") issues this Order to XXXXXXXX ("XXXX"), directing compliance with the Act and the OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. XXXXX is a foreign profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission ("PRC") SCC number XXXXX.
3. XXXX holds a valid C-133 permit, Authorization to Move Produced Water, approved by the OCD on November 10, 2004. The Form C-133 includes the following statement:

It is the responsibility of each holder of an approved Form C-133 to familiarize its personnel with the content of Division Rules 709 and 710 and to assure operations in compliance therewith. Failure to move and dispose of produced water in accordance with Division Rules 709 and 710 are cause for cancellation of Form C-133 and the authority to move produced water.

4. OCD Rule 709 [19.15.9.709 NMAC] prohibits the transportation of any produced water by motor vehicle without an approved Form C-133 (Authorization to Move Produced Water).
5. OCD Rule 710.A [19.15.9.710.A NMAC] states, "No person, including any transporter, may dispose of produced water on the surface of the ground, or in any pit, pond, lake, depression, draw, streambed, or arroyo, or in any watercourse, or in any other place or in any manner which will constitute a hazard to any fresh water supplies."

6. OCD Rule 710.D [19.15.9.710.A NMAC] states, "Vehicular movement or disposition of produced water in any manner contrary to these rules shall be considered cause, after notice and hearing, for cancellation of Form C-133."
7. An OCD site investigation established the following facts:
 - a. On May 2, 2005 at approximately 10:30 a.m., Mr. XXX, XXX lease operator, saw a transport truck pull into the location of the XXXX, API XXXXX, in Eddy County, New Mexico. Mr. XXXX had not ordered a truck, so he drove to the off site location and observed the truck's activity.
 - b. Mr. XXXXX observed the driver pumping fluid out of his truck into drilling pits.
 - c. Mr. XXX went to the site and spoke to the driver. The driver stated he was not able to unload at the disposal because it was full.
 - d. The truck was XXXXXXXX truck number XXX, license plate #XXXXX, DOT #XXXX.
 - e. Mr. XXXX called his direct supervisor, Mr. XXXX, and reported the incident. Mr. XXXXX instructed Mr. XXXXX to tell the driver to stop pumping into the pit and to pull the fluid back out. Mr. XXXX then left the site and continued his duties.
 - f. Mr. XXXX arrived at the location at approximately 10:50 a.m. and questioned the driver. The driver said he was looking for a place to use the restroom. Noticing that the pit was available, he emptied approximately 10 barrels from his truck, an 18 wheeler water transport, into the pit.
 - g. Mr. XXXX contacted his supervisor, who instructed him to get a water sample from the truck, release the driver, and call the OCD.
 - h. Mr. XXXX contacted OCD field representative Van Barton, who met him at the site at approximately 1:00 p.m. Mr. XXXX gave the water sample and the truck information to Mr. Barton.
 - i. Mr. Barton obtained statements from Mr. XXXX and Mr. XXXX.
8. Further investigation of XXXX records by the OCD established the following facts:
 - a. According to records provided by XXXX ("XXX") the only work done by truck #XXX on May 2, 2005 was to transport 130 barrels of produced water to a disposal site.

- b. The trip ticket dated May 2, 2005, and completed by the driver for truck #XXX states "system shut down & I still had about 5 bbls left on truck. I was not able to unload it all."
- 9. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule adopted pursuant to the Act.

CONCLUSIONS

- 1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 2. XXXX is a "person" as defined by OCD Rule 7.P (19.15.1.7.P NMAC) subject to civil penalties for knowing and willful violations of the Oil and Gas Act or OCD Rules.
- 3. XXXX knowingly and willfully violated OCD Rule 710 by disposing of produced water into a pit.

ORDER AND CIVIL PENALTY

- 1. The OCD hereby assesses a civil penalty of one thousand dollars (\$1,000) against XXXX for disposing of produced water into a pit in violation of Rule 710.
- 2. The civil penalty shall be paid at the time XXXX executes this Agreed Order. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention Director Mark Fesmire, 1220 South St. Francis Drive, Santa Fe, NM 87505.
- 3. XXX's Authority to Move Produced Water pursuant to its C-133 is hereby suspended for 30 days, from August 1, 2005 through August 30, 2005.
- 4. By signing this Order, XXXX expressly
 - a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraph (2);
 - c) agrees that it will not move produced water in New Mexico from August 1 through August 30, 2005;
 - d) 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; and

- e) 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 (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico this ____ day of ____, 2005

By: _____
MARK FESMIRE, P.E., Director
Oil Conservation Division

ACCEPTANCE

XXXXXX hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

XXXXXXXXXXXXXXXXXXXX

By: _____

Title: _____
Date: _____