

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

NMOCD-OGA-04- 57

IN THE MATTER OF DUGAN PRODUCTION CORP.

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 Dugan Production Corp. ("Dugan") directing compliance with the Act and 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. Dugan is a domestic profit corporation doing business in New Mexico, registered with the Public Regulation Commission under SCC number 0444224. Dugan is an active entity with a principal address at Post Office Box 420, Farmington, NM 87499-0420. Its registered agent for service of process in New Mexico is Thomas A. Dugan at P. O. Box 420, Farmington, NM 87499-0420. Dugan's OGRID is 6515.
3. Dugan is the operator of record for the Big Field #9 SWD well, API #30-045-32258, located at Unit Letter L, Section 15 Township 30 North, Range 14 West in San Juan County, New Mexico ("well").
4. On October 6, 2004, New Mexico Oil Conservation Division Deputy Oil and Gas Inspector Bruce Martin found the drilling pit at the Big Field #9 SWD was unlined and full of water.
5. An OCD investigation and review of relevant documents established the following facts:
 - a) OCD rule 19.15.2.50.A NMAC (rule 50.A) provides, in relevant part, that "[d]ischarge into, or construction of, any pit...is prohibited absent possession of a permit issued by the division...."
 - b) OCD rule 19.15.2.50.C(2)(b)(i) NMAC (rule 50.C(2)(b)(i)) provides,

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“Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh water, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.”

- c) On May 24, 2004 Dugan submitted a form C-103, applying for a permit for a lined drilling pit at the referenced well. Dugan did not request an exception to rule 50's liner requirements under the procedures set out in 19.15.2.50.G NMAC (Rule 50.G). OCD Deputy Inspector Denny Foust approved Dugan's permit application for a lined drilling pit on May 27, 2004.
 - d) Dugan spudded the well cited above on July 12, 2004, and completed the well on August 12, 2004.
 - e) During drilling operations drilling fluids were placed in the unlined pit.
 - f) At the time of the OCD inspection a significant volume of water remained in the unlined drilling pit.
 - g) Rule 1103.(A)1.(a) says in pertinent part, “Form C-103 shall be filed in triplicate by the operator and approval obtained from the division prior to . . . [e]ffecting a change of plans from those previously approved on form C-101 or form C-103.”
 - h) A requested change for a permit to use an unlined pit under the provisions of Rule 50C(2)(g)(iii) would not have been approved due to the proximity of the pit to a watercourse.
6. NMSA 1978, section 70-2-31(A) provides in relevant part, “Any 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.” 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...”
 7. As a result of its investigation, the OCD issued Notice of Violation (3-05-02) to Dugan.
 8. After OCD issued its notice of violation, Dugan submitted the following additional data:
 - a) Bureau of Land Management (“BLM”) conducted an onsite field inspection on April 6, 2004.

- b) On June 25, BLM amended the federal APD by removing the requirement to line the drilling pit because the location was located on a bentonitic shale outcrop.
- c) Upon being notified by the OCD that its unlined pit was in violation of its OCD permit and OCD rules, Dugan immediately attempted to file for a revised permit.
- d) Dugan has improved internal communications and knowledge of rule 50's requirements.
- e) Dugan has initiated closure procedures under an OCD-approved plan.

CONCLUSIONS

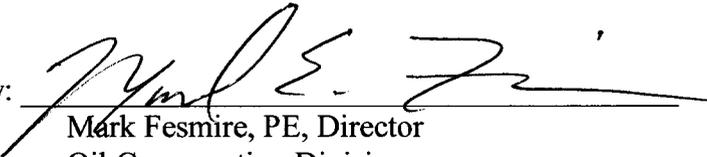
1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Dugan is a person as defined by NMSA 1978, section 70-2-33(A) subject to civil penalties under NMSA 1978, section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD rules.
3. Dugan is subject to civil penalties under NMSA 1978, section 70-2-31(A) for constructing and discharging into an unlined pit in violation of the terms of its permit issued pursuant to OCD rule 50.A and in violation of the liner requirements of OCD rule 50.C(2)(b)(i).
4. Dugan is subject to civil penalties under NMSA 1978, section 70-2-31(A) for failing to file C-103 showing their change of plans. No penalty is assessed for violating OCD rule 1103.A.(1)(a) at this time.

ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling one thousand dollars (\$1,000) against Dugan.
2. The civil penalty shall be paid within sixty days of receipt of this 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, 1220 South Saint Francis Drive, Santa Fe, New Mexico, 87505.
3. By signing this order, Dugan expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
 - b. agrees to comply with ordering paragraph 2;

- 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;
- e. agrees that if it fails to pay penalties assessed pursuant to this order, upon application by the OCD the district court may enter judgment against Dugan in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for Dugan's violation of the penalty provisions of this order.

Done at Santa Fe, New Mexico, this 19th day of Feb, 2005.

By: 
Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

Dugan Production Corp. hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

Dugan Production Corp.

By: 
Title: Vice President - Expl.
Date Feb. 14, 2005