

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

NMOCD-ACO-1048

**IN THE MATTER OF M.R. SCHALK, L.L.C., MANAGING  
PARTNER OF SCHALK DEVELOPMENT COMPANY,**

**Respondent.**

**AGREED COMPLIANCE ORDER**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 through 70-2-38, as amended ("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 and M.R. Schalk, L.L.C., Managing Partner of Schalk Development Company, enter into this Order to resolve the violations alleged in Notice of Violation (3-06-03)

**I. FINDINGS**

1. The Oil Conservation Division (hereinafter "OCD") is the state division charged with administration and enforcement of the Act and OCD rules.
2. M.R. Schalk, L.L.C., Managing Partner of Schalk Development Company (hereinafter "Schalk") is a for profit company doing business in New Mexico. Schalk has been assigned OGRID # 20389.
3. Schalk is the operator of record for the Schalk 55 #2A, Unit Letter C, Section 03, Township 30 North, Range 05 West, API #30-039-26739, in Rio Arriba, New Mexico.
4. On September 1, 2005, Johnny Alm of Schalk observed Frontier Drilling personnel overtopping the reserve pit by draining a water tank into the drilling pit.
5. On September 2, 2005, OCD Deputy Oil and Gas Inspector Denny Foust received a telephone message from John Reidinger of the Forest Service stating that Schalk had overtopped their drilling pit at the Schalk #55A well.
6. Jack Evans of Schalk verbally reported the unauthorized release to OCD Deputy Inspector Denny Foust on September 6, 2005, at approximately 10:00 a.m.
7. After the call from Jack Evans, on the same day, Deputy Inspector Villanueva conducted an onsite inspection the same day. Mr. Villanueva found:
  - a) the lined drilling pit had been overtopped; and

- b) Schalk had built a temporary earthen berm on the low side of the drilling pit to prevent additional loss of drilling fluids.
8. A review of OCD records show no record of Schalk applying for a drilling pit at this well site.
  9. Rule 50.A prohibits the discharge into, or construction of, any pit absent possession of a permit issued by the division, unless otherwise provided or the division has granted an exemption.
  10. Rule 50.C(2)(b)(i) requires that “[e]ach 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.”
  11. Schalk violated Rule 50.A by constructing and/or discharging into the pit at the Schalk 55 #2A without obtaining a pit permit.
  12. Schalk violated Rule 50.C(2)(b)(i) by failing to maintain the liner and fluid level in a manner to prevent overtopping the liner.
  13. NMSA 1978, §70-2-31(A) provides, in relevant part, 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.”
  14. NMSA 1978, §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....”
  15. As a result of its investigation, the OCD issued Notice of Violation (3-06-03) on February 7, 2006 to Schalk, alleging two violations of Rule 50.
  16. Schalk responded by letter dated February 10, 2006. The letter committed Schalk to the following:
    - a. To provide instruction to all field and drilling personnel, including drilling rig crews and completion rig crews, to monitor all pits to make sure that no pit is ever allowed to leak in any manner. When a pit shows evidence of overtopping or losing integrity, operations will be suspended. Fluids will be removed by truck to prevent spillage.
    - b. The procedures for the “Application for Permit to Drill” will include checks to determine that pit permits are part of the process.

## II. CONCLUSIONS

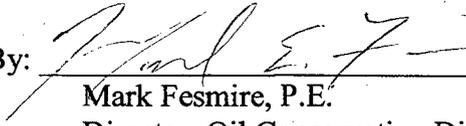
1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Schalk is a person as defined by NMSA 1978, § 70-2-33(A) and if this matter went to hearing, may be subject to civil penalties under NMSA 1978, §70-2-31(A).
3. Schalk is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Schalk 55 #2A for two violations of Rule 50.

## III. ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Schalk totaling **Two Thousand Dollars (\$2,000.00)** for two (2) violations of Rule 50.
2. The civil penalty shall be paid at the time Schalk 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. Schalk has remediated the release site following an OCD approved plan. However, Schalk must close the ~~un~~lined drilling pit, following OCD guidelines, by ~~April 15~~, **JUNE 1**, 2006. A C-144 pit closure form must be submitted to the OCD by ~~April 15~~, 2006. **JUNE 15, MEF** 
4. By signing this Order, Schalk 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; and
  - 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 Schalk in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for Schalk violation of the penalty provisions of this Order.
5. Nothing in this Order relieves Schalk 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 Schalk of its responsibility for compliance with any other federal, state or local laws and/or regulations.

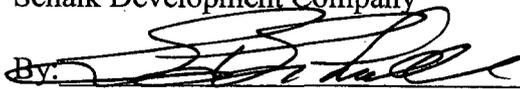
Done at Santa Fe, New Mexico, this 28<sup>th</sup> day of March 2006.

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

**ACCEPTANCE**

**M.R. Schalk, L.L.C., Managing Partner of Schalk Development Company,** hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the order.

M.R. Schalk, L.L.C., Managing Partner  
Schalk Development Company

By: 

Title: Steve Schalk, Manager

Date 03/24/06