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

ACO 08- 233

IN THE MATTER OF KOCH EXPLORATION COMPANY 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 Koch Exploration Company, LLC (hereinafter "Koch") 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) Koch is a foreign limited liability corporation doing business in New Mexico, registered with the Public Regulatory Commission Secretary of the State, under number 2234318. Koch is an active entity with a principal address of 4111 East 37th Street North Wichita Kansas 67220. Its registered agent for service of process in New Mexico is CT Corporation System, 123 East Marcy St., Santa Fe New Mexico 87501. Koch's OGRID is 12807.
- 3) Koch is the Operator of Record of the Quinn #341T, Unit letter C, Section 19, Township 31 North, Range 08 West, API # 30-045-34422 and the Quinn #388T, Unit letter F, Section 18, Township 31 North, Range 08 West, API # 30-045-34420.
- 4) On November 6, 2007, OCD Deputy Oil and Gas Inspector Karen Sharp performed a well file inspection for Koch's Quinn #338T upon receipt of the well's spud notice. On November 19, 2007, she performed a well file inspection for Koch's Quinn #341T, also upon receipt of the well's spud notice. Inspector Sharp discovered that there were not pit permits on file for either location. Inspector Sharp notified OCD Deputy Oil and Gas Inspector

Brandon Powell on November 26, 2007 that she had not been able to locate pit permits for either of these two locations.

- 5) The Application for Permit to Drill (hereinafter "APD") for the Quinn 341T was approved by the OCD on October 26, 2007 with the specific condition that Koch "[o]btain a pit permit from NMOCD prior to constructing the location" being expressly articulated on the front page of the APD.
- 6) The Application for Permit to Drill (hereinafter "APD") for the Quinn 338T was approved by the OCD on October 26, 2007, with the specific condition that Koch "[o]btain a pit permit from NMOCD prior to constructing the location" being expressly articulated on the front page of the APD.
- 7) For the Quinn 341T well, the OCD received a sundry November 19, 2007, reporting that the well had been spud on November 7, 2007.
- 8) For the Quinn 338T well, the OCD received a sundry November 6, 2007, reporting that the well had been spud on October 31, 2007.
- 9) Inspector Powell called Donald Johnson, District Superintendent for Koch, on November 26, 2007 regarding the missing permits for the two sites. Mr. Johnson stated that Koch had become aware that morning (November 26th) of the fact that these two wells did not have pit permits, and further stated that he would have the permit applications delivered to the OCD right away. Mr. Johnson also acknowledged that these two pits had already been used.
- 10) OCD Rule 50.A [19 15.2.50.A NMAC] prohibits the discharge into or construction of any pit or below-grade tank absent possession of a permit issued by the OCD, unless otherwise provided by OCD rules or unless the OCD grants an exemption pursuant to OCD Rule 50.G [19 15.2.50.A NMAC].
- 11) Koch has drilled other wells in New Mexico and knew of its obligations under Rule 50.A [19 15.2.50.A NMAC] as an operator in New Mexico. Further, Koch was specifically informed in writing that each of the two APD's was being approved on the express condition that Koch obtain a pit permit prior to constructing at either site. Despite this, Koch proceeded to construct and discharge into drilling pits at both sites referenced above without first obtaining the required permits, and in so doing, Koch knowingly and willfully violated OCD Rule 50.A [19 15.2.50.A NMAC].
- 12) NMSA 1978 Section 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."

- 13) NMSA 1978, section 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..."
- 14) As a result of its investigation, on January 25, 2008, the OCD issued Notice of Violation (3-08-01) to Koch.

II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE OPERATOR, KOCH

Koch provided the following supplemental information and statements during the January 31, 2008 administrative Conference:

- 15) The pit permits were overlooked partially due to trying to rush to drill the wells before the BLM winter closures.
- 16) Koch had not contacted the OCD the morning that they found the missing pit permits because they had a break-in at their office the week before, and were in the process of preparing legal paperwork (police report, etc.) that morning. Koch was planning on filling out the permits and dropping them off that evening.
- 17) In the future pit permits will be submitted with the APD package.
- 18) An APD check list has been created and will be used to ensure the pit permit is attached.

III. CONCLUSIONS OF THE OCD

- 19) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 20) Koch 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).
- 21) Koch is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Quinn #341T and the Quinn #388T for two violations of OCD Rule 50.A [19 15.2.50.A NMAC] (construction and discharge into a pit with out an approved pit permit).

IV. ORDER & CIVIL PENALTY ASSESSMENT

- 22) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Koch totaling **Two Thousand Dollars (\$2,000.00)** for the violations of the OCD's Rules.
- 23) The civil penalty shall be paid at the time Koch 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.
- 24) By signing this Order, Koch 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 22, and 23;
 - 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;
- 25) Nothing in this Order relieves Koch 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 Koch of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 21st day of April 2008.

By: 



Mark Fesmire, P.E.

Director, Oil Conservation Division

ACCEPTANCE

KOCH EXPLORATION COMPANY LLC, (OGRID No. 12807), Operator of the Quinn #341T, Unit letter C, Section 19, Township 31 North, Range 08 West, API # 30-045-34422 and the Quinn #388T, Unit letter F, Section 18, Township 31 North, Range 08 West, API # 30-045-34420, hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

KOCH EXPLORATION COMPANY LLC,

By: *Dale S. Schling*

Title: *President*

Date: *Feb. 26, 2008*