

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

NMOCD – ACOI- 149

**IN THE MATTER OF ERS RESOURCES, LLC,**

**Respondent.**

**AGREED COMPLIANCE ORDER**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") and ERS Resources, LLC ("Operator") enter into this Agreed Compliance Order ("Order") under which Operator agrees to: 1) pay penalties for violations of OCD Rule 703 [19.15.9.703 NMAC]; 2) bring the wells identified herein into compliance with the Act and OCD Rules 201 [19.15.4.201 NMAC] and 703 in accordance with the following agreed schedule and procedures; and 3) pay additional penalties as set out below if it fails to meet the compliance schedule set out in this Order.

**FINDINGS**

**Parties**

1. The OCD is the state division charged with administration and enforcement of the Act, and rules and orders adopted pursuant to the Act.
2. Operator is a limited liability company operating wells in New Mexico under OGRID 225298.

**Injection Well Issues**

3. OCD Rule 701 [19.15.9.701 NMAC] requires operators to hold a permit for the injection of gas, liquefied petroleum gas, air, water or any other medium into any reservoir for the purpose of maintaining reservoir pressure or for the purpose of secondary or other enhanced recovery or for storage of the injection of water into any formation for the purpose of water disposal.
4. Operator holds permits under Rule 701 to operate the following wells as injection wells in New Mexico:

30-015-00942	Artesia Metex Unit #016
30-015-01196	Artesia Metex Unit #020
30-015-02140	Artesia Metex Unit #032

5. OCD Rule 703 [19.15.9.703 NMAC] provides in relevant part:
- A. Injection wells shall be equipped, operated, monitored, and maintained to facilitate periodic testing and to assure continued mechanical integrity which will result in no significant leak in the tubular goods and packing materials used and no significant fluid movement through vertical channels adjacent to the well bore.
  - B. Injection project, including injection wells and producing wells and all related surface facilities shall be operated and maintained at all times in such a manner as will confine the injected fluids to the interval or intervals approved and prevent surface damage or pollution resulting from leaks, breaks, or spills.
  - C. ....
  - D. ....
  - E. Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injection volume and pressure, or shut-in, until the failure has been identified and corrected.
6. OCD Rule 704.A [19.15.9.704.A NMAC] provides in relevant part:
- (1) Prior to commencement of injection and any time tubing is pulled or the packer is resealed, wells shall be tested to assure the integrity of the casing and the tubing and packer, if used, including pressure testing of the casing-tubing annulus to a minimum of 300 psi for 30 minutes or such other pressure and/or time as may be approved by the appropriate district supervisor. A pressure recorder shall be used and copies of the chart shall be submitted to the appropriate division district office within 30 days following the test date.
  - (2) At least once every five years thereafter, injection wells shall be tested to assure their continued mechanical integrity. Tests demonstrating continued mechanical integrity shall include the following:
    - (a) measurement of annular pressures in wells injecting at positive pressure under a packer or a balanced fluid seal; or,
    - (b) pressure testing of the casing-tubing annulus for wells injecting under vacuum conditions; or,
    - (c) such other tests which are demonstrably effective and which may be approved for use by the division.
  - (3) Notwithstanding the test procedures outlined above, the division may require more comprehensive testing of the injection wells when deemed advisable, including the use of tracer surveys, noise logs, temperature logs, or other test procedures or devices.

7. The wells identified in Findings Paragraph 4 failed mechanical integrity tests conducted on February 20 and 21, 2006.
8. By letter dated February 21, 2006, the OCD notified Operator that the wells identified in Findings Paragraph 4 had failed the inspection and identified the nature of the failure for each well. The letter instructed Operator to repair the failures by May 26 or 27, 2006, so the wells could be re-tested.
9. To date, Operator has not repaired the wells identified in Findings Paragraph 4.
10. On July 31, 2006, the OCD issued Notice of Violation 2-06-16 to Operator alleging the knowing and willful violation of Rule 703 as to the wells identified in Findings Paragraph 4.
11. The wells identified in Findings Paragraph 4 are scheduled for mechanical integrity tests in February 2007.

#### **Inactive Well Issues**

12. OCD Rule 201 [19.15.4.201 NMAC] states, in relevant part:

“A. The operator of any of the following wells, whether cased or uncased, shall be responsible for the plugging thereof: wells drilled for oil or gas; or service wells including but not limited to seismic, core, exploration or injection wells.

B. A well shall be either properly plugged and abandoned or placed in approved temporary abandonment in accordance with these rules within 90 days after:

....

....

(3) a period of one year in which a well has been continuously inactive.”

13. The following wells operated by Operator in New Mexico have been inactive for a continuous period in excess of one year plus ninety days, and have not been properly plugged and abandoned or placed in approved temporary abandonment status:

30-015-00938	Artesia Metex Unit #003
30-015-00944	Artesia Metex Unit #008
30-015-01940	Artesia Metex Unit #011
30-015-01964	Artesia Metex Unit #012
30-015-01190	Artesia Metex Unit #044

#### **Penalty Provisions:**

Agreed Compliance Order  
Injection wells/inactive wells  
ERS Resources, LLC  
Page 3 of 8

14. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule or order adopted pursuant to the Act.
15. NMSA 1978, Section 70-2-3(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..."

### **CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. The injection wells identified in Findings Paragraph 4 are out of compliance with OCD Rule 703 because they failed mechanical integrity tests. Operator is subject to penalties under NMSA 1978, Section 70-2-31(A) because it failed to repair the wells after being notified that the wells had failed mechanical integrity tests.
3. The wells identified in Findings Paragraph 13 are out of compliance with Rule 201 because they have been inactive for a period in excess of one year plus ninety days and have not been properly plugged and abandoned or placed on approved temporary abandonment status.
4. As operator of the wells identified in Findings Paragraphs 4 and 13 Operator is responsible for bringing those wells into compliance with OCD rules.
5. Operator is a "person" as defined by OCD Rule 7.P(2) and may be subject to civil penalties for knowing and willful violations of the Oil and Gas Act or rules or orders adopted pursuant to the Act.

### **ORDER**

1. Operator agrees to pay a penalty of \$4,000 for its failure, to date, to repair the wells identified in Findings Paragraph 4 after being informed by the OCD that the wells failed mechanical integrity tests.
2. Operator shall pay the \$4,000 penalty at the time this order is executed. 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 St. Francis Drive, Santa Fe, NM 87505.

3. By January 31, 2007 Operator shall return the four wells identified in Findings Paragraph 4 to compliance with Rule 703 by performing one of the following actions with regard to each well:
  - a) repair the well so that it passes the mechanical integrity tests required under Rule 704, return the well to injection and file a C-115 reporting injection;
  - b) plug the wellbore in accordance with 19.15.4.202.B(1) and (2) NMAC; or
  - c) place the well on approved temporary abandonment status in accordance with 19.15.4.203 NMAC.
4. Operator shall file a compliance report by January 31, 2007 using the OCD's web-based on-line application, identifying each well returned to compliance, stating the date it was returned to compliance, and describing how the well was returned to compliance.
5. When the OCD receives a timely compliance report indicating that Operator has returned the four wells identified in Findings Paragraph 4 to compliance by January 31, 2007 and verifies the accuracy of that report, the OCD shall issue an amendment to this Order extending its terms for an additional six-month period and requiring Operator at least three of the wells identified in Findings Paragraph 13 to compliance with Rule 201 by July 31, 2007 by taking one of the following actions with regard to each well:
  - a) return the well to production or other OCD-approved beneficial use, and file a C-115 reporting that use;
  - b) plug the wellbore in accordance with 19.15.4.202.B(1) and (2) NMAC; or
  - c) place the well on approved temporary abandonment status in accordance with 19.15.4.203 NMAC..
6. If an amendment is issued pursuant to Ordering Paragraph 5, Operator shall file a compliance report by July 31, 2007 using the OCD's web-based on-line application, identifying each well returned to compliance, stating the date it was returned to compliance, and describing how the well was returned to compliance.
7. When the OCD receives a timely compliance report indicating that Operator has returned at least three of the wells identified in Findings Paragraph 13 to compliance by July 31, 2007 and verifies the accuracy of that report, the OCD shall issue an amendment to this Order extending its terms for an additional six-month period and requiring Operator to return to compliance with Rule 201 by January 31, 2008 any remaining non-compliant wells identified in Findings Paragraph 13 that Operator still operates.
8. If an amendment is issued pursuant to Ordering Paragraph 7, Operator shall file a compliance report by January 31, 2008 using the OCD's web-based on-line

application, identifying each well returned to compliance, stating the date it was returned to compliance, and describing how the well was returned to compliance.

9. The OCD shall provide a copy of any amendment issued pursuant to Ordering Paragraphs 5 or 7 to Operator at Operator's address of record provided pursuant to OCD Rule 100.C.
10. If Operator fails to bring the required number of wells into compliance by the compliance deadline set by this Order or an amendment issued pursuant to Ordering Paragraphs 5 or 7, Operator agrees to pay a penalty of \$1000 times the number of wells it failed to bring into compliance under its schedule during the applicable time period. In the event the Operator encounters unanticipated circumstances that prevent it from meeting its goal, Operator may file an administrative application with the OCD to request a waiver or reduction of the penalty, and/or an amendment pursuant to Ordering Paragraphs 5 or 7. Operator shall serve the OCD's Enforcement and Compliance Manager with a copy of the application. If the Enforcement and Compliance Manager concurs with the Operator's request, the application may be granted administratively. If the Enforcement and Compliance Manager does not concur with the Operator's request, the application shall be set for hearing. Once Operator pays the penalty or files an administrative application to request a waiver or reduction of the penalty, the OCD may, in its discretion, issue an amendment to this Order as provided in Ordering Paragraphs 5 and 7.

Example A: Operator X enters into an agreed compliance order under which it agrees to bring 5 wells into compliance in a six-month period. At the end of the six-month period, Operator X has brought only 3 wells into compliance. Operator X pays the \$2000 penalty. The OCD exercises its discretion to issue an amendment extending the term of the agreed compliance order for an additional six-month period, again requiring Operator X to bring at least 5 wells into compliance. During this additional six-month period, Operator brings only one well into compliance. Operator X pays a \$4000 penalty. Although Operator X pays the \$4000 penalty, the OCD exercises its discretion and declines to issue an amendment to extend the terms of the agreed compliance order for an additional six-month period.

Example B: Operator Y enters into an agreed compliance order under which it agrees to bring 10 wells into compliance in a six-month period. Although Y has made arrangements for plugging the 10 wells, due to adverse weather conditions and mechanical difficulties with the available plugging rig, Y is able to plug only 3 wells. Y files an administrative application for hearing seeking to waive the \$7000 penalty, and serves the Enforcement and Compliance Manager with a copy of the application. The Enforcement and Compliance Manager does not concur with the application's request to waive the full amount of the penalty, so the application is set for hearing. The OCD exercises its discretion and issues an

amendment to extend the terms of the agreed compliance order for an additional six-month period.

11. While this Order remains in effect, the wells identified in Findings Paragraphs 4 and 13 shall be removed from the inactive well list kept pursuant to OCD Rule 40.F [19.15.1.40.F NMAC]. Thirty days after the expiration of the original term of this Order and any amendments to this Order issued pursuant to Ordering Paragraphs 5 or 7, any wells identified in Findings Paragraphs 4 and 13 not in compliance with OCD Rule 201 will appear on the inactive well list kept pursuant to OCD Rule 40.F.
12. By signing this Order, Operator expressly:
  - (a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - (b) agrees to pay the \$4,000 penalty assessed in Ordering Paragraph 1;
  - (c) agrees to return to compliance the four wells identified in Findings Paragraph 4 by January 31, 2007, and agrees to comply with the compliance deadline set by any amendment to this Order issued pursuant to Ordering Paragraphs 5 or 7;
  - (d) agrees to submit a compliance report as required in Ordering Paragraph 4 and the deadline set by any amendment to this Order issued pursuant to Ordering Paragraphs 5 or 7;
  - (e) agrees to pay penalties as set out in Ordering Paragraph 10 if it fails to return wells to compliance under the deadline set by this Order or any amendment to this Order issued pursuant to Ordering Paragraphs 5 or 7;
  - (f) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior to or subsequent to the entry of this Order or to an appeal from this Order; and
  - (g) agrees that the Order and amendments to the Order may be enforced by OCD or Oil Conservation Commission Order, by suit or otherwise to the same extent and with the same effect as a final Order of the OCD or Oil Conservation Commission entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act.
13. This Order applies only to those wells identified in Findings Paragraphs 4 and 13. Other wells operated by Operator out of compliance with Rules 201 or 703 may be subject to immediate enforcement action under the Oil and Gas Act.
14. The Oil Conservation Division reserves the right to file an application for hearing to obtain authority to plug any well identified in Findings Paragraphs 4 and 13 and forfeit the applicable financial assurance if the well poses an immediate environmental threat.

Done at Santa Fe, New Mexico this 16<sup>th</sup> day of October, 2006

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

**ACCEPTANCE**

ERS Resources, LLC \_\_\_\_\_ hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

ERS Resources, LLC

By: [Signature]  
(Please print name) Ryan Tipton  
Title: Pres/Owner/ Buyer  
Date: 10-12-06