

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE SUPERVISOR OF DISTRICT I, FOR AN ORDER REQUIRING
KEVIN O. BUTLER & ASSOCIATES, INC. TO COMPLY WITH 19.15.3.116
NMAC, AND ASSESSING AN APPROPRIATE CIVIL PENALTY; LEA
COUNTY, NEW MEXICO.**

2005 SEP 23 PM 3 52

CASE NO. 13577

APPLICATION FOR COMPLIANCE ORDER

1. Kevin O. Butler & Associates, Inc. (hereinafter, "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"). *Exhibit 1.*

2. On March 24, 2004, New Mexico Oil Conservation Division (hereinafter, "OCD") personnel investigated and documented a release of oil and water at the site of the subject well.

3. The release traveled from the top of the cap down a cliff and into an arroyo. The release then followed a dirt road into another arroyo, flowing a total of about 2000 feet northwest and west. The fluids also flowed down the access road on the cap to the southeast.

4. The release was not reported to the OCD, as required by Rule 19.15.3.116 NMAC (hereinafter, "OCD Rule 116").

5. The release had been covered up with dirt.

6. As KOB had not reported the release to the OCD, the OCD had not approved any remediation activities.

7. 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. "Minor releases" require written notice within 15 days to the division district office. "Major releases" require 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.

8. A "minor release" is defined as an unauthorized release of more than 5 barrels but not more than 25 barrels." OCD Rule 116.B(2).

9. A "major release" includes 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 116.B(1). "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.

10. OCD Rule 116.D provides,

Corrective Action. 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.

11. 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. *Exhibit 2, 4/9/04 Letter from OCD to Kevin O'Butler & Assoc., Inc.*

12. On May 10, 2004, the OCD mailed a request for a Show Cause Hearing to KOB, as KOB had made no response to the OCD's April 9, 2004 letter, and had failed to submit spill reports or a Remediation Work Plan by the required deadline of April 23, 2004. *Exhibit 3, 5/10/04 Letter from OCD to Kevin O'Butler & Assoc., Inc.*

13. Finally, on June 7, 2004, KOB submitted to the OCD three C-141 forms, Release Notification and Corrective Action, spill reports, but no Remediation Work Plans.

14. One C-141 reported a release of 105 barrels of oil and water from a tank battery located at the south Caprock Queen Unit on March 23, 2004. KOB reported that water ran down the road, and that the area affected was approximately 100' by 300'. They reported having vacuumed up about 100 barrels of the spill, and spreading dirt and caliche over the area. The second reported a ten-barrel release of salt water from a tank at the South Caprock Queen Unit on April 15, 2004. The leak was due 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 report was of a ten-barrel release of salt water from a leak in a disposal line at a stock tank on April 17, 2004. Again, KOB reported repairing the leak and cleaning the location.

15. Not only were KOB's reports untimely, they were incomplete, misleading and contained factually inaccurate information. KOB denied that the large spill had reached a watercourse, when OCD's investigation showed that it had. The three C-141 reports were returned to KOB on June 14, 2004 for re-submittal; the re-submittal was to

be accomplished by June 18, 2004 and was to include corrective action work plans for each incident. *Exhibit 4-A, 6/14/04 Letter from OCD to Kevin O'Butler & Assoc., Inc.; Exhibit 4-B, Re-Submit Notice, incorrectly dated 6/9/03 (should have been 6/9/04); Exhibit 4-C Three Release Notifications.*

16. In late June 2004, KOB provided two identical Remedial Work Plans, one dated June 17, 2004 and the other June 18, 2004. *Exhibit 5, Remedial Work Plans.* The only proposed remedial work by KOB was to gather soil samples for analysis. The Plans were inadequate.

17. By letter dated October 4, 2004 to 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 states that three soil samples taken at the site were found to be clean of TPH, BTEX and Chlorides. *Exhibit 6, Letter dated October 4, 2004 and Remedial Work Plan.*

18. KOB's letter was inaccurate, as two samples exceeded OCD guidelines for remediation of TPH. Further, KOB had not addressed the issue of cleaning the fluids that ran along an access road on top of the cap, down the cliff and down an arroyo. *Exhibit 7, October 6, 2004 letter to KOB from the OCD; Exhibit 8, photograph.*

19. 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. *Exhibit 9, Letter from Bill Robinson to Chris Williams.*

20. A containment berm was constructed and a remediation plan submitted to the OCD on January 21, 2005. The same day, the OCD approved the remediation plan, which approval expired on March 25, 2005. *Exhibit 10, January 21, 2005 Letter and Remediation Plan.*

21. KOB never completed the work proposed by the remediation plan.

22. On July 13, 2005, Paul Sheeley, OCD, visited the KOB South Caprock Queen operation. There were more leaks. KOB was also dumping waste on the ground at other well sites, off the Caprock.

WHEREFORE, Chris Williams, Supervisor of District I of the OCD, hereby applies to the Director to enter an order:

A. Requiring Kevin O. Butler & Assoc. Inc. to perform the work specified in the remediation plan submitted by them and approved by the Oil Conservation Division on January 21, 2005;

B. Requiring Kevin O. Butler & Assoc. Inc. to perform remediation clean up work for its violations subsequent to March 25, 2004;

C. Terminating Kevin O. Butler & Assoc. Inc.'s operational authority 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;

D. A Ten Thousand Dollar (\$10,000.00) civil penalty for knowingly and willfully violating Rule 116 [19.15.3.116 NMAC]; and

E. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED, this 23rd
day of September, 2005 by

A handwritten signature in black ink, appearing to read "Cheryl O'Connor", written over a horizontal line.

Cheryl O'Connor
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Case No. _____. Application of the New Mexico Oil Conservation Division for a Compliance Order Against Kevin O. Butler and Associates, Inc. The Division seeks an order requiring operator Kevin O. Butler and Associates, Inc. to perform the work specified in the remediation plan submitted by them and approved by the Oil Conservation Division on January 21, 2005; to perform remediation clean up work for its violations subsequent to March 25, 2004; to terminate Kevin O. Butler & Assoc. Inc.'s operational authority 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; for a Ten Thousand Dollar (\$10,000.00) civil penalty for knowingly and willfully violating Rule 116 [19.15.3.116 NMAC]; and for such other relief as the Director deems appropriate. The affected site is 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.