

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

NMOCD- 184

IN THE MATTER OF PRO NM ENERGY, INCORPORATED.

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 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 (hereinafter "OCD") issues this Order to **PRO NM ENERGY, INCORPORATED (hereinafter "Pro NM")** directing compliance with the Act and OCD rules, and assessing a penalty for violations of the Act and OCD rules.

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Pro NM is a corporation doing business in New Mexico, registered with Secretary of State as a foreign corporation under number SCC 1326602. Pro NM is an active entity with a principle and mailing address at 460 St. Michael's Drive, Suite 104, Santa Fe, NM 87505. Its registered agent for service of process in New Mexico is J.E. Gallegos, Pro NM, 460 St. Michael's Drive, Suite 104, Santa Fe, NM 87505. Pro NM has been assigned OGRID # 18118.
3. Pro NM is the operator of record of the Gracia Federal 181 #1, Unit Letter I, Section 18, Township 26 North, Range 11 West, API # 30-045-32857, San Juan County, New Mexico.
4. On Tuesday, February 27, 2007, OCD Deputy Oil and Gas Inspector Karen Sharp received a deviation survey submitted by Pro NM for the Gracia Federal 181 #1.
5. Upon conducting further investigation it was determined:
 - a. The well was spud on February 18, 2007.
 - b. Inspector Sharp conducted a well file review and determined no application for a drilling pit permit had been submitted or issued.

- c. Inspector Sharp spoke by telephone with Dana Delventhal, Pro NM, who advised she believed that the pit permit had been submitted with the APD. Inspector Sharp requested a copy of the approved pit permit be sent to the OCD. Ms. Delventhal later corrected herself, stating that Pro NM needed to request a pit permit.
- d. On February 27, 2007, Deputy Oil and Gas Inspector Shelly Cowden inspected the site and saw there was a pit on location. The pit was lined and fenced.
- e. OCD Rule 50.A [19.15.2.50.A. NMAC] prohibits the “[d]ischarge into, or construction of, any pit or below-grade tank . . . absent possession of a permit issued by the [OCD]. . . .”
- f. Pro NM was aware of the pit permit requirements of OCD Rule 50.A at the time it drilled the Gracia Federal 18I #1.
- g. Karen Sharp phoned Ms. Delventhal on March 27, 2007 to advice of the situation, and promptly on March 28, 2007, Ms. Delventhal submitted the permit request.

6. NMSA 1978, § 70-2-31(A) provides that “[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 (\$1,000.00) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation.”

7. NMSA 1978, § 70-2-33(A) defines “person” for purposes of the Oil and Gas Act to include corporations.

8. On March 20, 2007 the OCD issued Notice of Violation (03-07-11) to Pro NM alleging that Pro NM had knowingly and willfully violated OCD Rule 50-A as to the Gracia Federal 18I #1 by constructing and discharging into an un-permitted pit. Pro NM denies that the matter amounts to a knowing and willful violation; the failure to submit the pit permit with the APD was an innocent oversight.

9. During the administrative conference on April 11, 2007, Pro NM presented the following information:

- a. The fact that Pro NM had not timely filed the permit with the OCD was an administrative oversight and it was promptly corrected.
- b. Pro NM’s personnel will calendar and monitor the submission of permits for the installation of pits and now allow any work to commence until a permit is issued.

10. After the OCD notified Pro NM that the Gracia Federal 18I #1 was out of compliance with Rule 50.A., Pro NM immediately applied for and obtained a permit for the pit at the Gracia Federal 18I #1.

II. CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Pro NM 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. Pro NM is subject to civil penalties under NMSA 1978, § 70-2-31(A) for violation of OCD Rule 50 at the Gracia Federal 181 #1.

III. ORDER AND CIVIL PENALTY

1. Pro NM agrees to execute this Order and pay \$1,000 to resolve the issues raised in Notice of Violation (03-07-11).
2. Pro NM shall pay the \$1,000 at the time this order is executed. Payment shall be made by 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, Pro NM expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
 - b. agrees to comply with ordering paragraph 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; and
 - d. agrees that if it fails to comply 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, §§ 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico, this 1st day of June, 2007.

By: _____

Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

PRO NM ENERGY, INCORPORATED hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

PRO NM ENERGY, INCORPORATED.

By: J E Kalligan
Title: President
Date: June 1, 2007