

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

ACO 07- 193

**IN THE MATTER OF CDX RIO, LLC.,  
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 CDX Rio, LLC. (hereinafter "CDX") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

**I. FINDINGS & DETERMINATIONS BY THE OCD**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. CDX is a foreign limited liability Corporation doing business in New Mexico, registered with the New Mexico Public Regulatory Commission under SCC number 2367704. CDX is an active entity with a mailing address of 5485 Beltline RD. STE. 190 Dallas , Texas 75254 with a Principal address of 5485 Beltline RD. STE. 190 Dallas, Texas 75254; C T Corporation System is the registered agent. CDX's OGRID is #222374.
3. CDX is the Operator of Record of the Jicarilla C #4F well, API No. 30-039-29590, located at Unit Letter N, Section 24, Township 26 North, Range 5 West, Rio Arriba County, New Mexico
4. On May 11, 2007, OCD Deputy Oil and Gas Inspector Brandon Powell performed a routine inspection at the CDX Jicarilla C #4F well. Inspector Powell found an open drilling pit on location. The liner in the pit was torn in two places. Both tears in the liner extended below the level of the fluid inside the pit. There was a substantial amount of oil in the pit. Fencing materials were also found to be inside of the pit.
5. The APD was approved by OCD on November 17, 2005.
6. OCD Rule 50.A provides that "[d]ischarge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division,

unless otherwise herein provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.50 NMAC.” CDX applied for a pit permit, including a general pit closure plan. The pit permit for this location, including the general pit closure plan, was approved by OCD November 21, 2005.

7. The well was spud on March 5, 2006.
8. The production casing string was set and cemented on March 27, 2006. Therefore, activity approved by the drilling pit permit ceased on this date, and the 180-day time period imposed by the closure requirement began on this date.
9. This well has been producing since August of 2006.
10. CDX had previously submitted a general pit closure plan (hereinafter “Plan”) on August 15, 2004, which was attached to and referenced by the pit application submitted on June 28, 2005, and ultimately approved by the OCD on November 21, 2005. The Plan provided the following assurances and specifications regarding its protocol for well completion and pit closure and reclamation:

The following criteria will be utilized for all pit closures for CDX drilling, completion, and workover operations where required.

#### Pit Reclamation

- 1) Immediately upon well completion, the location and surrounding area will be cleared of all unused tubing, equipment, debris, materials, trash and junk not required for production.
- 2) Free liquids will be disposed of through evaporation or at an approved disposal site as per BLM and OCD regulations.
- 3) Pit closure will follow prevailing BLM and OCD rules and regulations.
- 4) The reserve pit and that portion of the location not needed for production facilities/operations will be re-contoured to the approximate contours that existed prior to commencing operations. The pit area will be crowned to prevent pooling or erosion by rainwater over site. The reserve pit will be reclaimed within 180 days from the date of well completion.
- 5) Reclamation of unused disturbed areas on the well pad/access road no longer needed for operations, such as cut slopes, will be graded, leveled and seeded as recommended by the Authorized Officer.

- 6) The seed mixture for reclamation work will be a sight specific mixture as recommended by the authorized officer at the time of reclamation. Seeding will be performed in the fall after September 15 or until permanent ground freeze. Any other seeding period will require the approval of the authorized officer.

*“CDX Rio, LLC Drilling & Workover Pit Closure, Jicarilla Area Operations General Plan,” August 2004. (emphasis added).*

11. On the Form C-103 Pit Application, filed June 28, 2005 by CDX for this site, CDX stated that “[t]he pit will be closed within 180 days from completion of project as per General Closure Plan submitted August, 2004.”
12. CDX violated the terms of their permit because they did not abide by the assurances and specifications articulated in the general pit closure plan and in the Form C-103 Pit Application. Specifically, CDX failed to:
  - a. Close the pit “within 180 days from completion of project as per General Closure Plan submitted August 2004,”
  - b. Immediately clear the location of “unused tubing, equipment, debris, materials, trash and junk not required for production,”
  - c. Dispose of “free liquids” through “evaporation or at an approved disposal site as per BLM and OCD regulations,”
  - d. Complete reclamation of the site including the recontouring of the reserve pit to prevent erosion and pooling of rainwater within 180 days of well completion,
  - e. Complete reclamation of unused disturbed areas on the well pad/access road no longer needed for operations, and
  - f. Reseed the area as recommended by the “authorized officer.”
13. 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...”
14. CDX Violated Rule 50.C (2) (b) (i) by failure to maintain or repair the pit liner where it was torn and below the level of fluid inside the pit.
15. OCD Rule 50.C (2) (e) states in relevant part: “No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit...”
16. CDX Violated Rule 50.C (2) (e) by allowing oil to accumulate and remain on the surface of the pit.

17. OCD Rule 50.F (1) states in relevant part: "Except as otherwise specified in Section 50 of 19.15.2 NMAC, a pit or below-grade tank shall be properly closed within six months after cessation of use... The division for good cause shown may grant a six-month extension of time to accomplish closure".
18. CDX violated OCD Rule 50.F (1) because it neither closed this pit nor applied for an extension to do so prior to the end of the sixth month period provided for by the rule, which ended on or about September 27, 2006.
19. Regarding trash, such as the fencing materials found in this pit, CDX is advised to read OCD Environmental Handbook Pit and Below Grade Tank Guidelines Section IV.A Paragraph 2 states: "Remaining solid wastes (i.e. buckets, cans, miscellaneous trash, debris, contaminated solids, etc.) will be removed from the pit or below-grade tank....."
20. CDX was aware of its duty to be informed of and adhere to OCD Rules, as is clearly outlined in its August 2004 "Drilling & Workover Pit Closure General Plan." CDX has failed to adhere to the protocol and criteria outlined in this Plan with regard to this site.
21. As a result of its investigation, the OCD issued Notice of Violation (3-07-17) to CDX, alleging knowing and willful violations OCD Rule 50.C (2) (b) (i), OCD Rule 50.C (2) (e), and OCD Rule 50.F (1).

## **II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE OPERATOR, CDX**

CDX provided the following supplemental information and statements at the August 21, 2007 Administrative Conference.

22. The pit is now closed.
23. The trash in the pit was removed and disposed of immediately.
24. The soil was tested and the contaminated soil was hauled to TNT Environmental's Landfarm.
25. The process was changed so that the frac water is no longer flowed back to the pit.
26. They had problems finding a disposal that would accept the water.
27. Agua Moss agreed to take 400bbls of fluid a day if it was filtered.
28. The oil in the pit was skimmed off and placed in the production tank.
29. They will reseed the location with the Jicarilla/Bureau of Land Management approved seed mix.

### III. CONCLUSIONS OF THE OCD

30. The OCD has jurisdiction over the parties and subject matter in this proceeding.
31. CDX 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).
32. CDX is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Jicarilla C #4F for one violation of OCD Rule 50.C (2) (b) (i) (torn pit liner), one violation of OCD Rule 50.C (2) (e) (oil in the pit); and two violations of OCD Rule 50.F (1) (failure to close the pit within the initial six months and failure to close the pit in the second six months without a pit extension).

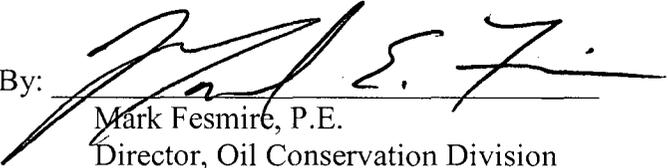
### IV. ORDER & CIVIL PENALTY ASSESSMENT

33. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against CDX totaling **Four Thousand Dollars (\$4,000.00)** for one violation of OCD Rule 50.C (2) (b) (i), one violation of OCD Rule 50.C (2) (e), and two violations of OCD Rule 50.F (1).
34. In addition, if it has not already done so, CDX is instructed to file a form C-144 pit closure for this pit, no later than September 28, 2007.
35. Reseeding of the location will be completed with the Jicarilla/Bureau of Land Management-approved seed mix as noted by CDX in Section II above.
36. The civil penalty shall be paid at the time CDX executes this Order. 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.
37. By signing this Order, CDX expressly:
  - a. acknowledges the authority of the OCD to render the above "Findings & Determinations," "Conclusions" and "Order & Civil Penalty Assessment";
  - b. agrees to comply with the Order, specifically as articulated in Section "IV," Paragraphs 33, 34, 35 and 36, above;
  - 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;

38. Nothing in this Order relieves CDX 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 CDX of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 13<sup>th</sup> day of Sept. 2007.

By:   
Mark Fesmire, P.E.  
Director, Oil Conservation Division

**ACCEPTANCE**

**CDX RIO, LLC.** (OGRID No. 238619), Operator of Jicarilla C #4F (API 30-039-29590), hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

**CDX RIO, LLC.**

By: James R Duncan

Title: DIST MGR

Date: Sept 5, 2007