

GW - 183

ENFORCMENT

DATE:

2005

STATE OF NEW MEXICO
NEW MEXICO OIL CONSRVATION DIVISION

**IN THE MATTER OF
Duke Energy Field Services (DEFS)**

**COMPLIANCE ORDER
NM-OCD 2006-003**

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, issues this Compliance Order ("Order") to Respondent Duke Energy Field Services. ("Duke Energy Field Services", "Respondent" or "DEFS") to enforce the WQA and the Water Quality Control Commission ("WQCC") Rules, 20.6.2 NMAC, for violations of the WQA and WQCC Regulations.

FINDINGS OF FACT

1. OCD, an agency of the executive branch of New Mexico Energy, Minerals, and Natural Resources Department, is charged with administration and enforcement of the Oil and Gas Act 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 Arch Rock Compressor Station located in the SW/4 of Section 14, Township 14 North, Range 10 West, NMPM, San Juan County, New Mexico.

3. The DEFS Arch Rock Compressor Station is permitted by the OCD, pursuant to WQCC rule 20.6.2.3104, under discharge Permit GW-183. 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 July 1, 2002 DEFS notified OCD by letter of a change of ownership and provided OCD a list of facilities that DEFS acquired from Burlington Resources Gathering, Inc. The Arch Rock Compressor Station GW-183 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 Burlington Resources Gathering, Inc."

5. On October 24, 2002 DEFS submitted to OCD the results of the annual sump integrity inspection program-Val Verde Facilities. The Arch Rock facility was listed as part of this test.

6. The discharge permit GW-183 for the DEFS Arch Rock Compressor Station expired on February 21, 2005. DEFS has made no attempt to renew the permit and has not contacted OCD concerning this site.

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 Arch Rock 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 failed to renew the current discharge permit and accordingly has been out of compliance since February 21, 2005 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 207 days without a permit.

5. 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 \$ 53,000.00 Dollars. This penalty amount is derived as shown under Conclusion of Law items 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 Environment Department
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. Whether or not Respondent requests a hearing and files an Answer, the 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

12. 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.



J. Daniel Sanchez
Compliance and Enforcement Manager - Oil Conservation Division

PENALTY COMPUTATION WORKSHEET

Company Name Duke (Arch Rock)

Address _____

Violation _____

PENALTY AMOUNT FOR COMPLAINT

1. Potential for harm MINOR
Extent of Deviation MAJOR
2. Gravity based penalty from matrix 500
3. Multiply line 2 by number of violations and/or days ¹⁰⁶⁻¹
of violation minus 1 (or other number, as appropriate). \$ 52,500
Provide narrative explanation).....
4. Add lines 2 and 3 \$ 53,000
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. \$ 53,000.00

This procedure should be repeated for each violation.

NARRATIVE EXPLANATION

1. Gravity Based Penalty

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

Small compressor station not in populated area

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

willful & knowing

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

Penalty assessed from 6/10/05 - the date OCD received dismissed corrected case

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) _____

Penalty ass

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