

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

NMOCD – ACO 175

IN THE MATTER OF XTO ENERGY INC.,

Respondent.

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

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 (hereinafter "OCD") issues this Order to **XTO ENERGY INC. (hereinafter "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 operating wells in New Mexico under OGRID 5380.
3. XTO is the operator of the Martin Gas Com E #1E, API# 30-045-24236, Unit Letter C, Section 15, Township 27 North, Range 10 West, San Juan County, New Mexico.
4. On February 15, 2007 OCD Deputy Oil and Gas Inspector Kelly Roberts performed a routine inspection at XTO's Martin Gas Com E #1E well. Inspector Roberts found two earthen pits on location. One pit was approximately 10' by 10' in size and the other was approximately 30' by 30'. Both pits had been fenced and nets placed over the pits; however, the netting in both pits had fallen below the fluid level in the pit. The 30' by 30' pit also had a layer of oil on the surface of the water.
5. Upon conducting further investigation it was determined:
 - A. The two pits on the Martin Gas Com E #1E well were registered, as required by OCD rules.
 - B. OCD Rule 50.C(2)(e) [19.15.2.50.C(2)(e) NMAC] states in relevant part: "Disposal or storage pits. No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit...."
 - C. OCD Rule 50.C(2)(f) [19.15.2.50.C(2)(f) NMAC] states in relevant part: "Fencing and netting. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement. Immediately after cessation of

these operations such pits shall have any visible or measurable layer of oil removed from the surface. Upon written application, the division may grant an exception to screening, netting or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.”

6. XTO violated OCD Rules 50.C(2)(f) and 50.C(2)(e) by allowing the netting on both pits to fall below the fluid level within the pit, without the Division having granted an exception to the netting requirements and by allowing a layer of oil to accumulate on the surface of the fluid within the larger pit.
7. As a result of its investigation OCD issued **Notice of Violation (3-07-08)** to XTO alleging a violation of OCD Rules 50.C(2)(f) and 50.C(2)(e).
8. During the administrative conference on March 13, 2007, XTO presented the following information:
 - A. XTO has an earthen pit closure program in place and working.
 - B. They average 2 full time crews dedicated to earthen pit closures year round.
 - C. One of the crews was a half-mile away from these pits working towards them.
 - D. Through this program XTO has closed over 800 earthen pits at a cost of over 3 million dollars.
 - E. XTO estimates to have less than 100 earthen pits left in their program to close.
 - F. XTO will inspect the remaining pits and maintain them in compliance with OCD rules until the completion of its closure program
9. XTO has removed all of the fluids out of the pit and re-netted the pit.

II. 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, §70-2-33(A) that may be subject to civil penalties under NMSA 1978, §70-2-31(A).
3. XTO is subject to civil penalties under NMSA 1978, §70-2-31(A) for one violation of OCD Rule 50.C(2)(f) and one violation of OCD Rule 50.C(2)(e) at the Martin Gas Com E #1E.

III. ORDER AND CIVIL PENALTY

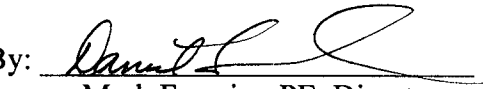
1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling two thousand dollars (\$2,000) against XTO.
2. The civil penalty shall be paid upon execution of this order. Payment shall be made by certified or cashier's check made payable to the "New 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. By signing this order, XTO expressly:

- A. acknowledges the correctness of the Findings and Conclusions set forth in this order;
- B. agrees to comply with Ordering paragraph 2;
- 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 (NMSA 1978, §§70-2-1 through 70-2-38, as amended).

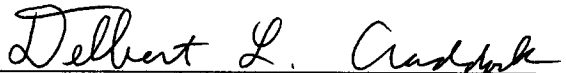
Done at Santa Fe, New Mexico, this 24th day of April 2007.

By: 
Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

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

XTO ENERGY INC.

By: 

Title: VP Operations

Date 4-19-07