



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



September 14, 2009

Cirilo Cortez
Cortez Trucking & Oilfield Services
2403 Los Alamos
Carlsbad, NM 88220

Re: Company: Cortez Trucking & Oilfield Services
Violations: OCD Rule 19.15.29 NMAC
OCD Rule 19.15.34 NMAC
WQCC Rule 20.6.2.1203 NMAC
WQCC Rule 20.6.2.3104 NMAC

Dear Mr. Cortez:

On August 17, 2009, Oil Conservation Division ("OCD") staff met with you—owner of Cortez Trucking & Oilfield Services ("CT&OS")—to discuss allegations that CT&OS had released produced water onto the ground in a residential area on or about June 22, 2009. During our meeting you admitted that CT&OS had released produced water onto the ground; that CT&OS did not report the release to the OCD; and that you dug up the contaminated soil and took it to your ranch outside of town. You also admitted that CT&OS does not have an approved C-133 Authorization To Move Produced Water permit and that CT&OS transports produced water for several operators. You said you have stopped transporting.

Applicable Regulatory Rules

Transportation of Produced Water

OCD Rule 19.15.34.8(A) NMAC states:

A person shall not transport produced water, drilling fluids or other liquid oil field waste, including drilling fluids and residual liquids in oil field equipment, except for small samples removed for analysis, by motor vehicle from a lease, central tank battery or other facility without an approved form C-133, authorization to move liquid waste. The transporter shall maintain a photocopy of the approved form C-133 in the transporting vehicle.



Disposition of Produced Water

OCD Rule 19.15.34.11 NMAC states in relevant part:

Except as authorized by 19.15.30 NMAC, 19.15.17 NMAC, 19.15.36 NMAC, 19.15.29 NMAC or 19.15.26.8 NMAC, persons, including transporters, shall not dispose of produced water or other oil field waste:

(1) on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse;

(2) in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment; or

Discharge Permit

Water Quality Control Commission ("WQCC") Rule 20.6.2.3104 NMAC provides that unless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary.

Release Reporting and Corrective Action

OCD Rule 19.15.29 NMAC requires persons who operate or control the release or the location of the release to report to the OCD the unauthorized release of produced water that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing. Notification requirements are described in OCD Rule 19.15.29 NMAC.

OCD Rule 19.15.29.11 NMAC requires the responsible person to complete division-approved corrective action for releases that endanger public health or the environment.

WQCC Rule 20.6.2.1203(A) NMAC requires, with respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, the following notification and corrective actions to occur:

i.) As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility to orally notify the OCD. The notification shall include the following information to the best of that person's knowledge:

- the name, address, and telephone number of the person or persons in charge of the facility, as well as of the owner and/or operator of the facility;
- the name and address of the facility;
- the date, time, location, and duration of the discharge;
- the source and cause of discharge;
- a description of the discharge, including its chemical composition;
- the estimated volume of the discharge; and

- any actions taken to mitigate immediate damage from the discharge.
- ii.) Within one week after the discharger has learned of the discharge, the facility owner and/or operator to send written notification to the OCD, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification.
- iii.) As soon as possible after learning of such a discharge, the owner/operator of the facility to take such corrective actions as are necessary or appropriate to contain and remove or mitigate the damage caused by the discharge.
- iv.) If it is possible to do so without unduly delaying needed corrective actions, the facility owner/operator to endeavor to contact and consult with the OCD, in an effort to determine the department's views as to what further corrective actions may be necessary or appropriate to the discharge in question. In any event, no later than fifteen (15) days after the discharger learns of the discharge, the facility owner/operator shall send to the OCD a written report describing any corrective actions taken and/or to be taken relative to the discharge.

WQCC Rule 20.6.2.1203(A)(4) NMAC provides that its notice requirements are not intended to be duplicative of the reporting requirements of OCD rules. Therefore, if a facility owner/operator subject to OCD jurisdiction is complying with the reporting requirements of OCD rules he does not need to additionally comply with the reporting requirements of WQCC Rule 20.6.2.1203 NMAC.

Compliance Requirements

As indicated above, CT&OS cannot transport produced water or other oil field waste unless and until it has an approved C-133 from the OCD. A form C-133 (and all other OCD forms) can be found at our website site: www.emnrd.state.nm.us/ocd/Forms.htm. For CT&OS to be considered for a C-133 permit you must submit a complete C-133 to the OCD's Santa Fe Office.

CT&OS cannot dispose of produced water onto the ground, or in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment.

CT&OS cannot discharge water contaminants unless it is pursuant to a discharge permit. For discharge permit information contact the OCD's Environmental Bureau in the Santa Fe Office at (505) 476-3440.

CT&OS must report the release to the OCD and take the appropriate OCD-approved corrective action.

At the August 17, 2009 meeting I gave you a blank form C-141 Release Notification and Corrective Action to fill out and submit to the OCD's Artesia District Office. As of today's date, the Artesia District Office has not yet received your C-141. **Please submit a completed C-141 to the Artesia District Office by September 23, 2009.**

If the Artesia District Office does not receive a completed form C-141 or other written report from CT&OS for the release by September 23, 2009, or if CT&OS does not take appropriate OCD-approved corrective action, then I will pursue further enforcement action against CT&OS, which may include:

- obtaining an administrative or district court order requiring CT&OS to submit a complete C-141 and take OCD-approved corrective action.
- obtaining a district court order requiring CT&OS to pay civil penalties pursuant to Section 70-2-31(A) NMSA 1978 of the Oil & Gas Act for violations of OCD rules. Section 70-2-31(A) authorizes penalties of up to **One Thousand Dollars (\$1,000.00)** per day per violation for any knowing and willful violation of any provision of the Oil and Gas Act or order or any rule adopted pursuant to the Act.
- assessing civil penalties pursuant to Section 74-6-10.1 NMSA 1978 of the Water Quality Act for violations of WQCC rules. Subsection A of Section 74-6-10.1 authorizes penalties of up to **Fifteen Thousand Dollars (\$15,000)** per day of noncompliance for each violation of Section 74-6-5 and any rule adopted pursuant to that section. Subsection B of Section 74-6-10.1 authorizes penalties of up to **Ten Thousand Dollars (\$10,000)** per day for each violation of any provision of the Water Quality Act other than Section 74-6-5 and any rule, water quality standard or compliance order adopted pursuant to that section.

In addition, if CT&OS transports produced water or other oil field wastes without an approved C-133, I will seek injunctive relief from the district court requiring CT&OS to cease transport operations. I will also seek civil penalties pursuant to Section 70-2-31(A) for CT&OS's violations of OCD rules. The OCD would also have the authority to deny any future C-133 application for CT&OS pursuant to OCD Rule 19.15.34.10 NMAC, which states:

A transporter's vehicular movement or disposition of produced water, drilling fluids or other liquid oil field wastes in a manner contrary to division rules is a ground for denial of approval of form C-133 in addition to the those specified in Subsection D of 19.15.34.9 NMAC.

Your immediate attention to this matter would be appreciated. Please contact me at (505) 475-3463 or sonny.swazo@state.nm.us if you have any questions.

Sincerely,



Sonny Swazo
Assistant General Counsel, OCD

CC: Mark Fesmire, Director, OCD
Daniel Sanchez, Enforcement & Compliance Manager, OCD