

**From:** Altomare, Mikal, EMNRD [mailto:Mikal.Altomare@state.nm.us]  
**Sent:** Thursday, September 13, 2007 1:27 PM  
**To:** Michael Feldewert  
**Cc:** Perrin, Charlie, EMNRD; Macquesten, Gail, EMNRD  
**Subject:** McElvain ACO

Mr. Feldewert,

I apologize for the delay in getting this back to you. I had thought I had forwarded it to you for your review, but apparently had not. As you will see, I have accepted some of your changes, rejected some and added some of my own. Basically, the way the ACO is structured, the first portion consists of a summary of the conclusions of the OCD, and we therefore do not permit the operator to make changes to that portion. Those conclusions were discussed with your client at the time of the administrative conference, and at that time your client provided its additional information, which has been included in a separate portion of the document. I have inserted additional language that we do not usually use, but I am willing to do so in this case. This language indicates that your client is expressly disagreeing with the conclusions as articulated under the first section of the agreement, so that it is clear which statements within the ACO are derived from what party, etc. The agreement additionally has the language you have requested, indicating that while your client does not agree with the conclusions of the OCD or that it knowingly and willfully committed a violation, it agrees that a fact finder could so determine and is thus willing to proceed with the agreement, etc. If the new language is an acceptable compromise, please review it, have your client execute two copies, and forward them to my office along with payment of the penalty assessment.

Thank you,

Mikal Altomare

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BEFORE THE OIL CONSERVATION DIVISION  
Santa Fe, New Mexico  
Case No. 14186 Exhibit No. 13  
Submitted by:  
McElvain Oil & Gas Properties, Inc.  
Hearing Date: October 15, 2008

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

ACO \_\_\_\_\_

**IN THE MATTER OF MCELVAIN OIL & GAS PROPERTIES, 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 ("OCD") issues this Order to McElvain Oil & Gas Properties, Inc. ("McElvain") 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. McElvain is a domestic profit corporation doing business in New Mexico, registered with the Public Regulation Commission under number 1574441. McElvain is an active entity with a principal address at 1050 17<sup>th</sup> St., Suite 1800, Denver, Colorado 80265. Its registered agent for service of process in New Mexico is John Catron, 2006 Botolph Road, Santa Fe, New Mexico, 87505. McElvain's OGRID is 22044.
3. McElvain is the operator of record of the Amacker #1 well, API #30-043-21013, located at Unit Letter L, Section 22, Township 23 North, Range 01 West, in Sandoval County, New Mexico.
4. An OCD investigation found the following:
  - a) On April 20, 2007 Deputy Oil and Gas Inspector Kelly Roberts performed a routine inspection at the well. Inspector Roberts found that the well sign on the location showed "Frontier Drilling" as the operator. There was an open drilling pit on location. The pit was standing full of fluid and had overtopped the liner in several locations. There was a berm constructed around the perimeter of the pit, with a constructed drainage running away from the pit in two separate locations, allowing the overflowing fluids to

drain into the bermed area around the pit.

- b) Frontier Drilling, LLC ("Frontier") filed an Application for Permit to Drill the Amacker #1 well on February 28, 2006. The Application for Permit to Drill included an application for a pit permit and certification that the pit would be constructed according to OCD guidelines. Based upon the representations made by Frontier in these applications, the OCD approved the application for permit to drill and pit permit on March 1, 2006.
- c) The well was spud on May 16, 2006.
- d) On January 25, 2007 the OCD received a notice changing the operator of the well from Frontier to McElvain effective January 1, 2007.
- e) OCD Rule 50.C (1) states in relevant part: "Pits, sumps and below-grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment."
- f) McElvain violated OCD Rule 50.C (1) by allowing liquids to overtop the pit liner and accumulate on the ground outside the lined pit.
- g) 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."
- h) The production casing string was set and cemented on June 20, 2006.
- i) McElvain violated OCD Rule 50.F (1) by failing to close the pit within six months after cessation of use without being granted an extension.
- j) OCD Rule 103.E states: "An operator will have 90 days from the effective date of an operator name change to change the operator name on the well sign unless an extension of time, for good cause shown along with a schedule for making the changes, is granted."
- k) McElvain violated OCD Rule 103.E because it failed to change the operator name on the well sign for this site within 90 days (by April 1, 2007) without having been granted an extension, as required by this Rule.
- l) NMSA 1978 Section 70-2-31(A) provides in relevant part, "Any 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."

- m) 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..."

5. As a result of its investigation, on May 11, 2007, the OCD issued Notice of Violation (3-07-15) to McElvain.

## **II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY CONTENTIONS OF THE OPERATOR, McELVAIN**

6. McElvain does not agree with the findings and determinations of the OCD as outlined in Section I, above. McElvain provided the following supplemental information and statements at the May 30, 2007 Administrative Conference:

- a) McElvain had 320 bbls of water removed from the pit on May 1, 2007.
- b) McElvain did not receive the Notice of Violation until May 15, 2007.
- c) a) McElvain presented a printout of the snowfall totals for the area of the pit. Snowfall from January through February totaled 35 inches.
- d) b) McElvain presented a photo of the well location taken on January 11, 2007 that showed significant accumulations of snow on location.
- c) McElvain did not discharge any liquids into the pit and the overflow was the result of a heavy Spring runoff.
- d) On February 21, 2007 McElvain failed in an attempt to retrieve a pumping unit from the well location because a truck could not drive to location due to snow accumulations.
- e) On May 1, 2007, when weather conditions had improved to allow access to the well location, McElvain removed 320 bbls of water from the pit.
- f) On May 3, 2007 McElvain submitted a request for approval of an unorthodox well location to extension of the closure timeline. McElvain plans to re-complete the well in Mesa Verde formation, thereby indicating its intent to continue to use the drilling pit. The Division approved the unorthodox well location on May 24th.
- g) McElvain received the Notice of Violation on May 15, 2007.
- h) At the May 30th administrative conference, McElvain was informed that in addition to approval of its unorthodox well location, a C-103 pit extension request was required. On May 31st McElvain filed a C-103 pit extension request and it was approved by the Division on June 4th.

McElvain had Envirotech Inc. conduct a site assessment of the well site. Envirotech took samples and performed the analysis at their lab. Laboratory results show that no contamination tested for was above regulatory standards.

### III. CONCLUSIONS OF THE OCD

7. The OCD has jurisdiction over the parties and subject matter in this proceeding.
8. McElvain is a person as defined by NMSA 1978, Section 70-2-33(A) subject to civil penalties under NMSA 1978, Section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD Rules.
9. McElvain disputes that any knowing and willful violation of the Oil and Gas Act or OCD Rules occurred in this matter, but agrees a district court that a fact finder could find otherwise and subject McElvain is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for failure to close the pit within six months of cessation of use, a violation of OCD Rule 50.F (1).
10. Under NMAC 19.15.14.1227, the OCD is authorized to Order McElvain to perform corrective action for its violation of OCD Rule 103.E.
11. During the Administrative Conference the OCD determined that it would waive the penalty for violation of OCD Rule 50.C (1) due to certain mitigating factors.

### IV. ORDER & CIVIL PENALTY ASSESSMENT

12. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty pursuant to NMSA 1978, Section 70-2-31(A) totaling **One Thousand Dollars (\$1,000)** against McElvain for failing to ~~me~~ knowing and willful violation of Rule 50.F.1. ~~(failure to close the pit within six months after cessation of use as required by Rule 50.F(1)).~~
13. The civil penalty shall be paid at the time McElvain 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.
14. The reserve pit will be closed according to OCD rules, no later than December 4, 2007.
15. If it has not already done so, McElvain will correct the well sign at this site within thirty (30) days of entry of this Order so as to comply with OCD Rule 103.E.

## V. ACKNOWLEDGEMENT BY OPERATOR

16. By signing this order, McElvain expressly:

- a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
- b. agrees to comply with Order & Civil Penalty Assessment outlined 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;

~~e. agrees that if it fails to pay penalties assessed pursuant to this order, upon application by the OCD the district court may enter judgment against McElvain in the amount of the penalties assessed and in the discretion of the court may impose additional penalties for McElvain's violation of the penalty provisions of this order.~~

Done at Santa Fe, New Mexico, this \_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_

Mark Fesmire, PE, Director  
Oil Conservation Division

## VI. ACCEPTANCE BY OPERATOR McELVAIN

McElvain Oil & Gas Properties, Inc. (OGRID No. 22044), Operator of the well site known as Amacker #1, API 30-043-21013, hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

**McElvain Oil & Gas Properties, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_