

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

NMOCD - OGA 04-__

IN THE MATTER OF BP AMERICA PRODUCTION COMPANY,

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 Oil Conservation Division ("OCD") issues this Order to BP AMERICA PRODUCTION COMPANY, 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. BP America Production Company ("BPA") is foreign profit corporation doing business in New Mexico under SCC number 0176503.
3. BPA is the operator of record and injection permit holder for the Gallegos Canyon Unit #306 salt water disposal well, API #30-045-24286, located in Lot 7, Section 19, Township 29 North, Range 12 West, in San Juan County, New Mexico (hereinafter the "facility").
4. On February 20, 2004, an OCD deputy oil and gas inspector performing a routine periodic inspection of the facility observed an oil pool measuring approximately twenty-five feet in diameter in an earthen containment. He observed what appeared to be the tracks of a web-footed bird around the pool.
5. An OCD investigation established the following facts:
 - a) On October 2, 2003, lightning struck the gun barrel tank at the facility. According to BPA's subsequent report on the incident, the strike caused the release of 280 barrels of produced water and 80 barrels of condensate and oil.

- b) A BPA employee verbally reported the release to the OCD on October 3, 2003, and proposed a corrective action plan. BPA received verbal approval from the OCD to proceed with the proposed plan.
 - c) On October 15, 2003, BPA submitted a form C-141 "Final Report" describing completed operations. The completed operations included the removal of 140 barrels of produced water and 60 barrels of oil to another disposal site. The report also indicated that the soil contaminated by the remaining 140 barrels of produced water and 20 barrels of oil that was not recovered was being landfarmed on site.
 - d) OCD personnel understood the report to convey that all contaminated soil had been excavated from the earthen containment and was being actively landfarmed.
 - e) Subsequent telephone conversations between OCD and BPA personnel confirmed that BPA's intent in filing the C-141 was to convey that all contaminated soil had been excavated from the earthen containment and was being actively landfarmed.
 - f) The OCD's field inspection on February 20, 2004 showed that the corrective action proposed by BPA had not been completed. Not all of the contaminated soil in the earthen containment had been removed to the area being landfarmed, which was separate from the earthen containment that still contained oil. A portion of the remaining oil had pooled in the earthen containment. The OCD notified BPA of the results of its inspection.
 - g) During an interview conducted by the OCD on March 3, 2004, the BPA field foreman stated that he had intentionally delayed cleaning up the earthen containment until spring weather conditions were more favorable for clean up.
6. OCD Rule 116. D [19.15.3.116.D NMAC] states in relevant part:
- "CORRECTIVE ACTION: The responsible person must complete division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division . . ."
7. OCD Rule 7.R(3) [19.15.1.7.R(3) NMAC] defines "release" 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."

8. OCD Rule 7.R(5) [19.15.1.7.R(5) NMAC] defines "responsible person" as "the owner or operator who must complete division approved corrective action for pollution from releases."
9. OCD Rule 310 [19.15.5.310 NMAC] states in relevant part: "Oil shall not be stored or retained in earthen reservoirs, or in open receptacles."
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 March 29, 2004, OCD mailed "Notice of Violation (3-04-04)" to BPA, stating that BPA was in violation of OCD Rules 116.D and 310.
13. BPA took immediate action after being informed of the field inspection results. BPA removed fluids from the earthen containment and excavated the area until it encountered clean soil. Samples taken at that time indicated that the earthen containment met remediation standards. Because odors still remained, BPA excavated the area a second time to remove residuals.
14. BPA has modified its internal procedures to require field personnel to submit photos showing the completed work before final closure reports are filed with the OCD.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. BPA 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. The leak of 280 barrels of produced water and 80 barrels of condensate and oil at the facility constitutes a release endangering public health or the environment requiring corrective action under OCD Rule 116.D.
4. As operator and injection permit holder for the facility, BPA is the "responsible person" required to take corrective action under OCD Rule 116.D for releases at that facility that endanger public health or the environment.

5. BPA is subject to civil penalties under NMSA 1978, §70-2-31(A) for violating OCD Rule 116.D because it failed to complete the division-approved corrective action described in its form C-141 Final Report dated October 15, 2003.
6. BPA is subject to civil penalties under NMSA 1978, §70-2-31(A) for violating OCD Rule 310 because it stored or retained oil in an earthen reservoir or open receptacle.

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 BPA.
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. By signing this Order, BPA expressly:
 - a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraph (2);
 - 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 1st day of Aug., 2004

By: 

Mark Fesmire

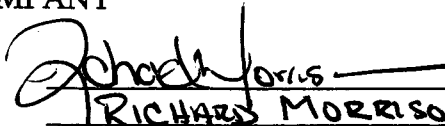
Director, Oil Conservation Division

ACCEPTANCE

BP America Production Company hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

BP AMERICA PRODUCTION
COMPANY

By:

 RICHARD MORRISON *CMV*

Title:

PERFORMANCE UNIT LEADER, WESTERN US

Date:

July 11, 2004