

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

NMOCD - OGA 04-__

33 SF

IN THE MATTER OF T-N-T ENVIRONMENTAL, INC.,

Respondent.

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, §§70-2-1 through 70-2-38, as amended ("Act"), the Director of the New Mexico Oil Conservation Division (OCD) issues this Order to T-N-T ENVIRONMENTAL, INC. 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. T-N-T Environmental, Inc. (TNT) is a domestic profit corporation doing business in New Mexico under SCC number 1322619.
3. TNT operates an oilfield surface waste management facility located in Sections 5, 7, and 8 of Township 25 North, Range 3 West, NMPM, Rio Arriba County, New Mexico.
4. On August 2, 2004, OCD Deputy Inspector Denny Foust inspected the facility operated by TNT.
5. This OCD inspection of the facility and facility records revealed the following:
 - a) From July 20, 2004 through August 2, 2004, there was no pH testing paper or other pH testing equipment available at the facility with which to test the water in the evaporation ponds.
 - b) The pH level of the water in the evaporation ponds was falsely recorded as 7.0 from July 20, 2004 through July 31, 2004 in records maintained at the facility. During a separate inspection on July 20, 2004, Mr. Foust

observed that the pH levels were recorded as 7.0 through July 27, 2004, seven days in the future from that date.

6. OCD Rule 711 [19.15.9.711.B NMAC] states in relevant part, "...all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC...shall be permitted by the Division".
7. Permit number NM-01-008 issued to TNT on May 11, 2001, includes conditions under which TNT must operate the facility.
8. Condition number 1.b of the permit section entitled H₂S PREVENTION AND CONTINGENCY PLAN states in pertinent part, "Daily tests must be conducted and records made and maintained of the pH levels in each pond..."
9. NMSA 1978, 70-2-31.B states in pertinent part, "It is unlawful...for any person to knowingly and willfully...do any of the following for the purpose of evading or violating the Oil and Gas Act or any rule, regulation, or order of the division issued pursuant to that act: ...make or cause to be made any false entry in any record, account or memorandum required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act..."
10. The Oil and Gas Act authorizes penalties of up to one thousand dollars (\$1,000) per day for a knowing and willful violation of any provision of the Act or any rule adopted pursuant to the Act. NMSA 1978, § 70-2-31(A).
11. The Oil and Gas Act defines "person" as "any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity..." NMSA 1978, § 70-2-33(A)(1).
12. On August 19, 2004, OCD mailed "Notice of Violation" to TNT, stating that TNT was in violation of OCD Rule 711 and NMSA 1978, 70-2-31.B.
13. On September 8, 2004, an officer of TNT, Mr. Craig Schmitz, was in attendance at an administrative conference to discuss the Notice of Violation. Mr. Schmitz was very cooperative during the discussion.
14. TNT has modified its internal procedures so that they include the monitoring of pH levels in the evaporation ponds.
15. TNT has agreed to file copies of their pH monitoring reports with Ed Martin of the OCD Santa Fe office for the period October 2004 through March 2005. In the spirit of cooperation, TNT further agreed to treat their leak detection monitoring reports in the same manner, even though this was not an original subject of the conference.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. TNT is a "person" as defined by NMSA 1978, §70-2-33(A) subject to civil penalties under NMSA 1978 §70-2-31(A) for knowing and willful violations of the Act or OCD Rules.
3. TNT is subject to civil penalties under NMSA 1978, §70-2-31(A) for violating OCD Rule 711 because it did not comply with the conditions of the permit issued to TNT under this rule.
4. TNT is subject to civil penalties under NMSA 1078, §70-2-31(B) for falsifying records required to be kept under a permit issued pursuant to OCD Rule 711.

ORDER AND CIVIL PENALTY

1. Taking into consideration both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling two thousand dollars (\$2,000) against TNT.
2. The civil penalty shall be paid within sixty days (60 days) of receipt of the 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 St. Francis Drive, Santa Fe, NM 87505.
3. TNT shall file monthly reports of the pH level monitoring in the evaporation ponds with Ed Martin of the OCD Santa Fe office for the period October 2004 through March 2005.
3. By signing this Order, TNT expressly:
 - a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraphs (2) and (3);
 - 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, §§70-2-1 through 70-2-38, as amended.

Done at Santa Fe, New Mexico this 25th day of October, 2004

By:



Mark Fesmire

Director, Oil Conservation Division

ACCEPTANCE

T-N-T Environmental, Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

T-N-T Environmental, Inc.

By:

 _____

Title:

PRES. _____

Date:

9/23/04 _____