

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**APPLICATION OF PUBLIC SERVICE COMPANY
OF NEW MEXICO FOR REVIEW OF OIL
CONSERVATION DIVISION DIRECTIVE DATED
MARCH 13, 1998, DIRECTING APPLICANT TO
PERFORM ADDITIONAL REMEDIATION FOR
HYDROCARBON CONTAMINATION, SAN JUAN
COUNTY, NEW MEXICO.**

CASE NO. 12033 (De Novo)

**CLOSING STATEMENT OF THE
NEW MEXICO OIL CONSERVATION DIVISION**

A SIMPLE CASE

This is a simple case with convincing evidence supporting the following findings:

- A. Contamination from oil and gas operations exists at the Hampton 4M site.
- B. Two sources of that contamination have been found---the Public Service Company of New Mexico ("PNM") dehydrator pit and the Burlington Resources ("BR") production facilities---with the soil beneath each source contaminated down to the groundwater.
- C. PNM and BR should therefore both be held responsible for the cleanup of the groundwater contamination beneath and downgradient of the PNM dehydrator pit and each held responsible for the soil contamination found at each of their respective source sites.

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GROUNDWATER CONTAMINATION RESULTED FROM THE PNM PIT

PNM argues that since the only contamination that can be linked solely to one party (i.e., the contamination upgradient of its site) is from BR's operations, it cannot be proved that any contamination resulted from its operations. It is interesting to note that when the groundwater contamination was found underneath PNM's pit, PNM did not throw up its hands and say "We don't understand---our operations couldn't have resulted in this type of contamination." It was only when another contamination source was located upgradient of the PNM site did PNM take the position that its operations could not have resulted in the groundwater contamination.

PNM also takes the position that the amount of natural gas condensate discharged through its dehydrator unit was limited. PNM bases its position on a number of assumptions that do not stand up under scrutiny. For instance, PNM claims that if BR's separator was operating at 99% or greater efficiency, the amount of natural gas condensate discharged through its dehydrator unit would have been relatively small. BR's witness refuted this testifying that an unlimited amount of condensate could have been discharged to the pit. PNM also claims that if BR's separator was malfunctioning and more condensate was flowing into the dehydrator unit as a result thereof, PNM should not be held responsible for that amount. Should not PNM be held responsible for how discharges from its dehydrator were disposed of? It was PNM's decision to dispose of natural gas condensate and produced water into an unlined pit. Could not have PNM

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installed a lined pit or a tank to handle any discharges, whether required then by OCD rules or not?

PNM also claimed that because the soil beneath its site was not saturated with contamination, it was not possible for the contamination from the PNM pit to reach the groundwater. The OCD witness Bill Olson refuted this claim by relating to the Commission his experience that saturation was not necessary for contamination to migrate down from a unlined pit through soil to groundwater. Nor were high levels of contamination necessary evidence of such migration. Mr. Olson testified that, based upon his experience, contamination will take various paths through soil and will not leave uniform amounts of residue contamination throughout the soil. The samples taken that fall within OCD guidelines may be from soils not in the paths of migration or may be just the residue left after the migration occurred.

Mr. Olson also testified that based upon his experience the greatest amount of free product contamination almost always occurs directly underneath the primary source of contamination regardless of the gradient or traps that may occur for liquids underground. This testimony refuted the evidence offered by PNM that attempted to explain why the greatest concentration of free product occurred directly underneath PNM's pit.

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PNM IS A RESPONSIBLE PERSON

PNM was the owner and operator of the dehydration unit. PNM witnesses admitted that natural gas condensate and produced water was discharged from its dehydration equipment to an unlined pit. BR witnesses testified that natural gas condensate can be currently found in the dehydration tank and that the dehydration unit was capable of discharging large volumes of condensate. Contamination from that condensate has been found in the soil beneath the dehydrator pit all the way down to groundwater. Groundwater contamination has occurred. PNM thus is a responsible person for purposes of cleanup of that contamination.

PNM'S CLEANUP ACTIVITIES WERE INSUFFICIENT

PNM argued that since it has already recovered more free product than could have possibly flowed through its pit (based on a number of PNM assumptions as to operating efficiencies and other conditions), it should be excused from any further cleanup. Even assuming that is the case (and the OCD does not agree with PNM's assumptions or conclusion), the party that recovers its contamination contribution first should not be relieved of further cleanup.

For example, if an apartment is flooded from two sources and 6 inches of water on the floor results, if one of the two sources could somehow prove that its contribution is 2 inches, should that source be relieved from any further cleanup if it gets a shop vacuum

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and sucks up the top 2 inches? Is not the damage to the carpet and floor the real (and expensive) damage that needs addressing and not the liquid removal? If there existed no source other than the 2-inch contributor, would not that source be liable for all the damage? Either of the two sources would have caused the same damage so why excuse the first to remove its share of the damaging contamination?

PNM also seems to argue that since its operations are downgradient of Burlington's site, it should be excused from cleanup activities because the contamination from the BR site would have contaminated the groundwater under PNM's site anyway. This argument ignores the fact that PNM's operations would have also contaminated the groundwater in the absence of any BR contamination.

PNM's arguments do not hold water.

THE OCD'S ACTIONS WERE JUSTIFIED AND WARRANTED

Only one witness was in any meaningful way impartial---that was Bill Olson of the OCD. Both PNM and BR have their own financial interests at stake, both as to this particular site as well as to future contamination cleanup sites with similar facility configurations. Mr. Olson made an independent review of the situation based on his extensive experience in supervising the cleanups of these types of contamination cases and determined that: (i) there were two sources of contamination---PNM's former dehydrator pit and BR's production operations, and (ii) it was impossible to determine

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which source was the major contributor to the groundwater contamination beneath and downgradient of PNM's operations.

Mr. Olson has found several sites with free product groundwater contamination resulting from dehydrator unit operations---in one case, 3 feet of free product from a dehydrator that had been inoperative for 10 years. In some cases, the dehydrator unit was located upgradient of the production operations, thus foreclosing the possibility that the contamination was not from the dehydrator unit. Mr. Olson has also witnessed free product accumulation in dehydrator tanks and pits.

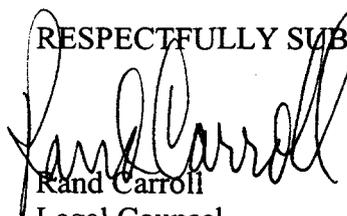
Mr. Olson thus found both PNM and BR to be responsible parties and directed them both to conduct cleanup operations at the Hampton 4M site---PNM for contamination underneath and downgradient of its site and BR for contamination upgradient of the PNM site. Mr. Olson's opinion changed later when additional evidence became known before and at the OCD hearing. The additional evidence convinced Mr. Olson that BR should also be held responsible for the groundwater contamination beneath and downgradient of the PNM site.

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CONCLUSIONS

- PNM should be held accountable and responsible for the contamination resulting from discharges from its dehydrator unit into its unlined dehydrator pit.
- The evidence introduced clearly shows that (i) condensate discharges were made into the pit, (ii) the condensate migrated down through the soil to groundwater, (iii) the soil and groundwater were thereby contaminated.
- The existence of a second source of contamination should not excuse PNM from its responsibility for cleanup of that contamination.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

Closing Statement of the Oil Conservation Division---Case No. 12033 (De Novo)

Proposed Order of the Oil Conservation Division---Case No. 12033 (De Novo)

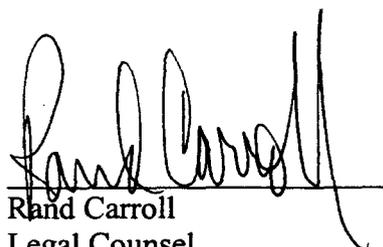
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