

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

NMOCD-OGA-04-102

**IN THE MATTER OF HEC PETROLEUM, INC.**

**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 **HEC PETROLEUM, INC. ("HEC")** directing compliance with the Act and OCD Rules, and assessing a civil penalty.

**FINDINGS**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. HEC is a corporation doing business in New Mexico, registered with Secretary of State as a foreign corporation under number SCC 1235282. HEC is an active entity with a principal and mailing address at 500 W. Illinois, Midland Texas 79701. Its registered agent for service of process in New Mexico is CT Corp. System, 123 E. Marcy, Santa Fe NM 87501. HEC's business address is 463 Turner Dr. Unit 101 Durango, CO 81303. HEC has been assigned OGRID # 9812.
3. HEC is the operator of record for the Yager #9, API #30-045-32344, Unit Letter P, Section 20, Township 32 North, Range 06 West, San Juan County, New Mexico ("Yager #9").
4. On May 13, 2004, the OCD approved HEC's application for a permit to drill the Yager #9 and construct a lined drilling pit according to OCD guidelines.
5. HEC spudded the Yager #9 on April 26, 2005.
6. An OCD inspection of the drilling pit at the Yager #9 on May 2, 2005, revealed the following:
  - a. The liner was torn on the Northeast side of the pit next to the drilling rig.
  - b. The tear was approximately thirty-five (35) feet in length, running horizontally approximately 26" above the fluid standing in the pit.

- c. The lower lip of the tear had dropped down into the fluid standing in the pit, exposing fluid-stained soil under the liner, and a watermark on the soil approximately 18" above the standing fluid in the pit and approximately 8" below the upper lip of the tear.
- d. Drill cuttings were present on top of the lower lip of the tear.
- e. HEC personnel were present at the site.

7. Rule 50.C(2)(b)(i) states, in relevant part, "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."

8. 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."

9. 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..."

10. As a result of its investigation, on May 11, 2005 the OCD issued Notice of Violation (3-05-10) to HEC alleging that HEC violated Rule 50.C(2)(b)(i) by failing to maintain the liner, and proposed to assess a \$1,000 civil penalty pursuant to NMSA 1978, section 70-2-31(A).

**OCD's Position:**

11. The OCD takes the position that HEC knowingly and willfully violated Rule 50.C(2)(b)(i)'s requirement to maintain the liner, based on the following:

a. The presence of drill cuttings on the lower lip of the torn liner indicates that the tear occurred before or during drilling operations.

b. When the OCD inspector saw the tear on May 2, 2005, it was obvious and visible: the tear was above the fluid level and above the high water mark in the pit, was approximately 35 feet long, and the lower lip of the tear had dropped into the fluid, exposing soil stained with fluid.

c. HEC personnel and/or agents were active at the site throughout drilling operations, and either saw the tear or would have seen the tear had they been maintaining the liner in the pit.

d. When the OCD inspector saw the site on May 2, 2005, the exposed soil showed a high water line approximately 8" lower than the upper lip of the tear, and approximately 18" above the existing fluid levels. This suggests that the fluid level in the pit had dropped some 18" between the time the tear occurred and the inspection took place, or enough time had passed after the tear to allow the fluid to infiltrate the soil to a level

approximately 18" above the existing fluid level. A drop in fluid level due to evaporation or leaking would take some time. If the drop in fluid level occurred because HEC removed fluids from the pit after the tear, HEC would have observed the damage to the liner.

**HEC's Position:**

12. HEC was not aware of the tear in the liner until it was notified by the OCD.
13. HEC started corrective actions the same day it was notified by OCD and has closed the drilling pit under an OCD-approved plan.
14. HEC contends that it did not knowingly and willfully violate any OCD Rules. Nevertheless, HEC acknowledges that if it went to hearing on the alleged violations, the examiner or commission may find HEC in violation of OCD Rules and assess a civil penalty or take other enforcement action under the Act.
15. HEC has determined that it is in its best interest to agree to this compliance order with payment of a \$1000 penalty, rather than contest the issues in a public hearing and in possible litigation.

**CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. HEC is the operator of record for the Yager #9.
3. HEC and the OCD disagree on the facts surrounding the tear in the liner at the Yager #9, and the legal conclusions to be drawn from those facts.
4. HEC 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).
5. HEC has agreed to the entry of a compliance order under which it will pay a \$1000 penalty for violating Rule 50.C(2)(b)(i) in order to resolve the violation alleged in notice of violation (3-05-10).

**ORDER AND CIVIL PENALTY**

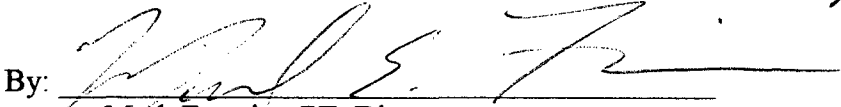
1. The OCD hereby assesses a civil penalty totaling one thousand dollars (\$1,000) against HEC for violating Rule 50.C(2)(b)(i).
2. The civil penalty shall be paid at the time HEC executes this order. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation 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. HEC shall take soil samples below and behind the tear in the liner and have the samples analyzed for major cations/anions, BTEX and TPH. HEC shall submit the results of the analysis to the OCD within 45 days of the execution of this order.

4. By signing this order, HEC expressly:

- a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
- b. agrees to comply with ordering paragraph 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 18<sup>th</sup> day of July, 2008.

By:   
Mark Fesmire, PE, Director  
Oil Conservation Division

**ACCEPTANCE**

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

HEC Petroleum, Inc.

By:   
Title: Atty-In-Fact  
Date: 1/10/2006