

GW - 163

ENFORCEMENT

DATE:

2005

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF
Duke Energy Field Services (DEFS)

COMPLIANCE ORDER
NM-OCD 2006-006

RESPONDENT.

September 16, 2005

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act ("WQA"), NMSA 1978, §§ 74-6-1 to 74-6-17, the Director of the New Mexico Oil Conservation Division (OCD), acting through his designee, the Compliance and Enforcement Manager of the Oil Conservation Division, issues this Compliance Order ("Order") to Respondent Duke Energy Field Services. ("Duke Energy Field Services", "Respondent" or "DEFS") to enforce the WQA 20.6.2 NMAC and the Water Quality Control Commission ("WQCC") Rules, for violations of the WQA and WQCC Regulations.

FINDINGS OF FACT

1. OCD, a division of New Mexico Energy, Minerals, and Natural Resources Department, is charged with administration and enforcement of the Oil and Gas Act, Section 70-2-1 through 70-2-38 N.M.S.A. 1978 (OGA) and OCD Rules including administration and enforcement of the WQA and the WQCC Rules as applied pertaining to New Mexico's oil and gas activity, which includes natural gas processing facilities and compressor stations.

2. Duke Energy Field Services owns and operates the Apex Compressor Station located in the SE/4 NE/4 of Section 36, Township 18 South, Range 36 East, NMPM, Lea County, New Mexico.

3. The DEFS Apex Compressor Station is permitted by the OCD, pursuant to WQCC rule 20.6.2.3104, under discharge Permit GW-163. The Permit as written does not authorize discharges of effluent or leachate that may move directly or indirectly into groundwater or surface water. The permit requires certain best management practices and proper handling of waste in order to protect fresh water, addresses stormwater water runoff, and requires that all spill/releases shall be reported and remediated or abated pursuant to both OCD and WQCC rules. In addition, the permit requires the company to abide by the information submitted and commitments in the discharge permit application.

4. On October 20, 2004 DEFS notified OCD by letter of a change of ownership and provided OCD a list of facilities that DEFS acquired from Conoco Oil Company. The Apex Compressor Station GW-163 was on that list. DEFS requested a transfer of the discharge plan and indicated "DEFS will comply with the terms and conditions of the previously approved discharge plans submitted by LG&E Natural Gathering and Processing Co. and later acquired by Conoco Oil Company."

5. On October 20, 2004 a conference call was conducted between Mr. Wayne Price and Mr. Jack Ford (OCD), Ms. Sharon Hall (Acardis, Inc., consultants to DEFS) and Mr. Stephen Weathers (DEFS). On October 20, 2004 Mr. Wayne Price sent an e-mail to Ms. Sharon Hall setting forth the requirements necessary to bring the Apex Compressor Station into compliance.

6. On November 30, 2004 DEFS submitted an Abatement Plan for the Apex Compressor Station with the stipulation that "DEFS has chosen to complete an Abatement Plan for the site as opposed to a Discharge Plan".

7. Subsequently Mr. Jack Ford notified Ms. Karen Char-Kumura (DEFS) via telephone that the substitution of an abatement plan for the Apex Compressor Station was not acceptable and an application for renewal of the Discharge Permit GW-163 was necessary.

8. On a recent telephone discussion (early September 2005) with Mr. Stephen Weathers (DEFS) Mr. Jack Ford (OCD) again informed DEFS that the submitted abatement plan was not acceptable and an application for renewal of the Discharge Permit GW-163 was required.

9. The discharge permit GW-163 expired on April 29, 2004. DEFS has made no attempt to continue the renewal process although contact with OCD was made concerning this issue.

CONCLUSIONS OF LAW

1. OCD has jurisdiction over Duke Energy Field Services and over the subject matter of this Order pursuant to the Oil and Gas Act [Section 70-2-12.B(22) NMSA 1978, as amended] the WQA and WQCC Rules.

2. Duke Energy Field Services is a "person" as defined in Section 70-2-33.A of the Oil and Gas Act, Section 74-6-2.I of the WQA and Section 20.6.2.7.II NMAC.

3. Duke Energy Field Services Apex Compressor Station is a "source" for water contaminants that may be discharged directly or indirectly into surface or groundwater, as defined in New Mexico Water Quality Act section 74-6-2.M.

4. DEFS has refused and failed to renew the current discharge permit and accordingly has been out of compliance since April 29, 2004 (the date the discharge permit GW-163 expired) by operating the facility without an approved permit. DEFS is in violation of the New Mexico Water Quality Act ("WQA"), NMSA 1978, §§ 74-6-1 to 74-6-17. OCD has calculated that DEFS has operated 403 days without a permit.

6. Section **74-6-10(C)** of the WQA authorizes the assessment of a civil penalty of up to \$15,000 per day for non-compliance with any provision of NMSA 1978, § 74-6-5, including any

regulation adopted or a permit issued pursuant to that section. Section 74-6-10(C) also authorizes the assessment of civil penalty of up to \$10,000 per day for each violation of a provision of the WQA other than the provisions in Section 74-6-5, or of a regulation or water quality standard adopted pursuant to the WQA.

Now, therefore OCD hereby orders:

COMPLIANCE ORDER

1. Duke Energy Field Services shall comply with the following schedule of compliance. Within 30 days of the date of this Order, Duke Energy Field Services shall submit for OCD approval a complete and accurate discharge plan application as required by 20.6.2.3104 NMAC.

CIVIL PENALTY

2. OCD hereby assesses a civil penalty against the Respondent in this Order of \$212,000.00 Dollars. This penalty amount is derived as shown under Conclusion of Law items 4, 5 and 6 and has taken into account mitigating circumstances. This penalty shall be due within 30 days of the date of this Order.

3. If Duke Energy Field Services fails to comply with the Schedule of Compliance set forth above, the Director of OCD may assess an additional civil penalty of up to \$25,000 for each day of noncompliance with the Order. NMSA 1978, § 74-6-10(F)(1).

RIGHT TO ANSWER AND REQUEST A HEARING

4. Pursuant to Section 74-6-10.G of the WQA, Respondent has the right to answer this Order and to request a hearing. If the Respondent (a) contests any material or legal matter upon which the Order is based, (b) contends that the Respondent is entitled to prevail as a matter of law, or (c) otherwise contests the appropriateness of the Order, the Respondent may request a hearing by mailing or delivering within 30 days of receipt of this Order, a written Request for Hearing and Answer to the Order to:

Water Quality Control Commission Hearing Clerk
C/o New Mexico Oil Conservation Division
Harold Runnels Building, Rm. 2050 South
1190 Saint Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

The Respondent must attach a copy of this Order to the Request for Hearing.

5. The Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Order with regard to which the Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation the Respondent shall so state, and the Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

6. The Respondent's Answer shall also include any affirmative defense upon which the Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

FINALITY OF ORDER

7. This Order shall become final unless the Respondent files a Request for Hearing and Answer with the WQCC within 30 days of receipt of this Order. Failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of WQA concerning this Order, unless the Respondent requests a hearing and files an Answer, the Schedule of Compliance set forth in this Order shall become final.

SETTLEMENT CONFERENCE

8. Respondent may confer with OCD concerning settlement. OCD encourages settlement consistent with the provisions and objectives of the WQA and applicable WQCC rules. Settlement discussions do not extend the 30-day deadline for filing the Respondent's Answer and a request for hearing, or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference itself and/or be represented by legal counsel.

9. Any settlement reached by the parties shall be finalized by written stipulated final order. A stipulated final order must resolve all issues raised in the Order, must be approved by the Director of OCD, shall be final and binding all parties to the Order, and shall not be appealable.

10. To explore the possibility of settlement in this matter, contact David K. Brooks, Assistant General Counsel, Office of General Counsel, New Mexico Oil Conservation Division, 1220 St. Francis Drive, Santa Fe, New Mexico 87505, 505-476-3450.

11. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

TERMINATION

This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and OCD has approved such certification, or when the Director of OCD approves a stipulated final order.

A handwritten signature in black ink, appearing to read "J. Daniel Sanchez", with a stylized flourish at the end.

J. Daniel Sanchez
Manager- Compliance and Enforcement

PENALTY COMPUTATION WORKSHEET

Company Name Duke (Apex CS.)

Address _____

Violation _____

PENALTY AMOUNT FOR COMPLAINT

1. Potential for harm Moderate
Extent of Deviation MAJOR
2. Gravity based penalty from matrix \$ 2000.00
3. Multiply line 2 by number of violations and/or days 106 days
of violation minus 1 (or other number, as appropriate. \$
Provide narrative explanation)..... 210,000
4. Add lines 2 and 3 \$ 212,000.00
5. Percent increase/decrease for good faith _____
6. Percent increase for willfulness/negligence _____
7. Percent increase for history of noncompliance _____
8. Percent increase/decrease for other unique factors _____
9. Total lines 5 through 8 _____
10. Multiply line 4 by line 9 _____
11. Add lines 4 and 10 for penalty amount _____
12. Adjustment amount for environmental project _____
13. Subtract line 12 from line 11 final penalty amount. \$ 212,000.00

This procedure should be repeated for each violation.

NARRATIVE EXPLANATION

1. Gravity Based Penalty

(a) Potential for Harm (attach additional sheets if necessary) Moderate

Numerous water wells in section

Groundwater contamination exists from past practices

(b) Extent of Deviation (attach additional sheets if necessary) Willful

& knowing

(c) Multiple/Multi-day (attach additional sheets if necessary) _____

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good Faith (attach additional sheets if necessary) _____

(b) Willfulness (attach additional sheets if necessary) _____

(c) History of compliance (attach additional sheets if necessary) _____

(d) Environmental project (attach additional sheets if necessary) _____

(e) Other unique factors (attach additional sheets if necessary) _____

4. Recalculation of penalty based on new information (attach additional sheets if necessary)