

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

NMOCD - OGA 04-53
RECEIVED

IN THE MATTER OF BC&D OPERATING, INC.,

JAN 21 2005

Respondent.

Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, NM 87505

**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 Oil Conservation Division ("OCD") issues this Order to BC&D Operating, 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. BC&D Operating, Inc. ("BC&D") is domestic profit corporation doing business in New Mexico under SCC number 1613132.
3. BC&D is the operator of record of the Santa Fe RR Lease Battery located in Unit Letter D, Section 7, Township 17 North, Range 8 West in McKinley County, New Mexico (hereinafter the "facility").
4. On April 15, 2004, an OCD deputy oil and gas inspector found oil-stained soil and free oil in standing water in a tributary of the Sandoval Arroyo.
5. An OCD investigation established the following facts:
 - a) BC&D constructed a bermed containment at the facility, and has been remediating oil-contaminated soil within this containment.
 - b) On April 12, 2004, BC&D opened a valve that permitted rainwater and freestanding oil to drain from this containment into a trench and then into a watercourse that is a tributary to the Sandoval Arroyo.

6. BC&D did not report this release to the OCD district office until April 15, 2004, when it made a verbal report to the district office after being advised to do so by the OCD deputy inspector.
7. The OCD district office gave verbal approval to BC&D's proposed corrective action.
8. BC&D completed the corrective action on April 15, 2004.
9. OCD Rule 116 [19.15.3.116 NMAC] requires the person operating or controlling either the release or the location of the release to notify the OCD of any "unauthorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, natural gases, produced water, condensate or oil field waste including Regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico...."
10. "Release" is defined as "all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment." OCD Rule 7.R(3) [19.15.1.7.R(3) NMAC].
11. A "major release" requires immediate verbal notification within 24 hours of discovery to the division district office for the area within which the release takes place. OCD Rules 116.B(1), 116.C(1), and 116.C(2) [19.15.3.116.B(1), 19.15.3.116.C(1) and 19.15.3.116.C(2) NMAC].
12. "Major release" is defined, in relevant part, as "an unauthorized release of any volume which...will reach a water course." OCD Rule 116.B(1)(ii) [19.15.3.116.B(1)(ii) NMAC].
13. "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." OCD Rule 7.W(4) [19.15.1.7.W(4) NMAC].
14. BC&D violated OCD Rule 116.D by failing to provide verbal notification to the OCD district office within 24 hours of the major release. That violation continued over a period of 3 days: April 13 through April 15, 2004.
15. OCD Rule 13.B [19.15.1.13.B NMAC] states, in relevant part, "all operators...shall at all times conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal, and storage wells or other facilities in a manner that will prevent waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize

oil or gas, or allow either to leak or escape from...tanks, containers, pipe or other storage, conduit or operating equipment.”

16. OCD Rule 7.F(3) [19.15.1.7.F(3) NMAC] provides, in relevant part, “Fresh water (to be protected) includes the water in lakes and playas, the surface waters of all streams regardless of the quality of the water within any given reach....”
17. BC&D released a mixture of oil and water from a bermed containment into an unnamed tributary of Sandoval Arroyo and contaminated fresh waters, in violation of OCD Rule 13.B. BC&D allowed the contamination to continue through a four-day period: April 12, 2004 through April 15, 2004.
18. The Oil and Gas Act authorizes penalties of up to one thousand dollars (\$1,000) per day against any person who knowingly and willfully violates any provision of the Act or any rule adopted pursuant to the Act. In the case of a continuing violation, each day of violation shall constitute a separate violation. NMSA 1978, §70-2-31(A).
19. 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).
20. On May 18, 2004, OCD mailed “Notice of Violation (3-04-06)” to BC&D, stating that BC&D was in violation of Rules 116.C and 13.B.

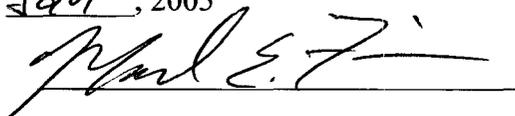
CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. BC&D 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. BC&D is subject to civil penalties under NMSA 1978, §70-2-31(A) for violating OCD Rule 116 because it failed to provide verbal notification to the OCD District office within 24 hours of a major release. This violation continued over a three-day period, from April 13 through April 15, 2004.
4. BC&D is subject to civil penalties under NMSA 1978, §70-2-31(A) for violating OCD Rule 13.B because it released a mixture of oil and water from a bermed containment and allowed that mixture to contaminate fresh water. This violation continued over a four-day period, from April 12 through April 15, 2004.

ORDER AND CIVIL PENALTY

1. Taking into consideration both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling seven thousand dollars (\$7,000) against BC&D.
2. The civil penalty shall be paid within sixty days (60 days) of receipt of this 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. BC&D shall, for a period of one year following the date this order is signed by the OCD Director, conduct formal monthly on-site inspections of BC&D's wells and facilities, prepare written reports of those inspections identifying the inspector(s) by name, and make those reports available to the OCD upon request.
4. BC&D shall, within six months of the date this order is signed by the OCD Director, design and implement an environmental and regulatory compliance training program for its personnel. The training shall include the following topics: waste identification, proper containment of wastes, release prevention and reporting, and acceptable waste disposal practices and methods. BC&D shall provide the OCD's Aztec office with a written report of the training describing the curriculum, indicating the source of the curriculum (internal or external), identifying the instructor(s) by name, listing the dates and times of the training and including a list of attendees.
5. By signing this Order, BC&D 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 23rd day of Jan, 2005

By: 

Mark E. Fesmire, P.E.
Director, Oil Conservation Division

ACCEPTANCE

BC&D Operating, Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

BC&D OPERATING, INC.

By: Donnie Hill

Title: President

Date: 4/17/2005