

## SETTLEMENT AGREEMENT

### **BC&D OPERATING, INC. NOTICE OF VIOLATION 03-02-05**

This SETTLEMENT AGREEMENT is entered into this \_\_\_\_ day of October, 2002 between the STATE OF NEW MEXICO, by and through the NEW MEXICO OIL CONSERVATION DIVISION, ("Division"), and BC&D OPERATING, INC., ("BC&D"), pursuant to Part VI of the Division's *OCD Enforcement Guidelines*.

#### **Background and Recitals**

1. The Division is the State agency charged with the administration and enforcement of the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1, *et seq.*, as amended, and the Water Quality Act, NMSA 1978, Sections 74-6-1, *et seq.*
2. BC&D is the Operator of the Hospah Sand Unit located, generally, in Section 1, T-17-N, R-10-W and Sections 5, 6 and 7, T-17-N, R-9-W, NMPM, McKinley County, New Mexico, (the "Subject Lands"). In May, 1993, BC&D acquired the oil and gas leases underlying the Subject Lands from American Exploration Company.
3. On March 6, 2002, the Division's Aztec District Office issued Notice of Violation, ("NOV"), asserting that BC&D had not reported a release occurring on the Subject Lands on approximately October 26, 2001 and that the release had not been cleaned up or remediated. The Division's NOV also asserted that BC&D had not reported a previous release which was subsequently identified as having occurred on September 16, 1997. BC&D has, in good faith, disputed the assertions set forth in the NOV.
4. On September 16, 1997, thunderstorm runoff caused a breach in the berm surrounding a storage tank near the Santa Fe railroad resulting in the release of approximately 50-60 Bbl of fluids that had overflowed from the tanks due to a mechanical malfunction. The release was reported verbally on September 17, 1997 and via C-141 form on September 24, 1997. The Division's field personnel subsequently determined that BC&D had made a prudent and good faith effort to remediate the spill.
5. On October 26, 2001, BC&D experienced a leak from a flow line at the Hospah Sand Unit Tank Battery that resulted in the release of a volume of water and oil. At the time, the release was contained to a small area, but runoff from a subsequent thunderstorm resulted in the fluids being carried to a containment pond located in an adjacent arroyo. The release was reported to the Division on a

C-141 form on November 19, 2001. The affected soil was removed to the well pad for the Hospah Sand Unit No. 13 well and was remediated.

6. Sometime after November 12, 2001, a leak from an underground flow line from the Hospah Sand Unit No. 13 well occurred. Fluids estimated by BC&D to consist of approximately 1/2 barrels of oil and 29 barrels of water were released on the surface into the Sandoval Arroyo. The Division has asserted that fluids from the flow line leak joined with the fluids released on October 26<sup>th</sup>. BC&D has disputed this particular assertion. In addition, the Division believes that the volume of fluids released was greater than that estimated by BC&D. BC&D also disputes this assertion.
7. On November 13, 2001, BC&D personnel discovered the leak from the flow line from the Hospah Sand Unit No. 13 well and began repair work on the leak. The release and the repair work were observed on November 14<sup>th</sup> by Division field personnel. Consequently, the Division had actual notice of the release within 24 hours of its occurrence. BC&D also telephonically reported the release to the Division's Aztec District Office on November 14<sup>th</sup> and received simultaneous verbal approval of its clean-up and remediation plan. The November 13<sup>th</sup> release was subsequently reported to the Division on a C-141 form on November 19, 2001. In the interim, BC&D and Division personnel communicated about the release, both in-person and telephonically and BC&D has since remediated the affected surface soils.
8. BC&D has asserted in good faith that because the October 26, 2001 release was contained within a retention pond constructed specifically for that purpose, the fluids did not enter a Watercourse. BC&D has asserted that the release was a "Minor Release" within the meaning of 19 NMAC 15.C.116.B(2), thus making the requirement for immediate verbal notification inapplicable. The Division has asserted, also in good faith, that regardless of the containment of the fluids in the retention pond, the arroyo constitutes a "Watercourse" within the meaning of 19 NMAC 15.1.7.W, and thus the flow into Sandoval Arroyo constituted a "Major release", making the requirement of immediate verbal notification applicable regardless of the volume of fluids involved.
9. The matters set forth in Paragraphs 3 through 8, above are referred to as the "Dispute".
10. The Division and BC&D further dispute whether immediate verbal notification of the October 26, 2001 release was required. However, the parties agree that BC&D's November 19, 2001 written notification of the October 26, 2001 release was untimely by nine days.
11. On approximately March 20, 2002, BC&D commissioned Envirotech Inc. to obtain and analyze soil closure samples from 16 separate sampling points in the vicinity of the releases to test for the presence of contaminants following BC&D's

remediation efforts. In its March 28, 2002 report of laboratory results, Envirotech Inc. concluded that none of the samples showed the existence of hydrocarbon contaminants exceeding the Division's standards for action.

12. Based on its own assessments and the test data provided by BC&D, the Division has determined that the remediation undertaken by BC&D has been satisfactory and that no further remediation is necessary.
13. Since receiving the NOV, BC&D has designed and implemented an environmental and regulatory compliance training program for its personnel.
14. The Division has determined that BC&D's response to the NOV has been adequate and that no further corrective action plan shall be necessary.

#### Settlement

In consideration of the mutual covenants contained herein, the Division and BC&D agree as follows:

- A. The Division and BC&D confirm the accuracy of the above recitals, the terms of which are incorporated herein.
- B. BC&D agrees to fully comply with the Division's statutes, rules and orders, including the Division's requirements for General Operations and Prohibition of Waste under Rule 13.B (19 NMAC 15.A.13) and Release Notification And Corrective Action under Rule 116 (19 NMAC 15.3.116).
- C. BC&D shall pay to the State a Settlement Payment in the amount of \$5,000 in full settlement and to offset the State's expenses in investigating, assessing damages and enforcing the State's rights. The Settlement Payment shall not be considered an admission by any party hereto of any liability or wrongdoing; and no such admission of past or present wrongdoing on the part of any party shall be implied by the payment.
- D. The Division shall dismiss Notice of Violation 03-02-05 with prejudice and shall pursue no further enforcement or penalties related in any way to the matters asserted, or which could have been asserted, therein or in connection with these proceedings.
- E. BC&D shall waive all rights to contest or otherwise appeal the Division's interpretation and application of Rule 13.B and Rule 116, limited only to the facts and circumstances related to the Dispute set forth herein.
- F. The Division and BC&D each agree that it shall not hereafter institute any judicial or administrative or other proceedings to litigate, arbitrate, appeal, or assert in any fashion any claim or issue which relates to the Dispute, one against the other;

provided that if information subsequently discovered or developed indicates that any further damage of danger to water resources or to public health safety or the environment has resulted or may result from the events the Division shall not be precluded hereby from requiring BC&D to abate the same, or from instituting enforcement proceedings, however, the Division shall not seek any additional penalties by reason of the occurrence of the releases described herein or the reporting thereof.

- G. Subject to the qualification stated in the foregoing paragraph, the Division and BC&D hereby release and discharge each other, and all those claiming by, through or under them, from any and all actions, suits, judgments, liabilities, penalties, demands, fees, interest, or obligations, whether known or unknown, arising out of, or in any way related to the Dispute.
- H. Except to the limited extent set forth in Paragraph 10, above, the Division and BC&D agree that by executing this Agreement, no party admits any liability to the other.
- I. The Division and BC&D agree that this Agreement is executed for the sole purpose of settling the Dispute. No party shall be deemed to have approved, accepted, or consented to any concept, method, theory, principle, or statutory or regulatory or contractual interpretation underlying any of the matters agreed to herein or raised in connection with the issues settled. This Agreement shall have no precedential value and shall not be binding on any party as to any claims, issues, or appeals, other than those specifically addressed herein.
- J. This Settlement Agreement shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been jointly prepared by all parties. Any ambiguity or uncertainty shall not be interpreted or construed against any party. This Settlement Agreement shall be liberally construed as effecting a full and final settlement of the Dispute.
- K. This Settlement Agreement may be executed in two or more counterparts.

BC&D OPERATING, INC.

By: Donnie Hill  
Its: PRESIDENT  
Date: 11/4/02

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

By: Jon Wrotenberg  
Its: Director  
Date: 11-6-02