

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

NMOCD-06-115

IN THE MATTER OF ENERDYNE, LLC,

Respondent.

AGREED COMPLIANCE ORDER

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 Oil Conservation Division of the Energy Minerals and Natural Resources Department of the State of New Mexico and ENERDYNE, LLC. (hereinafter "Enerdyne") enter into this Order to resolve the violations alleged in Notice of Violation (3-06-19).

I. FINDINGS

1. The Oil Conservation Division (hereinafter "OCD") is the state division charged with administration and enforcement of the Act and OCD rules. ENERDYNE is a domestic limited liability corporation registered to do business in New Mexico under SCC number 2024701. Enerdyne's mailing address is P.O. Box 502, Albuquerque, New Mexico 87103. Enerdyne's registered agent is Don L. Hanosh, with a principal address at 12814 Central Blvd. SE, Albuquerque, New Mexico 87123. Enerdyne's OGRID is 2096.
2. Enerdyne is the operator of record for the State #102, Unit Letter C, Section 28, Township 20 North, Range 9 West, API #30-031-21074, McKinley County, New Mexico.
3. On Monday, March 6, 2006, OCD Deputy Oil and Gas Inspector, Monica Kuehling, visited the Enerdyne State #102 during routine well inspections. Don Hanosh of Enerdyne was on site, operating the rig. On entering the location, Inspector Kuehling found no fence around the drilling pit. The drilling pit had oil on top of it, with netting over the oil. Inspector Kuehling told Mr. Hanosh to fence the pit; there was evidence of cattle in the area. Further, there was no approved permit to drill on site.
4. An OCD investigation found the following:
 - a) On September 6, 2005, the OCD Aztec District Office approved a permit to drill and a pit permit.

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- b) On October 20, 2005, Enerdyne notified Aztec District Geologist Steve Hayden that State #102 had been spudded.
 - c) However, the OCD had not received from Enerdyne a C-103 Sundry Notice of commencement of drilling.
 - d) Pursuant to OCD Rule 50.C(2)(f) [19.15.2.50.C(2)(f) NMAC], “[a]ll pits shall be fenced or enclosed to prevent access by livestock, and fences shall be maintained in good repair.”
 - e) Enerdyne violated OCD Rule 50.C(2)(f) by failing to have the drilling pit fenced.
 - f) OCD Rule 102.E [19.15.3.102.E NMAC] requires that the “operator shall keep a copy of the approved form C-101 at the well site during drilling operations.”
 - g) Enerdyne violated OCD Rule 102.E by failing to have a copy of the approved Form C-101 on the drilling site.
 - h) OCD Rule 1103.C [19.15.2.1103.C NMAC] requires an operator to “[w]ithin 10 days following commencement of drilling operations, ... file a report thereof on form C-103. Such report shall indicate the hour and the date the well was spudded.”
 - i) Enerdyne violated OCD Rule 1103.C by failing to file a C-103, written notice of commencement of drilling.
 - j) Enerdyne knew or should have known of the requirements of OCD Rules 50.C(2)(f), 102.E and 1103.C. Enerdyne knowingly and willfully violated these OCD Rules.
5. NMSA 1978, §70-2-31(A) provides in relevant part, “[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 (\$1,000) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation.” NMSA 1978, §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....”
 6. As a result of its investigation, the OCD issued Notice of Violation (3-06-19) to Enerdyne alleging one violation each of OCD Rules 50.C(2)(f), 102.E and 1103.C, but recommending a penalty of only the OCD Rule 50 violation.
 7. During the telephone conversation between Don Hanosh and Charlie Perrin, OCD District III Supervisor, on May 1, 2006 Enerdyne stated:

- a) Due to the small size of the pit, the operator was putting up and taking down the pit fence each day; after the compliance officer's visit on March 6, 2006, the fence has been left up all the time.
- b) The operator will have the approved APD in the vehicle on location.
- c) The oil on the pit was due to a pipe in the well being stuck; the operator spotted oil in the well to help get the pipe free, so that the problem is now corrected.

II. CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Enerdyne 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. Enerdyne is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Price Federal #1 for one knowing and willful violation of OCD Rule 50.C(2)(f), failure to have the drilling pit fenced. No penalty is being issued for violations of OCD Rules 102.E (no permit on site) and 1103.C (filing a C-103 Sundry Notice, notice of commencement of drilling).

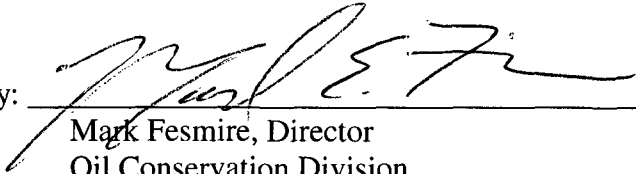
III. ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Enerdyne totaling **One Thousand Dollars (\$1,000.00)** for one knowing and willful violation of Rule 50.C(2)(f).
2. The civil penalty shall be paid at the time Enerdyne executes this Order. Payment shall be made by certified 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 Saint Francis Drive, Santa Fe, New Mexico 87505.
3. By signing this Order, Enerdyne expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with Ordering paragraphs 1 & 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;
 - 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; and

- 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 Enerdyne in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for Enerdyne's violation of the penalty provisions of this Order.
4. Nothing in this Order relieves Enerdyne 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 Enerdyne of its responsibility for compliance with any other federal, state or local laws and/or regulations.


Done at Santa Fe, New Mexico, this 11th day of ~~May~~ ^{July} 2006.

By: 
Mark Fesmire, Director
Oil Conservation Division

ACCEPTANCE

ENERDYNE, LLC. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the order.

ENERDYNE, LLC.

By: 
Title: Manager
Date: 7/3/06