

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

NMOCD- 176

IN THE MATTER OF WESTERLY EXPLORATION, 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 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 to **WESTERLY EXPLORATION INC.** ("Westerly") 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. Westerly is a corporation doing business in New Mexico, registered with the Public Regulation Commission as a corporation under number PRC 0737585. Westerly is an active entity with a principal and mailing address of P.O. Box 122389, Fort Worth, Texas 76121-2389. Its registered agent for service of process in New Mexico is CT Corporation Systems. Westerly has been assigned OGRID # 22568.
3. Westerly is the operator of the Romero Federal 34 #1, Unit Letter M, Section 34, Township 23 North, Range 1 West, API #30-043-21019, Sandoval County, New Mexico.
4. On Tuesday, November 16, 2006, OCD Deputy Oil and Gas Inspector Brandon Powell visited the Westerly Romero Federal 34 #1. Deputy Inspector Powell noted that the well had been drilled and that there was oil residue on the drilling pit. There were also standing oil and fluids in the vent pit. The fluids appeared to have been discharged from the well through the vent line. The fence around the pit was partially down. Workers on the site committed to repairing the fence that day. There was no well sign on location.
5. Upon conducting further investigation it was determined:
 - a. OCD Rule 1103.C requires that "[w]ithin 10 days following the commencement of drilling operations, the well's operator shall file a report thereof on form C-103. Such report shall indicate the hour and the date the well was spudded."

- b. As of November 27, 2006 the OCD had not received a spud notice on the Romero Federal 34 #1.
- c. Westerly violated OCD Rule 1103.C by failing to provide spud notice reports.
- d. OCD Rule 1103.D requires that the “well’s operator shall file a report of casing and cement test within 10 days following the setting of each string of casing or liner. Said report shall be filed on form C-103 and shall present a detailed description of the test method employed and the results obtained by such test and any other pertinent information required by 19.15.1.107 NMAC. The report shall also indicate the top of the cement and the means by which such top was determined. It shall also indicate any changes from the casing program previously authorized for the well.”
- e. As of November 27, 2006 no casing or cement reports have been received by the OCD on the Romero Federal 34 #1.
- f. Westerly violated OCD Rule 1103.D by failing to provide reports on the casing, cement and, if applicable, changes from the casing program previously authorized.
- g. The referenced well is on Federal land and is, therefore subject to OCD Rule 1128 [19 15.3.1128 NMAC]. OCD Rule 1128 provides that “federal forms shall be used in lieu of state forms when filing application for permit to drill ... and sundry notices and reports on wells and well completion or recompletion report and log for wells on federal lands in New Mexico.”
- h. An OCD Director’s memorandum titled “Operations on Federal and Indian Lands,” issued on January 2, 1985, instructs operators to provide “copies of drilling permits, sundry notices, well completion reports, and any other required information on Indian lands wells.” Operators must file “two copies of the forms and permits ... following their approval by the BLM” with the appropriate OCD district office.
- i. OCD Rule 50.C(2)(b)(i) requires that “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. 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.”
- j. Westerly violated OCD Rule 50.C(2)(b)(i) by allowing the fluid to accumulate in the vent portion of the pit, which is unlined, as opposed to the fluid flowing into the lined portion of the pit.
- k. OCD Rule 50.C(2)(f) requires that [a]ll ... exposed pits ... 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 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.”

- l. Westerly violated OCD Rule 50.C(2)(f) by allowing oil to stand on the surface of both the vent and reserve portions of the pit.
- m. OCD Rule 50.C(2)(f) requires that all pits shall be fenced or enclosed to prevent access by livestock, and that fences shall be maintained in good repair.
- n. Westerly violated OCD Rule 50.C(2)(f) by failing to adequately maintain the fence around the pit.
- o. OCD Rule 103 requires that “[a]ll wells and related facilities regulated by the division shall be identified by a sign, which sign shall remain in place until the well is plugged and abandoned and the related facilities are closed.”
- p. Westerly violated OCD Rule 103 by failing to have the well signed.

6. As a result of its investigation OCD issued **Notice of Violation (3-06-45)** to Westerly alleging a violation of OCD Rules 103 (no sign), 50.C(2)(b)(i) (accumulated fluid in unlined pit), 50.C(2)(f) (oil on the surface and failure to maintain the fence), 1103.C (no spud report), and 1103.D (no casing/cement report).

7. During the Administrative conference or by letter submitted January 26, Paul Thompson of Walsh Engineering, Westerly Exploration’s Agent, indicated that the:

- a. fence was repaired the day it was discovered;
- b. well site did have a sign, but it disappeared under the snow and mud, or was taken with the rig equipment, but it will be replaced;
- c. well was drilled with air, but the misted mud was too thick and dry to flow into the lined portion of the pit, as required by OCD Rule 50.C(2)(b)(i);
- d. oil stained dirt that was not in the lined portion of the pit was excavated and hauled to a land farm;
- e. Walsh implemented a tracking process to ensure that future paperwork will be filed timely; and
- f. in the future, the field supervisor will personally check locations after the rig leaves to verify that the fence, pit and sign are in compliance and any oil in the pit is removed.

II. CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Westerly 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. Westerly is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Romero Federal 34 #1 for violations of OCD Rules 103 (no sign), 50.C(2)(b)(i) (fluid in unlined pit), 50.C(2)(f) (failure to maintain the fence), 1103.C (no spud report), and 1103.D (no casing/cement report).

III. ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and extenuating factors, the OCD hereby assesses a civil penalty totaling **Two Thousand Dollars (\$2,000.00)** against Westerly for one violation of OCD Rules 50.C(2)(b)(i) (fluid in unlined pit) and 50.C(2)(f) (failure to maintain the fence).
2. No penalty will be assessed for violations of OCD Rule 103, failure to have well sign as the well had originally been signed as required by rule; 50.C(2)(b)(i), oil on the surface of pit, and 1103.C and D.
3. The civil penalty shall be paid within sixty days of receipt 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.
4. By signing this order, Westerly expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with ordering paragraph 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 (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico, this 7th day of March ~~February~~ 2007.

By: _____

Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

Westerly Exploration Inc. hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the Order.

WESTERLY EXPLORATION, INC.

By: Paul C. Thompson
Walsh Engineering and Production Corp.
Agent for Westerly Exploration, Inc.

Title: PRESIDENT / AGENT

Date 2/22/07