

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

NMOCD- 98

IN THE MATTER OF E. L. FUNDINGSLAND,

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 E. L. Fundingsland ("ELF") enter into this Order to resolve the violations alleged in Notice of Violation (3-05-11).

FINDINGS

1. The Oil Conservation Division ("OCD") is the state division charged with administration and enforcement of the Act and OCD rules.
2. E. L. Fundingsland does business in New Mexico as a sole proprietor. ELF's OGRID is 6640.
3. ELF is the operator of record for the Sunical Federal #1, Unit Letter D, Section 19, Township 26 North, Range 07 West, API #30-039-06422, located in Rio Arriba County, New Mexico:
4. On June 6, 2005, OCD Deputy Oil and Gas Inspector Darell Davis stopped at the ELF Sunical Federal #1 while doing well inspections in the area. Deputy Inspector Davis found a double-lined, netted production pit with crude oil and paraffin on the surface. The netting was sagging into the fluids within the pit.
5. An OCD investigation and review of relevant documents established the following:
 - a) On February 16, 2005 the OCD approved ELF's request to continue the use of a double lined produced water disposal pit with leak detection. The pit size specified was 20' X 30'.
 - b) Rule 50.C(2)(e) states in relevant part, "No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit."

- c) Rule 50.C(2)(f) states in relevant part, "All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds."
 - d) On August 24, 2005, Deputy Inspector Steve Hayden stopped at the Sunical Federal #1 and found conditions had not improved at the well site. Crude oil and paraffin still covered the lined production pit. The netting continued to sag below the surface of the pit fluids.
 - e) On September 6, 2005, the OCD notified Bruce Heller of Helmur Corporation of the violation. Helmer Corporation is a contract pumper for ELF.
 - f) ELF violated Rule 50.C(2)(e) at the Sunical Federal #1D by allowing crude oil and paraffin to accumulate on the surface of the production pit
 - g) ELF violated Rule 50.C(2)(f) at the Sunical Federal #1D by failing to maintain the netting in a manner to keep the production pit non-hazardous to migratory birds. The netting sags below the surface of pit fluids allowing migratory birds access to the pit and its contents.
6. NMSA 1978, §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. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation." 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...."
7. As a result of its investigation, the OCD issued Notice of Violation (3-05-11) to ELF alleging violations of Rule 50.C(2)(e) and Rule 50.C(2)(f).
8. After OCD's investigation, ELF notified the OCD they had completed corrective action at the well site on September 15, 2005.
9. Elf's letter of September 27, 2005 shows:
- a. Elf removed 160 barrels of produced fluids from the production pit to Basin Disposal, Inc.
 - b. ELF has repaired the netting and raised it above the fluid level in the production pit to prevent access by migratory birds.
 - c. ELF has committed to prevent these violations from occurring in the future.
 - d. ELF does not contest the civil penalty of two thousand dollars (\$2,000)

10. A subsequent inspection on October 6, 2005 indicated ELF's clean up efforts were insufficient to comply with Rule 50.C(2)(e). After additional measures taken by ELF, a subsequent site inspection on November 8, 2005 showed ELF had achieved compliance.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. ELF 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).
3. ELF is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Sunical Federal #1 for one violation of Rule 50.C(2)(e) and one violation of 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 against ELF totaling two thousand dollars (\$2,000) for one violation of Rule 50.C(2)(e) and one violation of Rule 50.C(2)(f).
2. The civil penalty shall be paid at the time ELF 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. ELF must prepare a best management plan showing how it will monitor production pits to prevent the buildup of oil on the surface and a means of inspecting pit netting to prevent access by migratory birds and submit a copy to the Aztec District office for review by January 15, 2006.
4. ELF must keep the surface of the production pit free of oil and maintain the netting in a manner that does not permit it to sag into the fluid in the production pit.
5. By signing this order, E. L. Fundingsland, Jr. expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
 - b. agrees to comply with ordering paragraphs 2, 3, and 4;
 - 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 ELF in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for ELF's violation of the penalty provisions of this Order.

- 4. Nothing in this Order relieves ELF 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 ELF of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico, this 21st day of Dec, 2005.

By: _____

Mark Fesmire, P.E.

Director, Oil Conservation Division

ACCEPTANCE

E.L. Fundingsland hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

E. L. Fundingsland

By: _____

Title: _____

Date: _____