

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

NMOCD - 13577

IN THE MATTER OF KEVIN O. BUTLER ASSOCIATES, INC.,

ACO-94

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"), the Director of the Oil Conservation Division (hereinafter, "OCD") issues this Order to **KEVIN O. BUTLER & ASSOCIATES, INC.** (hereinafter, "KOB"), directing compliance with the Act and the 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. KOB is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 1690171.
3. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
4. KOB is the operator of record for the South Caprock Queen well #12, API# 30-005-01180, located in Unit Letter L, Section 33, Township 14 South, Range 31 East, in Chavez County, New Mexico (the "subject well").
5. On March 24, 2004, OCD personnel investigated and documented a release of oil and water at the site of the subject well.
6. The release flowed in two directions off the cap. One flow traveled from the top of the cap down a cliff and into an arroyo, flowing a total of about 2000 feet northwest and west. The second flow is on, or along, the access road on the cap to the southeast, for approximately 200 feet.
7. The release was not reported to the OCD, as required by Rule 19.15.3.116 NMAC (hereinafter, "OCD Rule 116").

8. KOB maintains it remediated certain of the area; this could not be verified by the OCD. However, the release had been covered with dirt.
9. As KOB had not reported the release to the OCD, the OCD had not approved any remediation activities.
10. OCD Rule 116 requires the person operating or controlling either the release or the location of the release to notify the OCD of any unauthorized release.
11. "Minor releases" (an unauthorized release of a volume greater than 5 barrels but not more than 25 barrels) require written notice within 15 days to the division district office.
12. A "major release" (an unauthorized release of a volume in excess of 25 barrels, or any volume that may, with reasonable probability, endanger public health or results in substantial damage to property or the environment, or will reach a watercourse (OCD Rule 116B(1)) requires both verbal notification within twenty-four hours of discovery to the division district office and written notice within 15 days to the division district office.

"Watercourse" is defined as "any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed."
19.5.1.7.W(4) NMAC. This release is a major release, as it was in excess of 105 barrels.
13. OCD Rule 116D provides, that "the responsible person must complete division approved corrective action for releases, which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with Section 19 of 19.15.1 NMAC."
14. On April 9, 2004, the OCD mailed a notice of violation to KOB, notifying KOB that it was in violation of OCD Rule 116 and requiring KOB to submit a spill report and a remediation work plan by April 23, 2004.
15. KOB failed to respond to the OCD's April 9, 2004 letter or provide the requested information. Therefore, on May 10, 2004, the OCD mailed a request for a Show Cause Hearing to KOB.
16. Finally, on June 7, 2004, KOB submitted to the OCD three C-141 forms, Release Notification and Corrective Action and spill reports, but no Remediation Work Plan.
17. One KOB C-141 reported a release on March 23, 2004 of 105 barrels of oil and water from a tank battery located at the south Caprock Queen Unit. It stated that water ran down the road, and that the area affected was approximately 100' by 300'. KOB reported having vacuumed up about 100 barrels of the spill, and spreading dirt and caliche over the area.

The second C-141 reported a ten-barrel release on April 15, 2004 of salt water from a tank at the South Caprock Queen Unit. The leak was attributable to a faulty nipple at the production header on the tank battery; the nipple and a valve were replaced and the location of the spill cleaned.

The third C-141 reported an April 17, 2004 ten-barrel release of salt water from a leak in a disposal line at a stock tank. KOB reported repairing the leak and cleaning the location.

18. KOB's C-141 reports were untimely, incomplete and contained factually inaccurate information, denying that the large spill had reached a watercourse, when OCD's investigation showed that it had.
19. On June 14, 2004, the OCD required KOB to re-submit corrected C-141 reports and to include corrective action work plans for each incident.
20. In late June 2004, KOB provided two identical Remedial Work Plans, one dated June 17, 2004 and the other June 18, 2004. The only proposed remedial work by KOB was to gather soil samples for analysis. The Plans were inadequate.
21. By letter dated October 4, 2004 to the OCD, KOB stated it was submitting a "final report on the spills" and a "final remedial work plan." A Remedial Work Plan dated October 4, 2004 was enclosed. This Plan had a section titled "Final Analysis," which reported that three soil samples taken at the site were found to be clean of TPH, BTEX and Chlorides.
22. KOB's Plan was inaccurate, as two samples exceeded OCD guidelines for remediation of TPH. Further, KOB had not addressed the cleaning of fluids that ran along the access road on top of the cap, down the cliff and down an arroyo.
23. By undated letter received in the OCD October 29, 2004, Bill Robinson committed KOB to immediately begin the re-stabilization of the ground and to construct a "containment and secondary containment area around the battery and edge of the Caprock." He also stated that Phoenix Environmental would devise a 30-day approved work plan for KOB, with a 45-day completion date, for the issues at South Caprock Queen. KOB also agreed to meet with the OCD within the next two (2) weeks to discuss any further concerns.
24. KOB did construct a containment berm and on January 21, 2005 submitted a remediation plan to the OCD, which was approved by the OCD on the same day. The approval expired on March 25, 2005.
25. KOB never completed the work proposed by the remediation plan.
26. On July 13, 2005, Paul Sheeley, OCD, visited the KOB South Caprock Queen operation. There were more leaks. He also noted that there had been a dumping of waste on the ground at other well sites, off the Caprock. This is a violation of OCD Rule 313 [19.15.5.313 NMAC], which states that emulsion and basic sediments from wells producing oil shall not be allowed to pollute fresh waters or cause surface damage.

27. On September 26, 2005, the OCD filed an Amended Application for Compliance Order against KOB for failing to report unauthorized releases, untimely and inaccurate submission of spill reports (C-141s), and failure to remediate the site in compliance with its OCD approved remediation plan.

CONCLUSIONS


1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. KOB is a "person" subject to civil penalties for knowing and willful violations of the Oil and Gas Act or OCD Rules.
3. KOB knowingly and willfully violated OCD Rule 116 by failing to report unauthorized releases, untimely and inaccurate submission of spill reports (C-141s), and failure to remediate the site in compliance with its OCD approved remediation plan. KOB disagrees that its acts were knowing and willful.
4. KOB knowingly and willfully violated OCD Rule 313 by dumping or failing to prevent the dumping of waste on the ground at other of its well sites off the Caprock. KOB disagrees that its act or failure to act was knowing and willful.

ORDER AND CIVIL PENALTY

1. The OCD hereby assesses a civil penalty of **Ten Thousand Dollars (\$10,000.00)** against KOB for failing to report unauthorized releases, untimely and inaccurate submission of spill reports (C-141s), and failure to remediate the site in compliance with its OCD approved remediation plan, all in violation of OCD Rule 116.
2. KOB shall pay the **Ten Thousand Dollars (\$10,000.00)** civil penalty at the time it executes this Agreed Compliance 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.
3. KOB shall perform the work specified in the remediation plan submitted by them and approved by the OCD on January 21, 2005. The remediation shall be completed no later than December 23, 2005.
4. KOB shall perform remediation clean-up work for all its violations at the Caprock subsequent to March 25, 2004. This work shall be completed by December 23, 2005.
5. KOB shall immediately terminate all operation of the South Caprock Queen well # 12, API # 30-005-01180, located in Unit Letter L, Section 33, Township 14 South, Range 31 East, in Chavez County, New Mexico until it has been cleaned and remediated in compliance with the above submitted plan and to the satisfaction of the OCD.

6. KOB shall work cooperatively with the OCD as the OCD inspects all KOB's remaining facilities.
7. By signing this Order, KOB expressly:
- a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraphs (2) through (6);
 - 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).

Done at Santa Fe, New Mexico this 23 day of December 2005.

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

ACCEPTANCE

KEVIN O. BUTTLER & ASSOCIATES, INC. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

KEVIN O. BUTLER & ASSOCIATES, INC.

By: 

Title: President

Date: 12/22/05