

NOV(3-01-20)

Patina San Juan

OGRID: 173252

Rio Patina 21412 Closed: \_\_\_\_\_  
Valencia 21412

PENGAD 800-631-6989

EXHIBIT

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

ACO 07-215

IN THE MATTER OF PATINA SAN JUAN, Inc,  
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"), and the regulations 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 ("OCD") issues this Order to Patina San Juan Incorporated (hereinafter "Patina") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

**I. FINDINGS & DETERMINATIONS BY THE OCD**

- 1) The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
- 2) Patina is a foreign profit corporation doing business in New Mexico, registered with the Public Regulatory Commission under number 1956754. Patina is an active entity with a principal and mailing address at 5802 US HWY 64 Farmington New Mexico 87401. Its registered agent for service of process in New Mexico is CT Corporation System, 123 E. Marcy St., Santa Fe, New Mexico 87501. Patina's OGRID is 173252.
- 3) Patina is the operator of record for the following wells;
  - Rio Bravo 27 #12, Unit letter L, Section 27, Township 31 North, Range 13 West, API # 30-045-33982
  - Valance 33 #2, Unit letter B, Section 33, Township 31 North, Range 13 West, API # 30-045-32689
- 4) On June 12, 2007, OCD Deputy Oil and Gas Inspector Brandon Powell performed a routine inspection at the Patina Rio Bravo 27 #12 well and the Valance 33 #2 well.

- 5) At the Rio Bravo 27 #12 well Inspector Powell found an irrigation ditch with running water that was bordering the south side of the location near the pit. At the Valance 33 #2 well Inspector Powell found water underneath the liner that was pushing the liner above the fluid level of the pit due to standing water in a field next to the location. Inspector Powell determined that the water under the liner was likely ground water.
- 6) The pit permit for the Rio Bravo 27 #12 well was approved on October 5, 2006, and reported the depth to ground water at 100 feet and the distance to surface water at 300 feet.
- 7) The pit permit for the Valance 33 #2 well was approved on November 23, 2004, and reported the depth to ground water as greater than 100 feet, and the distance to surface water at greater than 1000 feet.
- 8) For the Rio Bravo 27 #12 well, the OCD received a sundry reporting that the production casing string was set and cemented on November 2, 2006.<sup>1</sup> At the time of the inspection on June 12, 2007 the drilling pit had been open more than seven months beyond the date of the completion of the drilling process.
- 9) OCD Rule 50.F (1) [19.15.2.50.F (1) NMAC] requires that "a pit or below grade tank ... be properly closed within six months after cessation of use."
- 10) Patina has been an operator in the state of New Mexico effective October 1, 2003 and has completed/re-completed numerous wells since that time for which it was required to abide by Rule 50.F(1) with regard to drilling pits such as the two at issue here. Patina therefore knew the requirements imposed by Rule 50.F(1).
- 11) Patina knowingly and willfully violated OCD Rule 50.F (1) by failing to close the pits within the allotted time period on the Valance 33 #2 and the Rio Bravo 27 #12 wells.
- 12) NMSA 1978 Section 70-2-31(A) provides in relevant part, "[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."
- 13) NMSA 1978, section 70-2-33(A) defines "person" in relevant part as "any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity..."
- 14) As a result of its investigation, on September 7, 2007, the OCD issued Notice of Violation (3-07-20) to Patina.

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<sup>1</sup> The casing string is cemented and set once the drilling process has been completed and drilling activity has ceased.

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**II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE  
OPERATOR, PATINA SAN JUAN**

Patina provided the following supplemental information and statements during the September 24, 2007 Administrative Conference.

- 16) Patina interpreted the cessation of use of the pit, as when the well was completed, not as when the drilling process was completed.
- 17) Patina is going to change their operating processes to operate in accordance with the rules.
- 18) Patina believes the use of the phrase "cessation of use" in the rule is ambiguous and open for interpretation.
- 19) Patina does not believe that it knowingly and willfully violated the rule.

**III. CONCLUSIONS OF THE OCD**

- 20) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 21) Patina 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).
- 22) Patina is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Rio Bravo 27 #12 and the Valance 33 #2 for one violation of OCD Rule 50.F (1) (failure to close the pits within the allotted time period) at each of the two sites.

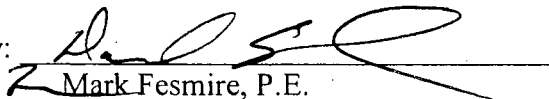
**IV. ORDER & CIVIL PENALTY ASSESSMENT**

- 23) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Patina totaling **Two Thousand Dollars (\$2,000.00)** for the violations of the OCD's Rules.
- 24) The civil penalty shall be paid at the time Patina 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.

- 25) Patina will file C-144 pit closure forms for each of the two referenced sites before November 26, 2007.
- 26) By signing this Order, Patina expressly:
- acknowledges the authority of the OCD to render the above "Findings & Determinations," "Conclusions" and "Order & Civil Penalty Assessment";
  - agrees to comply with the Order, specifically as articulated in the preceding Paragraphs of Section "IV," above;
  - 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;
  - 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;
- 27) Nothing in this Order relieves Patina 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 Patina of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 31<sup>st</sup> day of December 2007.

By:

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

ACCEPTANCE

PATINA SAN JUAN, INC. (OGRID No. 173252), Operator of the Rio Bravo 27  
#12, Unit letter L, Section 27, Township 31 North, Range 13 West, API # 30-045-33982  
and the Valance 33 #2, Unit letter B, Section 33, Township 31 North, Range 13 West,  
API # 30-045-32689, hereby accepts the foregoing Order, and agrees to all of the terms  
and provisions as set forth in the Order.

PATINA SAN JUAN, INC.

By: Billy Mae

Title: Production Manager

Date: 10/23/07