

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

ACO No. 236

IN THE MATTER OF PRIMERO OPERATING 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 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 ("Order," "Agreed Compliance Order," or "ACO") to Primero Operating Inc. (hereinafter "Primero" or "Operator") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

**I. FINDINGS**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Operator is a domestic for-profit corporation registered to do business in New Mexico under SCC Number 1516624. Operator's principal address of record with the New Mexico Public Regulation Commission is 400 North Pennsylvania Ave., Suite 840, Roswell, New Mexico 88201.
3. Operator operates wells within New Mexico under OGRID 18100.
4. Operator's current address of record with the OCD is P.O. Box 1433, Roswell, New Mexico 88202.
5. Effective January 1, 2007, Operator has been and is operator of record of the following well:
  - a. Luke State No. 003; 30-005-63387; M-3-08S-27E
6. The Luke State No. 003 was operated by Collins Oil and Gas Corporation of Roswell, New Mexico (hereinafter "Collins") from December 9, 2004, to January 1, 2007.
7. OCD Rule 19.15.2.50(F)(1) NMAC ("Rule 50") states a pit "shall be properly closed within six months after cessation of use."

8. The job conducted by Collins requiring pit closure was completed in July 2005. Under OCD Rule 50(F)(1), the pit should have been closed within six months of July 2005.
9. On December 2, 2005, Collins received OCD approval to close its open drilling pit on the Luke State No. 003.
10. The pit was not closed timely.
11. Sometime prior to July 10, 2007, a change of operator form was submitted for the Luke State No. 003 that identified the date of change of operator from Collins to Primero as being effective January 1, 2007. On July 10, 2007, the OCD approved the change of operator on the Luke State No. 003 from Collins to Primero.
12. On November 11, 2007, OCD Deputy Oil & Gas Inspector Phil Hawkins observed an open drilling pit during his inspection of the Luke State No. 003.
13. On November 14, 2007, Deputy Inspector Hawkins sent Operator a Letter of Violation (LOV No. 02-07-219) which informed Operator of the pit violation. The letter also noted that the pit liner had fallen down. The letter advised Operator that the “[p]it must be sampled and the results approved by OCD prior to closing.” Operator was asked to complete corrective action by December 3, 2007.
14. The pit remained open after the December 3, 2007 deadline.
15. As a result, OCD issued Notice of Violation No. 02-08-07, which alleged that Operator knowingly and willfully violated OCD Rule 50.
16. An administrative conference on the notice of violation was held on April 8, 2008 at the OCD’s Artesia District Office. Operator’s President, Phelps White, and its attorney, Lucas Williams, appeared in person for the conference.
17. At the conference Mr. White said he did not respond to the November 14 letter because he was on a job in Pecos. Additionally, although Operator has paid a dirt contractor \$15,000 to close the pit, Operator’s efforts to close the pit have been impacted by pending litigation presently styled *Primero Operating, Inc. v. McMullen Energy Company, LLC*, Case No. D-504-CV-200701134.

## **II. CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Operator 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. NMSA 1978, § 70-2-31(A) states, “[a]ny 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 for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate offense.”
4. Operator does not contest that it is subject to civil penalties under NMSA 1978, § 70-2-31(A).

### **III. ORDER & CIVIL PENALTY ASSESSMENT**

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Operator totaling **Three Thousand Dollars (\$3,000.00)**.
2. The **Three Thousand Dollars (\$3,000.00)** civil penalty shall be waived on the following condition:
  - a. Operator closes the pit **no later than thirty (30) days from execution of the ACO** or no later than any extension granted by OCD pursuant to Ordering Paragraph No. 5.
3. If Operator fails to close the pit no later than thirty (30) days from execution of the ACO or no later than any extension granted by OCD pursuant to Ordering Paragraph No. 5, payment of the \$3,000.00 shall become immediately due. In addition, further enforcement action may result.

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.

4. By signing this Order, Operator expressly:
  - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b. agrees to comply with the Order;
  - 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.

5. For good cause shown, Operator may request an extension to complete the requirements as set out in Ordering Paragraph No. 2. Such notification ("notice") shall reasonably describe the circumstances encountered by Operator that prohibits it from meeting the deadlines set out herein.

Within ten (10) days of receipt of this notice, the OCD shall either approve the extended time requested by Operator by executing a written amendment to this Order, or notify Operator that it will not extend the deadline. The OCD's approval of a time extension shall not be unreasonably withheld.

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

Done at Santa Fe, New Mexico this 5<sup>th</sup> day of May 2008.

By:

Mark Fesmire  
by Mark Fesmire, P.E.  
Director, Oil Conservation Division

**ACCEPTANCE**

Primero Operating Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

**PRIMERO OPERATING INC.**

By:

J. Phelps White IV  
President, Primero Operating Inc.

Date:

4-28-08