

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

ACO 07-204

**IN THE MATTER OF BLACK HILLS GAS RESOURCES, INC.,
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 (hereinafter, "Act"), and the rules promulgated under the Act, the Director of the Oil Conservation Division of the Energy Minerals and Natural Resources Department of the State of New Mexico (hereinafter, "OCD") issues this Order to **BLACK HILLS GAS RESOURCES, INC.** (hereinafter "Black Hills") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

I. FINDINGS & DETERMINATIONS BY THE OCD

- 1) The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
- 2) Black Hills is a foreign for Profit Corporation doing business in New Mexico, registered with the Public Regulatory Commission Secretary of the State, under number 1232834. Black Hills is an active entity with a principal address at 999 18th Street, Suite 1700, Denver, Colorado 80202-2417. Its registered agent for service of process in New Mexico is Corporation Service Company, 125 Lincoln Avenue, Suite 223, Santa Fe, New Mexico 87501. In New Mexico, Black Hills' address is P.O. Box 249, Bloomfield, New Mexico 87413. Black Hills OGRID is 13925.
- 3) Black Hills Operates the Many Canyons 30-04-12 #124 well, Unit Letter H, Section 12, Township 30 North, Range 04. API #30-039-29968
- 4) On July 30, 2007, Oil Conservation Division (hereinafter "OCD") Deputy Oil and Gas Inspector Karen Sharp received a spud and surface casing notice from Black Hills Gas Resources, Inc., (hereinafter "Black Hills") for the above-referenced well. In processing the notice it was determined that a pit permit application had not been submitted and/or approved.
- 5) The APD was approved on November 29, 2006.

- 6) The well was spud on July 13, 2007. A drilling pit was constructed and utilized by Black Hills at this site.
- 7) OCD had no record of a pit permit application being submitted by Black Hills or approved by the OCD for this site.
- 8) Upon inquiry by the OCD regarding the absence of a pit permit, Leslie Lam with Black Hills referred Inspector Sharp to Daniel Manus. Mr. Manus was unable to produce a pit permit for the well.
- 9) OCD Rule 102.D [19.15.3.102 NMAC] provides that “[t]he division may impose conditions on an approved permit to drill, deepen or plug back.”
- 10) Black Hills violated OCD Rule 102.D. by constructing the location before it filed for a pit permit as stipulated in the APD approval.
- 11) A pit permit application was submitted by Black Hills on July 31, 2007.
- 12) The permit was reviewed and approved by the OCD on July 31, 2007, and was then posted and scanned into the well file.
- 13) OCD Rule 50.A prohibits the discharge into or construction of any pit or below-grade tank absent possession of a permit issued by the OCD.
- 14) Black Hills has drilled other wells in New Mexico, knew of its obligations under Rule 50.A as an operator in New Mexico, and proceeded to construct and discharge into a drilling pit at this site without a permit despite this knowledge. Black Hills thus knowingly and willfully violated OCD Rule 50.A by constructing and discharging into a drilling pit without first obtaining a permit.
- 15) NMSA 1978 Section 70-2-31(A) provides in relevant part, “[a]ny person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.”
- 16) NMSA 1978, section 70-2-33(A) defines “person” in relevant part as “any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity...”
- 17) As a result of its investigation, on September 13, 2007, the OCD issued Notice of Violation (3-07-24) to Black Hills.

II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE OPERATOR, BLACK HILLS

Black Hills provided the following supplemental information and statements during the October 12, 2007 Administrative Conference:

- 18) This was a 2004 location and work was performed by a subcontractor who had completed this type work before without an issue.
- 19) Black Hills no longer uses the subcontractor.
- 20) Once notified of the deficiency Black Hills quickly submitted the application.
- 21) Black Hills is now doing the permitting in-house to prevent this type of issue.

III. CONCLUSIONS OF THE OCD

- 22) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 23) Black Hills is a person as defined by NMSA 1978, § 70-2-33(A) that may be subject to civil penalties under NMSA 1978, §70-2-31(A).
- 24) Black Hills is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Many Canyons 30-04-12#124 for one violation of OCD Rule 50A. [19.15.2.50.A NMAC] discharge into or construction of a pit absent a permit and one violation of OCD Rule 102D.[19.15.3.102 NMAC] failure to comply with stipulations.

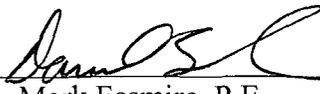
IV. ORDER & CIVIL PENALTY ASSESSMENT

- 25) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Black Hills totaling **Two Thousand Dollars (\$2,000.00)** for the violations of the OCD's Rules. (50.A prohibits the discharge into or construction of any pit or below-grade tank absent possession of a permit)
- 26) The civil penalty shall be paid at the time Black Hills executes this Order. Payment shall be made by check 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.
- 27) By signing this Order, Black Hills expressly:
 - a. acknowledges the authority of the OCD to render the above "Findings & Determinations," "Conclusions" and "Order & Civil Penalty Assessment";
 - b. agrees to comply with the Order, specifically as articulated in the preceding Paragraphs of Section "IV," above;

- 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;
- 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;

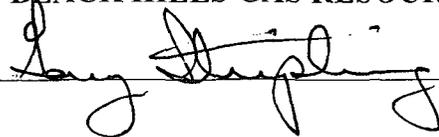
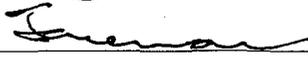
32) Nothing in this Order relieves Black Hills of its liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment. In addition, nothing in this Order relieves Black Hills of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 30th day of October 2007.

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

ACCEPTANCE

33) BLACK HILLS GAS RESOURCES, INC. (OGRID No. 13925), Operator of the Many Canyons 30-04-12 #124 Unit Letter H, Section 12, Township 30 North, Range 04, API #30-039-29968, hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

BLACK HILLS GAS RESOURCES, INC.
By: 
Title: 
Date: 10-25-07