

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

ACO-08 235

IN THE MATTER OF XTO ENERGY, 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 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 **XTO ENERGY, INC. (hereinafter "XTO")** 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. XTO is a corporation doing business in New Mexico, registered with the Secretary of State as a foreign corporation under number SCC 1522747. XTO is an active entity with a principal and mailing address at 810 Houston Street, Suite 2000, Fort Worth, Texas 76102. XTO's address of record as registered with the OCD is 382 Road 3100, Aztec New Mexico 87410, with Deeann Kemp and Delbert L. Craddock listed as Company Representatives. XTO has been assigned OGRID # 5380.
3. XTO is the operator of the Vaqueros Canyon #1, API# 30-039-27679 Unit Letter H, Section 10, Township 27 North, Range 04 West, Rio Arriba County, New Mexico.
4. On September 19, 2007, Oil Conservation Division (hereinafter "OCD") Deputy Oil and Gas Inspector Kelly Roberts performed an inspection at the Vaqueros Canyon #1 well. Upon conducting the inspection of the well site, Inspector Roberts found the following:
 - a. An open drilling pit;
 - b. The drilling pit at the site contained drilling fluids; and,
 - c. There was also a visible layer of oil on the surface of the pit.
5. Upon conducting further investigation it was determined:

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- a. The APD for this well was approved by the OCD on June 13, 2006.
 - b. According to documents ultimately submitted by XTO to the OCD, the well was spud on July 30, 2007, and a drilling pit was constructed and utilized by XTO at this site.
 - c. OCD has no record of ever receiving a pit application or approving a pit application for this site.
 - d. The casing string was cemented on September 7, 2007, indicating that drilling had been completed on this well.
 - e. OCD Rule 50.A [19.15.2.50.A NMAC] mandates that "[d]ischarge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division..."
 - f. XTO violated OCD Rule 50.A [19.15.2.50.A. NMAC] by constructing and discharging into a drilling pit without first obtaining an OCD permit.
 - g. OCD Rule 50.C.2.f. [19.15.2.50.C.2.f NMAC] states in relevant part: "[i]mmediately after cessation of these operations pits shall have any visible or measurable layer of oil removed from the surface."
 - h. XTO violated OCD rule 50.C.2.f [19.15.2.50.C.2.f NMAC] by not removing the visible layer of oil on the surface of the pit after the cessation of drilling operations.
6. As a major/longstanding operator in the state of New Mexico, XTO was aware of its obligations under Rules 50.A and 50.C.2.f.
 7. As a result of its investigation, OCD issued Notice of Violation (3-07-26) to XTO alleging a violation of OCD Rules 50.C(2)(f) and 50.C(2)(e).

II. ADDITIONAL INFORMATION & STATEMENTS PROVIDED BY OPERATOR

8. During the administrative conference on December 17, 2007, XTO presented the following statements and/or information:
 - a. XTO filed their APD in March 2004, and it was not approved until June 2006. Due to the time required for approval of the APD the pit permit slipped thru the process.
 - b. XTO provided evidence that the pit was monitored and photographed on a

regular basis.

- c. XTO provided evidence in support of its position that the fluid was not oil.
- d. XTO conducted a review of their pits, and at the time of the conference, all pits were in compliance.
- e. XTO did not knowingly and willfully violate any OCD rule.

III. CONCLUSIONS

- 9. The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 10. XTO 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).
- 11. XTO is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Vaqueros Canyon #1 for one knowing and willing violation of OCD Rule 50.A [19.15.2.50.A NMAC] "[d]ischarge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division...."

IV. ORDER AND CIVIL PENALTY

- 12. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling **One Thousand Dollars (\$1,000.00)** against XTO.
- 13. The civil penalty shall be paid upon execution 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.
- 14. By signing this order, XTO expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with Order contained herein;
 - 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).

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

Done at Santa Fe, New Mexico, this 22nd day of April 2008.

By: Daniel Cole
Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

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

XTO ENERGY, INCORPORATED.

By: Delbert L. Cuddaker

Title: VP Operations

Date 4-16-08