

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

ACO No. 245

IN THE MATTER OF KERSEY AND 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 Kersey and 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 business operating wells within New Mexico under OGRID 12576.
3. Operator's address of record with OCD is P.O. Box 1248, Fredericksburg, TX 78624.
4. Operator is Operator of Record of the following well:
 - **Parry No. 001; 30-015-03468; J-28-18S-29E**
5. During a routine inspection of the well on April 16, 2008, OCD Deputy Oil and Gas Inspector Ron Harvey observed a fresh hydrocarbon release at the wellhead. Fresh oil was pooled around the wellhead. A large area of the location was contaminated by the release.
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 17, 2008, Deputy Inspector Harvey sent a letter of violation (LOV No. 02-08-065) to Operator by certified mail (7007 3020 0000 3029 0737). The letter informed Operator of the violation and instructed Operator to submit a Form C-141

(Release Notification and Corrective Action) to the OCD District II office by April 30, 2008. Marie Wade signed for the letter on April 28, 2008.

8. OCD received no response from Operator to the April 17 letter.
9. As a result, on May 15, 2008, OCD issued Notice of Violation No. 02-08-10, which alleged that Operator was in knowing and willful violation of OCD Rule 116.
10. On June 10, 2008, an administrative conference was held on the Notice of Violation. Operator's owner Ken Wade participated in the conference by telephone.
11. The following facts were presented at the conference:
 - Mr. Wade lives in Fredricksburg, Texas.
 - Mr. Wade has a pumper routinely check the wells.
 - Mr. Wade physically checks the wells once a month.
 - Mr. Wade saw the release when he visited the wells on April 26 and 27. In his opinion the release was not a major release. He told the pumper to take care of the release. The area was backhoed.
 - Mr. Wade filled out a C-141 on the old form which his wife then mailed. The C-141 form went to the old OCD District II address. The form was returned to Mr. Wade. Mr. Wade then sent in a current C-141 to the current OCD District II office. The C-141 was received by the Artesia District Office.
 - The release stills needs to be remediated.

II. 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 knowing and willful violations of OCD Rule 116.

III. ORDER & CIVIL PENALTY ASSESSMENT

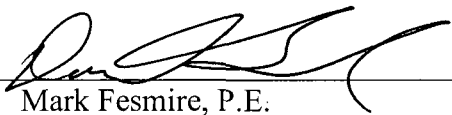
1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Operator totaling **One Thousand Dollars (\$1,000.00)**. The \$1,000.00 civil penalty is based on one violation of OCD Rule 116.
2. The **One Thousand Dollars (\$1,000.00)** civil penalty shall be waived on the following conditions:
 - a. By July 18, 2008, Operator shall take soil samples and have the samples analyzed (Operator shall notify the OCD Artesia District Office at least 48 hours in advance of the sampling so that a representative from the Artesia District Office can observe the sampling);
 - b. By August 15, 2008, Operator shall present to the Artesia District Office the analyticals from the samples and a work plan for the remediation;
 - c. Operator shall complete remediation procedures within 30 days of OCD's approval of the work plan.
3. If Operator fails to meet the conditions of Ordering Paragraph 2, payment of the \$1,000.00 civil penalty shall become immediately due. 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 Saint Francis Drive, Santa Fe, New Mexico 87505.
4. 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.

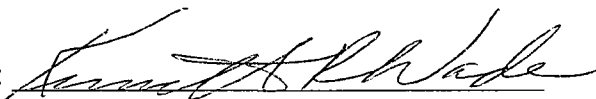
Done at Santa Fe, New Mexico this 16th day of July 2008.

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

ACCEPTANCE

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

Kersey and Company

By: 

Title: Manager

Date: 07-11-08