

GW - 51

ENFORCMENT

DATE:

9-16-2005

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION

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

**COMPLIANCE ORDER
NM-OCD 2006-002**

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 Val Verde Gas Processing Plant located in the SE/4 SE/4 of Section 11, Township 29 North, Range 11 West, NMPM, San Juan County, New Mexico.

3. The DEFS Val Verde Gas Processing Plant is permitted by the OCD, pursuant to WQCC rule 20.6.2.3104, under discharge Permit GW-051. 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 Val Verde Gas Processing Plant GW-051 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 September 29, 2003 DEFS requested cancellation or termination of the Val Verde Gas Processing Plant discharge plan on the grounds that the Water Quality Control Commission (WQCC) rules do not require such a plan for this facility.

6. On May 25, 2004 OCD inspectors Wayne Price and Jack Ford conducted a discharge plan inspection at the Val Verde Gas Processing Plant. Under the Miscellaneous Comments of the report OCD commented that "Permit will be required at this time".

7. On May 28, 2004 DEFS submitted a letter with a Discharge Plan Application Renewal, including a \$100 filing fee. The DEFS letter reminded OCD that DEFS had requested cancellation or termination of the discharge plan GW-051 on the grounds that the Water Quality Control rules do not require such a plan for this facility. In addition, DEFS indicated that since OCD has not responded to its request to cancel the discharge permit, DEFS was submitting the renewal application 120 days before permit expiration of September 17, 2004.

8. On June 21, 2004 OCD sent DEFS a letter of deficiency requesting additional information concerning certain aspects of the submitted plan. OCD noted that prior to issuance of public notice the application must be administratively complete. OCD advised DEFS that the information submitted in the renewal application was not sufficient to allow OCD to perform a proper evaluation.

9. On July 22, 2004 DEFS responded to OCD's request for information.

10. On August 9, 2004 OCD sent a letter and E-mail, notifying DEFS that the information submitted on July 22, 2004 was incomplete pursuant to 20.6.2.3106 NMAC and again requesting that DEFS provide the information requested in the June 21, 2004 letter.

11. The discharge permit GW-051 for the DEFS Val Verde Gas Processing Plant expired on September 27, 2004. DEFS has made no attempt to continue the renewal process and has not contacted OCD concerning this issue.

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 Val Verde Gas Processing Plant 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. Because DEFS failed to complete and correct its application for renewal after having been notified of deficiencies in that application, DEFS failed to comply with the requirements for submission

of a renewal application. The submission by DEFS of an incomplete and defective renewal application, in absence of a good faith effort to correct the application after notice, did not constitute compliance with 20.6.2.3106 NMAC and accordingly did not extend Permit GW-051 beyond its expiration date.

5. DEFS has refused and failed to renew the current discharge permit and accordingly has been out of compliance since September 27, 2004 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 354 days without a permit.

6. 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 \$208,000.00 Dollars. This penalty amount is derived as shown under Conclusion of Law items 4, 5 and 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 ENERGY FIELD SVCS GW-051

Address _____

Violation _____

PENALTY AMOUNT FOR COMPLAINT

1. Potential for harm MODERATE
Extent of Deviation MAJOR
2. Gravity based penalty from matrix \$2000.00 (1000 x 2 (willfulness))
3. Multiply line 2 by number of violations and/or days 6/2/05 - 9/14/05 104
of violation minus 1 (or other number, as appropriate).
Provide narrative explanation)..... \$206,000.00
4. Add lines 2 and 3 \$208,000.00
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 0
11. Add lines 4 and 10 for penalty amount \$208,000.00
12. Adjustment amount for environmental project -
13. Subtract line 12 from line 11 final penalty amount. \$208,000.00

This procedure should be repeated for each violation.

NARRATIVE EXPLANATION

1. Gravity Based Penalty

(a) Potential for Harm (attach additional sheets if necessary) Spills
& Leaks possible - History of Leaks

(b) Extent of Deviation (attach additional sheets if necessary) Intentional
Disregard for permitting - evaded questions

(c) Multiple/Multi-day (attach additional sheets if necessary) _____
from 2 June 05 - date received WQCC
base assessment

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) none

(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) _____

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