

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

ACO 07- 213

IN THE MATTER OF NGX COMPANY,

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 ("Act"), and the regulations 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 ("OCD") issues this Order to NGX Company (hereinafter "Operator") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

I. FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Operator is a domestic for-profit corporation doing business in New Mexico, registered with the New Mexico Public Regulatory Commission under SCC number 1481811. Operator is an active entity with a mailing address of 100 North Pennsylvania, Roswell, New Mexico 88203. Operator's principal address is 100 North Pennsylvania, Roswell, New Mexico 88203. Operator's registered agent is George Scott, Jr. Operator's OGRID number is 7269.
3. Operator is the Operator of Record of the McKee No. 001 well, API No. 30-015-28268, O-25-24S-28E.
4. On April 4, 2007, OCD Deputy Oil and Gas Inspector Phil Hawkins inspected the McKee No. 001 well and observed a large area of oil on the ground. An open ended 2 inch steel line from the heater had allowed oil to escape from the heater and flow out onto the ground.
5. OCD Rule 19.15.1.13 NMAC ("Rule 13") states:
 - A. The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such a manner or under such conditions or in such amount as to constitute or result in waste is hereby prohibited.

- B. All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons 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 a natural reservoir, or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.
6. OCD Rule 19.15.3.116 NMAC ("Rule 116") requires OCD to be notified of any unauthorized release and for such release to be remediated in accord with OCD requirements and standards.
 7. On April 4, 2007, Deputy Inspector Hawkins sent Letter of Violation No. 029707 to Operator. The letter informed Operator that it was in non-compliance with OCD Rule 13 and OCD Rule 116. The letter asked Operator to submit a C-141 Release Notification and Corrective Action Form to the OCD District 2 office by April 19, 2007, and a remediation work plan by May 4, 2007.
 8. On April 20, 2007, OCD received Operator's C-141 Form.
 9. On April 23, 2007, OCD Deputy Oil and Gas Inspector Mike Bratcher sent Operator a letter which informed Operator that OCD was denying Operator's C-141 Form because the C-141 Form was not signed and did not appear to report the correct volume of release. Inspector Bratcher asked Operator to re-submit a complete and accurate C-141 Form by May 14, 2007.
 10. On August 21, 2007, OCD Deputy Oil and Gas Inspector Gerry Guye sent George Scott, Operator's President and owner, an email asking for information on the status of the C-141 Form and remediation work plan. On August 22, 2007, Mr. Scott emailed Deputy Inspector Guye telling him that he had the C-141 Form ready to submit and that he would be submitting it on his next trip to Artesia.
 11. On September 4, 2007, OCD received Operator's re-submitted C-141 Form. OCD approved the C-141 Form with the stipulation that samples were to be taken, and a work plan prepared and approved prior to backfill of excavated area.
 12. On September 18, 2007, Deputy Inspector Guye informed Mr. Scott in an email that OCD had not received a work plan or any analytical data from sampling. Inspector Guye asked Mr. Scott to provide this information to OCD by September 19, 2007. On September 18, 2007, Mr. Scott emailed Inspector Guye telling him that he thought Michael Schultz was handling this matter. Mr. Scott said he would check on the status first thing in the morning. OCD did not hear anything further from Operator, and no work plan or analyticals were submitted.
 13. As a result, on November 7, 2007 OCD issue Notice of Violation No. 02-07-25 to Operator, alleging knowing and willful violations of OCD Rules 13 and 116.

14. On November 27, 2007, an administrative conference was held on the notice of violation. Jim Schultz, Operator's Vice-President, appeared in person. Mr. Scott participated by telephone.
15. Mr. Scott said Operator learned of the release when they received OCD's letter of violation. Mr. Scott said Operator started cleaning up the release in September. Mr. Scott said he's been busy on a well site in Arizona and that he thought Michael Schultz was going to follow-up on the work plan. Mr. Scott said Hall Environmental sampled the site last week and that the samples should be available by Thursday or Friday.

III. CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Operator 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).
3. NMSA 1978, Section 70-2-31(A) states, "Any 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 for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate offense."
4. Operator is subject to civil penalties under NMSA 1978, § 70-2-31(A) for one violation of OCD Rule 13 and five violations of OCD Rule 116.

IV. ORDER & CIVIL PENALTY ASSESSMENT

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Operator totaling Six Thousand Dollars (\$6,000.00). The amount is based on one violation of OCD Rule 13 and five violations of OCD Rule 116.
2. Four Thousand Dollars of the Six Thousand Dollars civil penalty shall be waived on the following conditions:
 - a. Operator shall submit its analytical samples and remediation work plan to OCD by Friday, December 7, 2007;
 - b. If the analyticals show contamination, Operator shall remediate the site within 30 days of OCD approval of the work plan.
3. Operator shall pay the Two Thousand Dollars civil penalty at the time it executes this Order. Payment shall be made by certified or cashier's 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.

4. If Operator fails to comply with Ordering Paragraph No. 2, the waived Four Thousand Dollars shall become immediately due and paid in accordance with Ordering Paragraph No. 3.
5. By signing this Order, Operator expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with the Order;
 - 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;
5. For good cause shown, Operator may request an extension to complete the requirements as set out in Ordering Paragraph 2. Such notification ("notice") shall reasonably describe the circumstances encountered by Operator that prohibits it from meeting the deadlines set out herein.

Within ten (10) days of receipt of this notice, the OCD shall either approve the extended time requested by Operator by executing a written amendment to this Order, or notify Operator that it will not extend the deadline. The OCD's approval of a time extension shall not be unreasonably withheld.

6. Nothing in this Order relieves Operator 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 Operator of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 14th day of December 2007.

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

ACCEPTANCE

NGX Company hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

NGX Company

By: James A. Kelly

Title: V.P.

Date: 12-5-07