

Florene –

Attached is an application for hearing against BTA Oil Producers Inc.

Please set this on the regular docket- we anticipate that it will be a contested case.

Please set it for the **January 21, 2010** docket, or the first regular docket after that date. Once it is set, please let me know what the case number is and the hearing date, so I can send notice to BTA.

Thanks-

Gail

Case 14413

February 4

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION
THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A
COMPLIANCE ORDER AGAINST BTA OIL PRODUCERS LLC, FINDING
THE OPERATOR IN VIOLATION OF ORDER NO. R-9147-C, 19.15.26.10.1
NMAC, 19.15.34 NMAC, 19.15.17 NMAC AND 19.15.29 NMAC AS TO A SAFE
WATER DISPOSAL FACILITY; REQUIRING OPERATOR TO SUBMIT A
DELINEATION REPORT AND REMEDIATE THE FACILITY SITE; IN THE
EVENT OF NON-COMPLIANCE REQUIRING THE OPERATOR TO PLUG
AND ABANDON THE DISPOSAL WELL AND REMEDIATE THE
ASSOCIATED FACILITY BY A DATE CERTAIN AND AUTHORIZE THE
DIVISION TO TAKE THOSE ACTIONS AND FORFEIT THE APPLICABLE
FINANCIAL ASSURANCE; AND HOLD OPERATOR IN VIOLATION OF
19.15.5.9 NMAC UNTIL OPERATOR COMPLETES ALL ORDERED
CORRECTIVE ACTION, EDDY COUNTY, NEW MEXICO.

2009 NOV 10

RECEIVED OCD

CASE NO. 14413

APPLICATION FOR COMPLIANCE ORDER
AGAINST BTA OIL PRODUCERS LLC

1. BTA Oil Producers LLC operates wells in New Mexico under OGRID 305316.
2. According to information posted on the website of the New Mexico Public Regulation Commission, BTA Oil Producers LLC is a foreign limited liability company with the following registered agent: Alan L. Castetter, 323 W. Mermod, Carlsbad, New Mexico 88221.
3. According to the records of the Oil Conservation Division (OCD), the address of record for BTA Oil Producers LLC is 104 S. Pecos, Midland, Texas, 79701.

This address is consistent with the address that appears on BTA Oil Producers LLC's recent regulatory filings with the OCD, and the mailing address listed for BTA Oil Producers LLC on the website of the New Mexico Public Regulation Commission.

4. According to OCD records, BTA Oil Producers LLC posted a \$50,000 blanket surety bond 105E9046 through Travelers Indemnity Company to secure the plugging and abandonment of its wells.

Factual Background

5. BTA Oil Producers, the predecessor to BTA Oil Producers LLC, drilled the Pardue C 8808 JVP #001 well, API 30-015-26341, in 1990.

6. The well is located in Section 11, Township 23 South, Range 28 East in Eddy County, New Mexico. The well is approximately 110 feet to the west of the Pecos River. The well site is located approximately 50 to 60 feet above the Pecos River. Ground water at the well site occurs at approximately 41 feet below ground level.

7. Order No. R-9147-C, issued in 1991 in Case No. 10268, permitted the well as a salt water injection well.

8. BTA Oil Producers began injection operations at the well in 1994.

9. On October 19, 2007, the OCD issued a Letter of Violation to BTA Oil Producers as a result of an inspection conducted that day. The inspector had found an unpermitted, unlined pit at the well site. Four overflow pipelines carried produced water from the tank battery to the pit. The Letter of Violation instructed BTA Oil Producers to "clean up the site and remove the overflow lines" by January 22, 2008.

10. BTA Oil Producers converted from a general partnership to a limited liability company, BTA Oil Producers LLC. The OCD approved the change of operator from BTA Oil Producers to BTA Oil Producers, LLC on June 2, 2008.

11. In the two years since the inspection and letter of violation, the OCD has worked with BTA Oil Producers and later with BTA Oil Producers LLC to require the operator to conduct a proper investigation of the site and perform appropriate corrective actions.

12. Neither BTA Oil Producers nor BTA Oil Producers LLC has submitted an acceptable plan for investigation and remediation.

13. According to the report submitted on behalf of BTA Oil Producers LLC on February 5, 2009 by R. T. Hicks Consultants, Ltd., groundwater “has likely been impacted by the facility operations at the surface.” The report indicates that the water zone beneath the site “is expressed from the hillside and ultimately leaks into the flowing Pecos River.”

14. On October 22, 2009 the OCD issued a Notice of Violation to BTA Oil Producers LLC notifying the operator of violations at the facility, and putting the operator on notice that if the parties could not resolve the issues administratively, the OCD would file an application for hearing.

15. The parties met on November 5, 2009 but were not able to resolve the issues.

Applicable Orders, Statutes and Rules

16. **Order No. R-9147-C** provides that the operator shall take all necessary steps to ensure that the injected water is not permitted to escape onto the surface, requires

the operator to take such steps as may be timely and necessary to correct failures and leakage, and requires the operator to conduct operations in accordance with OCD's rules on injection, including Rule 703. Rule 703 has since been re-numbered as 19.15.26.10 NMAC.

17. **19.15.26.10.B NMAC (formerly numbered Rule 703)** provides “the operator of an injection project shall operate and maintain at all times the injection project, including injection wells, producing wells and related surface facilities, in such a manner as will confine the injected fluids to the interval or intervals approved and prevent surface damage or pollution resulting from leaks, breaks or spills.”

18. **19.15.34 NMAC** governs the disposition of produced water and other oilfield waste. Part 34.11 provides, in relevant part, that no person shall dispose of produced water or other oil field waste “on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse” or “in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment.” Part 34.12 provides, in relevant part, that persons disposing of produced water shall dispose of the water “in a manner that does not constitute a hazard to fresh water, public health, safety or the environment...”

19. **19.15.17 NMAC** governs pits. “Pit” is defined in 19.15.2.7.P(3) NMAC to include natural depressions. Part 17.8A provides that a person shall not construct or use a pit except in accordance with a division-issued permit. The siting requirements specified in Part 17.10 prohibit pits within 300 feet of a continuously flowing watercourse. Part 17.13 prohibits unlined permanent pits, and sets out closure

requirements. The closure requirements provide that if a release has occurred at a pit, the operator must comply with the requirements of 19.15.29 NMAC.

20. **19.15.29 NMAC** governs releases. Part 29.8 sets out the reporting requirements for releases, requiring the person operating or controlling either the release or the location of the release to notify the division of unauthorized release occurring during the storing, disposal, injection or transportation of produced water or oil field waste. Part 29.11 requires the responsible person to complete division-approved corrective action for releases that endanger public health or the environment, in accordance with a remediation plan or an abatement plan.

21. **NMSA 1978, Section 70-2-14(B)** provides, in relevant part,

“If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules.”

19.15.8.13 NMAC sets out the process for obtaining a plugging order, and forfeiting financial assurances.

22. **NMSA 1978, Section 70-2-12(B)** provides that “apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state,” the OCD “is authorized to make...orders for the purposes and with respect to” the subjects identified in that subsection, including:

- “the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water...in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer” (NMSA 1978, Section 70-2-12(B)(15); and

- “the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment” (NMSA 1978, Section 70-2-12(B)(21)).

Requested Relief

23. The OCD files this application seeking an order that will result in remediation of the facility site, in order to protect public health and the environment, including the vadose zone, ground water and the Pecos River.

24. The first step is to require BTA Oil Producers LLC to submit, by a date certain, a report acceptable to the OCD’s Environmental Bureau delineating contamination of the vadose zone and ground water. The OCD’s Environmental Bureau will use the data from the report to determine the appropriate corrective action, to include removal of chloride-contaminated soil and bedrock and remediation of ground water.

25. The second step will be to require BTA Oil Producers LLC to complete the required corrective action by a date certain.

26. To ensure that the operator submits an acceptable report and completes the required corrective action, the OCD is also asking for the following sanctions to be included in the order.

27. The order should set an ultimate deadline: if the operator fails to meet the deadline set in the order for submitting an acceptable report or fails to complete the corrective action by the deadline, then the operator should be ordered to plug and abandon the disposal well and remediate the facility location by a date certain. And the OCD should be authorized to plug the well, remediate the site, and forfeit the applicable financial assurance if the operator fails to comply. This type of order is authorized by

NMSA 1978, Section 70-2-14(B). Such an order will allow the OCD to complete the corrective action if BTA Oil Producers LLC fails to do it, and forfeit the financial assurance to help pay for the corrective actions.

28. To create an additional incentive for BTA Oil Producers LLC to complete the actions required by the order in a timely fashion, the OCD asks that the order find the operator in violation of 19.15.5.9 NMAC (or issue an order equivalent to such a finding) until the operator demonstrates that it has completed the corrective action required by the order (or demonstrates that it has reimbursed the OCD if the operator fails to take the required corrective action and the OCD has to plug the well and remediate the facility site). The effect of an order finding the operator in violation of 19.15.5.9 NMAC, or an order giving the equivalent relief, would be that the OCD would be able to deny the operator's applications for permits to drill, applications for allowable and authorization to transport, applications for injection permits, and applications for operator changes that would transfer well operations to the operator. In other words, BTA Oil Producers LLC would not be able to "grow" its business until it addressed the contamination issues at the site.

WHEREFORE, the Enforcement and Compliance Manager of the Division hereby applies to the Director to enter an order:

- A. Determining that BTA Oil Producers LLC is in violation of: Order No. R-9147-C; 19.15.26.10.B NMAC; 19.15.34 NMAC; 19.15.17 NMAC; and 19.15.29 NMAC;

- B. Requiring BTA Oil Producers LLC to submit a report acceptable to the environmental bureau of the OCD by a date certain delineating the contamination of the vadose zone and the ground water at the site;
- C. Requiring BTA Oil Producers LLC to complete remediation of the site by a date certain according to a corrective action plan approved by the OCD's Environmental Bureau;
- D. If BTA Oil Producers LLC fails to meet the deadlines set in the order for submitting a delineation report or completing the remediation, ordering BTA Oil Producers LLC to plug and abandon the disposal well and remediate the site by a date certain, pursuant to NMSA 1978, Section 70-2-14(B), and authorizing the OCD to plug the well, remediate the site and forfeit the applicable financial assurance if BTA Oil Producers LLC fails to meet that deadline;
- E. Holding BTA Oil Producers LLC in violation of 19.15.5.9 NMAC, or issuing an equivalent order, until the operator either completes all corrective actions required by the order or reimburses the OCD for its costs in excess of the forfeited financial assurance to complete the corrective actions required by the order; and
- F. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED,
this 20th day of November 2009 by


Gail MacQuesten

Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
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Attorney for the New Mexico Oil
Conservation Division

Case No. 14413. Application of the New Mexico Oil Conservation Division for a Compliance Order against BTA Oil Producers LLC. The application affects the salt water disposal facility associated with the Pardue C 8808 JVP #001, 30-015-26341, located in Unit "A," Section 11, Township 23 South, Range 28 East in Eddy County, New Mexico. The facility is located less than five miles northeast of Loving, New Mexico on the Pecos River. The Applicant seeks an order finding the operator in violation of Order No. R-9147-C, 19.15.26.10.B NMAC, 19.15.34 NMAC, 19.15.17 NMAC and 19.15.29 NMAC; requiring the operator to submit a delineation report and complete remediation by dates certain; if operator fails to meet those deadlines ordering the operator to plug and abandon the well and remediate the site by a date certain and authorizing the Division to plug the well, remediate the site and forfeit the applicable financial assurance if the operator fails to meet that deadline; and holding the operator in violation of 19.15.5.9 NMAC or issue an equivalent order, to be kept in place until the operator completes the required corrective action or reimburses the Division for its costs in excess of the forfeited financial assurance to complete the required corrective action.