

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

ACO 08-~~294~~

**IN THE MATTER OF COULTHURST MANAGEMENT AND INVESTMENT,
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 Coulthurst Management and Investment, Inc (hereinafter "Coulthurst Management") 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) Coulthurst Management and Investment, Inc. ("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 of 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, CA 94618-1404. Coulthurst's OGRID is 5337.
- 3) Coulthurst Management Operates the Erin #2 well, Unit Letter C, Section 33, Township 18N, Range 03 West, API #30-043-20862, located in Sandoval County, New Mexico.
- 4) On August 6, 2007, OCD Deputy Oil and Gas Inspector Brandon Powell was performing a follow up inspection at the Coulthurst Management Erin #2 well. At that time, Inspector Powell found that one of the excavated production pits remained unfenced.
- 5) In March of 2006, the OCD had issued a Notice of Violation (NOV 3-

06-14) to Coulthurst Management with regard to this well on the basis of violations of Rule 50 involving three (3) earthen production pits.

- 6) Following the issuance of NOV 3-06-14, Coulthurst Management entered into an Agreed Compliance Order (ACO 128) relating to this well to address the referenced Rule 50 violations, with said ACO being sent out for Operator execution on May 19, 2006.
- 7) The OCD was in contact with Coulthurst Management regarding the fencing of the three (3) excavated production pits beginning on October 30, 2006, at which time Mr. Coulthurst agreed to have all three (3) of the pits fenced by November 8, 2006. Subsequently, after failing to have met the November deadline, Mr. Coulthurst made a number of statements by e-mail relating to when the fencing would be in place. In addition, in an attempt to obtain compliance from Coulthurst, the OCD imposed deadlines upon Mr. Coulthurst regarding the completion of the installation of the fencing for these pits. Inspector Powell continued communicating with Coulthurst, allowing the Operator some additional time to remedy the violation in the hope that no formal compliance action would need to be pursued.

Applicable E-mail Correspondence with Mr. Coulthurst:

 October 30, 2006:

- a) Inspector Powell stated that the Operator was required to "[A]dequately fence the pits to keep livestock from falling into the pits and to protect the public. We recommend five strand barbwire fence so the livestock can't knock it over, this will need to be done no later than Wednesday November 8th."
- b) Mr. Coulthurst responded by stating: "Thanks for the reasonable outline for the plan for the remediation of the site for Erin #2. I have already asked Justin Ingram to start the work on the fences."

 January 22, 2007:

- a) Mr. Coulthurst stated: "We are buried under 4 heavy snow falls, 10-20 foot drifts and a ruined Separator which will be replaced this spring. Our fencing is 1/2 finished and fully paid for. We can expect to finish job within 30 days of clear weather, when ever that is."

 April 23, 2007:

- a) Inspector Powell advised Mr. Coulthurst by email that the OCD required that the fencing be in place before May 7, 2007.

- b) Mr. Coulthurst responded to the above-referenced notification by stating: "I totally agree with your plan, Justin has been asked to work with you and will report to you as he/we go on. As far as the fence goes, you should know that we had some of the completed fence stolen as well. Again, I appreciate your constructive comments."

May 17, 2007:

- a) Mr. Coulthurst stated; "Justin says that he expects to be working on the last of the fencing in the next 10 days, I have asked him to speed it up, if he can."
- b) Inspector Powell responded: "Attached are photos taken on May10, 2007 showing oil in the pit, no fencing around the pit, and cattle in the area. On April 23, 2007, I had given you a deadline of May 7, 2007, to have the fencing constructed and that the oil was to be removed immediately. I had not received any contact of any progress being made, or that the deadlines were not going to be met prior to my inspection. Due to the environmental concerns and the non compliance to meet the deadline, the OCD will be issuing a Notice of Violation. Due to the environmental concerns I strongly recommend that the issues be completed quickly to reduce the time that the issues are in violation."
- c) Mr. Coulthurst replied, stating: "Appreciate your comments, we already drained the oil from the pit over a month ago. Do you want us to do it again? Justin's opinion is that it is a sheen of oil not any serious amount of oil, what is your opinion.? If you believe that pulling the pit dry again, we will do so."

June 6, 2007:

- a) Mr. Coulthurst stated: "Tomorrow, Justin will finish the temporary fence around the pits."

July 31, 2007:

- a) Mr. Coulthurst stated: "We finished the fencing last week with our new pumper getting the work done."
- 8) Despite the assertion made by Coulthurst on July 31, 2007, based upon the inspection and photographs taken on August 6, 2007, it is evident that only two (2) of the three (3) excavated production pits were, in fact fenced as required.

- 9) OCD Rule 50.C(2)(f) states in relevant part: "All pits shall be fenced or enclosed to prevent access by livestock and fences shall be maintained in good repair."
- 10) Coulthurst Management knowingly and willingly violated OCD Rule 50.C(2)(f) by failing to properly fence the open pits at the Erin #2, despite the fact that it was repeatedly notified and instructed to do so, and despite having expressly agreed to do so by the terms of (ACO 128) issued in May of 2006 (executed in July of 2006).
- 11) 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."
- 12) 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..."
- 13) As a result of its investigation, on August 6, 2007, the OCD issued Notice of Violation (3-07-19) to Coulthurst Management.

II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE OPERATOR, COULTHURST MANAGEMENT

Coulthurst Management provided the following supplemental information and statements during the December 21, 2007 administrative Conference:

- 14) Coulthurst Management terminated their pumper because they were receiving false information.
- 15) Coulthurst Management had part of their fencing supplies stolen.

III. CONCLUSIONS OF THE OCD

- 16) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 17) Coulthurst Management 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).

- 18) Coulthurst Management is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Erin #2 for one violation of Rule 50.C(2)(f) (failure to properly fenced a pit).

IV. ORDER & CIVIL PENALTY ASSESSMENT

- 19) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Coulthurst Management totaling **One Thousand Dollars (\$1,000.00)** for the violations of the OCD's Rules.
- 20) The civil penalty shall be paid at the time Coulthurst Management 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.
- 21) By signing this Order, Coulthurst Management expressly:
- a. acknowledges the authority of the OCD to render the above "Findings & Determinations," "Conclusions" and "Order & Civil Penalty Assessment";
 - b. agrees to comply with the Order, specifically as articulated in Section "IV," Paragraphs 28, and 29
 - 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;
- 22) Nothing in this Order relieves Coulthurst Management 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 Management of its responsibility for

compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 15th day of May 2008.

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

ACCEPTANCE

COULTHURST MANAGEMENT AND INVESTMENT, INC., (OGRID No. 5337), Operator of the Erin #2 well, Unit Letter C, Section 33, Township 18N, Range 03 West, API #30-043-20862, Sandoval County, New Mexico, hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

COULTHURST MANAGEMENT AND INVESTMENT, INC.

By: 

Title: PRESIDENT

Date: 3/7/08