

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

**NMOCD-OGA-3-06-02**

ACO 116

**IN THE MATTER OF SAN JUAN RESOURCES , INC., d/b/a  
SAN JUAN RESOURCES OF COLORADO, 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 (hereinafter, "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 (hereinafter, "OCD") issues this Order to **SAN JUAN RESOURCES , INC., d/b/a SAN JUAN RESOURCES OF COLORADO, INC. (hereinafter, "San Juan")** directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

**I. FINDINGS**

**A. Facts**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. San Juan is a domestic for profit Colorado corporation, doing business in the State of New Mexico under the name of San Juan Resources of Colorado, Inc. San Juan is an active entity with a mailing address at 1499 Blake St., No. 7K, Denver, Colorado 80202.
3. San Juan is the operator of record for the Apperson #1E, Unit Letter I, Section 30, Township 30 North, Range 11 West, API # 30-045-31250.
4. On September 13, 2005, OCD Deputy Oil and Gas Inspector Denny Foust, responded to a report from the Bureau of Land Management that frac tanks being transported

from the San Juan Apperson # 1E were losing fluids along a lease road that enters CR3175.

5. At the well site, Inspector Foust found:
  - a. a gap had been left in the pit fence;
  - b. a liner tear, extending below the fluid level, was present in the southeast corner of the pit;
  - c. fluids were standing in the unlined portion of the drilling pit; and
  - d. an oily substance was floating on the eastern third of the lined portion of the drilling pit.
6. Inspector Foust also saw that fluids from frac tanks had been strung intermittently down the lease road for .8 miles to CR 3175. The last visible evidence of the fluids, approximately three miles from the well site, was at the intersection of CR 3100 and CR 3000.
7. An OCD investigation and review of relevant documents established the following:
  - a. San Juan spudded the Apperson #1E on April 8, 2005;
  - b. the OCD does not have record of San Juan having applied for a drilling pit permit at this well site;
  - c. on September 11, 2005, San Juan Agent Paul Thompson, Walsh Engineering, told Inspector Foust that a rig had left the location on September 10, 2005;
  - d. Mr. Thompson advised that the frac tanks held only fresh water.
8. As a result of its investigation, the OCD District III office issued a Notice of Violation (3-06-02) to San Juan, citing it for the above Rule violations.
9. An administrative conference was held on January 31, 2006. San Juan presented the following:
  - a. Upon having been contacted by Inspector Foust and told of the overtopping of the pit, Paul Thompson, Walsh Engineering, had his crew immediately pump fluids from the pit and properly dispose of them. Mr. Thompson believes that the initial and subsequent overtopping was due to unauthorized dumping into the pit by an unknown party(ies). San Juan has installed a locked gate at the entrance to the well location to prohibit unlawful dumping into the pit. Regardless, the pit was not purposefully overfilled by San Juan, thus there is no knowing and willful intent to violate the rule.
  - b. San Juan does not believe it was necessary to gate the fence, i.e., close the gap, as there are no livestock in the area to enter the pit area. It has operated there for fifteen years and has never seen livestock in the area.

- c. San Juan disagrees that the substance on the top of the unlined pit is petroleum. Water used at the site was fresh, coming from Aztec. An analysis of the substance came back as inconclusive, but stated that “it might be an oily substance.” San Juan believes the “oily substance” was environmentally approved frac fluids and anticipates results of a more thorough analysis will show this to be the case.
  - d. Regarding the two citations under OCD Rule 50C(2)(b)(i), San Juan argues this is double fining. It believes that there was only a single violation, not one for failing to maintain the liner and letting fluids overtop, and a second for fluids standing in the unlined pit, as this is all part of a single incident. In addition, it maintains there was no intent to violate the rule.
  - e. San Juan does not agree it should be cited for failing to get a permit for the pit, as the Application for Permit to Drill the well was approved before the requirement that it be permitted was put into effect. San Juan would have permitted the pit if they had known permitting was required under the circumstances, and it was only a misunderstanding that it failed to apply for the permit.
10. San Juan’s position is that it did not knowingly and willfully violate OCD Rules 50B(3)(a), 50C(2)(b)(i) and 50C(2)(f).

**B. Relevant Law and Violations**

- 11. OCD Rule 50B(3)(a) [19.15.2.50B(3)(a) NMAC] provides that “[a]fter April 15, 2004, operators shall obtain a permit before constructing a pit or below grade tank.”
- 12. OCD Rule 50C(2)(b)(i) [19.15.2.50C(2)(b)(i) NMAC] provides that “[e]ach 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. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.”
- 13. OCD Rule 50C(2)(f) [19.15.2.50C(2)(f) NMAC] provides that “[a]ll pits shall be fenced or enclosed to prevent access by livestock, and all fences shall be maintained in good repair.” It further provides that “[i]mmmediately after cessation of drilling and workover rig operations such pits shall have any visible or measurable layer of oil removed from the surface.”
- 14. San Juan violated OCD Rule 50B(3)(a) by building a drilling pit at the Apperson #1E without obtaining the require pit permit.

15. San Juan violated OCD Rule 50C(2)(b)(i) by (1) failing to maintain the liner and fluid level in a manner to prevent overtopping of the liner, as a liner tear extended below the fluid level; and (2) by allowing fluids to stand in the unlined portion of the drilling pit.
16. San Juan violated OCD Rule 50C(2)(f) by leaving an opening in the pit fence.
17. San Juan had a second violation of OCD Rule 50C(2)(f) by failing to remove the oil from the surface of the drilling pit.

## **II. CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. San Juan is a person as defined by NMSA 1978, Section 70-2-33(A).
3. San Juan was the operator of the Apperson #1E on September 13, 2005.
4. San Juan disagrees that it knowingly and willfully violated OCD Rules 50.B(3)(a), 50.C(2)(b)(i), and 50.C(2)(b)(i). But it acknowledges that if this case went to hearing, the examiner or commission could find that San Juan is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD Rules for:
  - a. building a drilling pit at the Apperson #1E without obtaining the required pit permit, a violation of OCD Rule 50.B(3)(a);
  - b. failing to maintain the liner and fluid level in a manner to prevent overtopping of the liner, as a liner tear extended below the fluid level, a violation of OCD Rule 50.C(2)(b)(i);
  - c. allowing fluids to stand in the unlined portion of the drilling pit, a violation of OCD Rule 50.C(2)(b)(i); and
  - d. failing to remove an oil substance from the surface of the drilling pit, a violation of OCD Rule 50C(2)(f).
5. Rule 50.C(2)(f) requires pits to be enclosed by fencing to prevent access by livestock. Upon request by an operator, an exception may be granted to this rule upon showing that such an exemption will not endanger fresh water, public health or the environment. San Juan did not request an exception to the fencing rule. However, based on San Juan's representation, and documentation, that they have contacted all

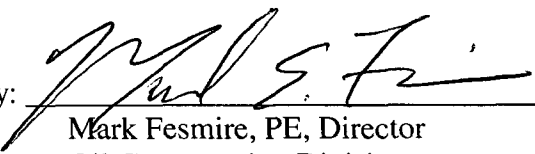
surrounding neighbors and that no livestock is kept within the area, the OCD will not assess a penalty for this violation.

### **III. ORDER AND CIVIL PENALTY**

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling **Four Thousand Dollars (\$4,000.00)** against San Juan for one violation of OCD Rule 50B(3)(a) (failing to obtain a permit for a drilling pit); two violations of OCD Rule 50C(2)(b)(i) (failing to maintain a liner and allowing fluid to overtop a pit, and allowing fluids to stand in an unlined drilling pit); and one violation of OCD Rule 50C(2)(f) (failure to remove a hydrocarbon substance from the surface of the drilling pit).
2. The civil penalty shall be paid at the time this Order is executed. Payment shall be made by 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 St. Francis Drive, Santa Fe, New Mexico 87505.
3. San Juan is directed in future operations to keep livestock-proof fence in place around the drilling pit, without gaps, until the pit is closed under an OCD-approved plan, or to obtain an exception to the fencing requirement under the provisions set out in OCD Rule 19.15.2.50.G.
4. By signing this Order, San Juan expressly:
  - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b. agrees to comply with ordering paragraphs 1, 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;
  - 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;
  - 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 San Juan in the amount of the penalties assessed and, in the discretion of the court, may

impose additional penalties for San Juan's violation of the penalty provisions of this Order.

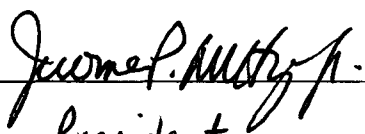
Done at Santa Fe, New Mexico this 2<sup>nd</sup> day of May ~~April~~ 2006.

By:   
Mark Fesmire, PE, Director  
Oil Conservation Division


**ACCEPTANCE**

**San Juan Resources, Inc., d/b/a San Juan Resources of Colorado, Inc.** hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

**Jerome P. McHugh, Jr., President  
San Juan Resources, Inc., d/b/a  
San Juan Resources of Colorado, Inc.**

By:   
Title: President  
Date 4/21/06

APPROVED:

  
Tommy Roberts, Esq.  
Attorney for San Juan Resources, Inc.,  
d/b/a San Juan Resources of Colorado, Inc.

4-18-06  
Date