

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

NMOCD-OGA-04-58

IN THE MATTER OF ROBERT L. BAYLESS PRODUCER LLC.

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 Robert L. Bayless Producer LLC ("Bayless") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD rules.

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Bayless is a foreign limited liability corporation doing business in New Mexico, registered with the Public Regulation Commission number SCC 2005445. Bayless is an active entity with a principal address at *PO BOX 168, 368 NM HIGHWAY 170 FARMINGTON NEW MEXICO 87499*. Its registered agent for service of process is Robert L. Bayless, 368 NM HIGHWAY 168, PO BOX 170 FARMINGTON NEW MEXICO 87499. Bayless's OGRID is 150182.
3. Bayless is the operator of record of the Hazel Bolack 10 #3, located at Unit Letter P, Section 10, Township 30 North, Range 11 West, API# 30-045-32259 in San Juan county, New Mexico ("well").
4. On October 22, 2004, the New Mexico Oil Conservation Division (OCD) Aztec office received a telephoned complaint that liquid discharge from the referenced Bayless well had flowed off of the well site and onto a nearby road. Oil and Gas Inspector Frank Chavez investigated the complaint and found red staining and erosion that indicated liquids had flowed off of the referenced well site for approximately 75 feet onto an unpaved extension of Blanco Street within the city limits of the City of Aztec. The liner in the drilling pit had a hole in it and the soil exposed by the hole was stained with drilling fluids.
5. An OCD investigation and review of relevant documents established the following:

- a) OCD Rule 19.15.2.50.A NMAC (Rule 50.A) provides, in relevant part, that [d]ischarge into, or construction of, any pit...is prohibited absent possession of a permit issued by the division....”
 - b) OCD rule 19.15.2.50.C(2)(b) NMAC (Rule 50.C(2)(b)) provides, in relevant part, that “[e]ach drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh water, and protect public health and the environment.”
 - c) On June 28, 2004, Deputy Inspector Denny Foust approved a permit for a lined drilling pit for the referenced well on OCD Form C-103.
 - d) A hole in the liner approximately one foot wide and three feet long allowed drilling fluids to migrate out of the liner. It appears that the hole in the liner developed during drilling operations, and Bayless knew or should have known about the hole.
 - e) During completion operations on October 10 thru 13, 2004, Bayless also used a steel tank to hold drilling fluids.
 - f) During an interview and in a written message to the OCD, a Bayless representative stated that he observed drilling fluids overflowing from the tank and allowed the overflow to continue.
 - g) The fluids overflowing from the tank flowed to an ephemeral stream at the location.
6. OCD rule 19.15.1.7.R(3) NMAC (Rule 7.R(3)) states, “Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.”
 7. OCD rule 19.15.1.7.W(4) NMAC (Rule 7.W(4)) states, “Watercourse shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.”
 8. OCD rule 19.15.3.116.B(1) NMAC (Rule 116.B(1)) states in pertinent part, “A Major Release shall be reported giving both immediate verbal notice and timely written notice . . . A Major Release is . . . (b) an unauthorized release of any volume which: (ii) will reach a water course; . . .”
 9. OCD rule 19.15.3.116.C(1) NMAC (Rule 116.C(1)) states in pertinent part, “Immediate verbal notification required pursuant to Subsection B of 19.15.3.116 NMAC shall be reported within twenty-four (24) hours of discovery to the Division District Office for the area within which the release takes place.”
 10. OCD Rule 19.15.3.116.D NMAC (Rule 116.D) provides, “The responsible person must complete division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with Section 19 of 19.15.1 NMAC.”

11. Bayless did not give immediate verbal notification or subsequent written notification to the OCD after observing drilling fluids flow into a watercourse from the tank overflow.
12. After being contacted by the OCD, Bayless sent personnel to clean up the staining from the tank overflow release. No further remedial action for that release is necessary at this time.
13. Bayless has taken samples from beneath the liner at the hole in the drilling pit liner. Tests conducted on those samples indicated elevated levels of TPH. Bayless has not yet completed corrective action for the release at the pit.
14. On December 1, 2004, the OCD issued Notice of Violation (3-04-23) to Bayless.
15. Bayless takes the position that it is not subject to a penalty for the following reasons:
 - a) The fine is punitive.
 - b) If Bayless violated any rule the violation was not "knowing and willful."
 - c) If Bayless was aware of the fluid contact with the ground the action would have been immediately stopped.
16. Although Bayless does not believe it is subject to penalties for the conduct described in this order, it acknowledges that if this case went to hearing the OCD would likely prove that it is subject to penalties, and therefore has determined that it is in its economic interest to pay the penalty rather than litigate the issues.

CONCLUSIONS

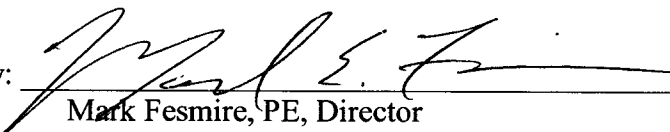
1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Bayless is a person as defined by NMSA 1978, Section 70-2-33(A) subject to civil penalties under NMSA 1978, Section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD Rules.
3. Bayless is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for discharging into a pit with a torn liner, in violation of the terms of its permit issued under Rule 50.A and in violation of the liner requirements of Rule 50.C(2)(b).
4. Bayless is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for failing to give immediate verbal notification or subsequent written notification to the OCD after observing drilling fluids flow into a watercourse from the tank overflow and after observing the release from the hole in the pit liner, in violation of Rule 116.

5. Bayless is a "responsible person" required to complete division-approved corrective action under Rule 116 for the releases.

ORDER AND CIVIL PENALTY

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling two thousand dollars (\$2,000) against Bayless. This penalty is based on one violation of Rule 50 and one violation of Rule 116.
2. The civil penalty shall be paid within sixty days of receipt of this order. 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, 87504.
3. Bayless must excavate and remediate contaminated soil at the site of the hole in the pit liner under an OCD-approved plan. A report must be submitted by February 15, 2005.
4. By signing this order, Bayless expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this order;
 - b. agrees to comply with ordering paragraphs 2 and 3;
 - 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;
 - e. agrees that if it fails to pay penalties assessed pursuant to this order, upon application by the OCD the district court may enter judgment against Bayless in the amount of the penalties assessed and, in the discretion of the court, may impose additional penalties for Bayless's violation of the penalty provisions of this order.

Done at Santa Fe, New Mexico, this 3rd day of March, 2005.

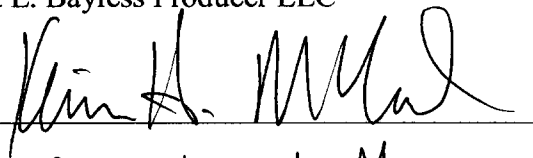
By: 
Mark Fesmire, PE, Director
Oil Conservation Division

ACCEPTANCE

Robert L. Bayless Producer LLC, hereby accepts the foregoing order, and agrees to all of the terms and provisions set forth in the order.

Robert L. Bayless Producer LLC

By: _____



Title: _____

Operational Manager

Date _____

Feb 7, 2005