

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

NMOCD-OGA-04- 75

IN THE MATTER OF XTO ENERGY, INCORPORATED

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 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 ("OCD") issues this Order to **XTO ENERGY, INCORPORATED** ("**XTO**") 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. XTO is a corporation doing business in New Mexico, registered with Secretary of State as a foreign corporation under number SCC 1522747. XTO is an active entity with a principal and mailing address at 810 Houston Street, Suite 2000, Fort Worth, TX 76102. Its registered agent for service of process in New Mexico is Del Craddock, 6001 Highway 65, Farmington, NM 87401. XTO's business address is 2700 Farmington Avenue, Bldg. K, Suite 1, Farmington, NM 87401. XTO has been assigned OGRID # 167067.
3. XTO is the operator of record for the R. B. Sullivan #4, API #30-045-32300, Unit Letter H, Section 11, Township 27 North, Range 10 West, San Juan County, New Mexico ("well").
4. On February 2, 2004, New Mexico Oil Conservation (OCD) Deputy Oil and Gas Inspector Darell Davis stopped at the XTO Energy, Inc. (XTO) R. B. Sullivan #4 while doing well inspections in the area. Deputy Inspector Davis discovered an unlined vent/flare portion of the drilling pit that contained standing water and oil. The woven wire fence around the pit appeared to have been lowered to permit truck access and never rebuilt. Water in the drilling pit was standing above the liner at one point.

5. Based on an OCD investigation and review of relevant documents, OCD believes it could establish the following facts:
- a) OCD has not issued a permit to XTO to construct or discharge into a drilling pit at this well site.
 - b) The last casing string was set December 9, 2004.
 - c) The completion rig left location on January 27, 2005.
 - d) Kevin Harris confirmed produced water was used as part of the completion fluid on this well.
 - e) Rule 710.A states in pertinent part, "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."
 - f) Rule 50.B.(3)(a) states "After April 15, 2004, operators shall obtain a permit before constructing a pit or below-grade tank."
 - g) Rule 50.C.(2)(b)(i) states, "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."
 - h) Rule 50.C.(2)(e) states, "No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit."
 - i) Rule 50.C.(2)(f) states in pertinent part, "All pits shall be fenced or enclosed to prevent access by livestock, and fences shall be maintained in good repair. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations."
 - j) XTO violated Rule 710.A. by allowing the fluid level in the drilling pit to overtop the drilling pit liner.
 - k) XTO violated Rule 50.B.(3)(a) by drilling the R. B. Sullivan #4 without a permit for the drilling pit.
 - l) XTO violated Rule 50.C.(2)(b)(1) by allowing drilling fluids to stand in the unlined vent portion of the drilling pit.
 - m) XTO violated Rule 50.C.(2)(e) by allowing oil to remain pooled in the unlined vent portion of the drilling pit.
 - n) XTO violated Rule 50.C.(2)(f) by failing to maintain the drilling pit fence in a manner to prevent access by livestock.
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 (3-05-04) to XTO.
8. According to information provided by XTO during an administrative conference regarding the Notice of Violation, XTO took the following actions after being notified of the violations:
 - a) XTO assigned an employee to do weekly documented inspections of XTO drilling and workover pits when a rig is not on location through first sales.
 - b) XTO is in the process of revamping the design of its pits to comply with Rule 50 requirements.
 - c) XTO is developing a new drilling system to maximize the reuse of drilling fluids and drilling mud.
 - d) XTO started corrective actions the same day they were notified by OCD and have closed the vent portion of the flare pit under an OCD approved plan.
9. XTO has contested liability in this matter, raised defenses to this administrative action, and contended that XTO did not knowingly and willfully violate any OCD Rules. XTO acknowledges that if it went to hearing on the alleged violations, there is sufficient evidence that could support a finding that XTO violated OCD Rules and the examiner could assess a civil penalty or take other enforcement action under the Act.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. XTO is a person as defined by NMSA 1978, Section 70-2-33(A) and as such is subject to the civil penalty provisions of NMSA 1978, Section 70-2-31(A).
3. XTO is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for allowing drilling fluids including produced water to overtop the drilling pit liner and soak into the ground, in violation of OCD Rule 710.A.
4. XTO is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for constructing a drilling pit at the R. B. Sullivan #4 without an OCD-approved permit, in violation of Rule 50. B.(3)(a).
5. XTO is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for using an unlined pit to vent or flare gas during drilling operations that was not designed to allow liquids to drain into a separate pit, in violation of OCD Rule 50.C(2)(b)(i).

6. XTO is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for allowing a measurable or visible layer of oil to remain pooled in the unlined vent portion of the drilling pit, in violation of OCD Rule 50.C.(2)(e).
7. XTO is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for not keeping a fence sufficient to prevent access by livestock around an open drilling pit, in violation of OCD Rule 50.C.(2)(f).

ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling five thousand dollars (\$5,000) against XTO.
2. The civil penalty shall be paid at the time XTO executes 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. XTO is directed to keep a livestock-proof fence in place around the pit until the pit is closed under an OCD approved plan for this location.
4. XTO must develop an informative training program on Rule 50 requirements for employees and contractors. An OCD representative will attend and critique the initial session.
5. By signing this order, XTO expressly:
 - a. consents to 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; and
 - 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.

Done at Santa Fe, New Mexico, this 29th day of June, 2005.

By: _____

Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

XTO Energy, Incorporated hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

XTO Energy, Incorporated

By: Delbert Craddock

Title: VP Operations - XTO Energy

Date June 21, 2005