

**STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION**

**IN THE MATTER OF
New Mexico Salt Water Disposal Co., Inc.**

**COMPLIANCE ORDER
NM-OCD**

96

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 (hereinafter, "Act") and the Water Quality Act, NMSA 1978, Sections 74-6-1 to 74-6-17, as amended (hereinafter, "WQA"), the Director of the New Mexico Oil Conservation Division (hereinafter, "OCD"), issues this Order to **NEW MEXICO SALT WATER DISPOSAL COMPANY, INC.** (hereinafter, "NMSW"), directing compliance with the Act, the OCD Rules, WQA and the Water Quality Control Commission (hereinafter, "WQCC") Rules, and assessing a penalty for violations of OCD, WQA and WQCC Rules and the Act.

I. FINDINGS of FACTS

1. The OCD, a division of the New Mexico Energy, Minerals and Natural Resources Department, is the state division charged with administration and enforcement of the Oil and Gas Act (hereinafter, "Act"), NMSA 1978, Section 70-2-12B(22), as amended, and OCD Rules, including the administration and enforcement of the WQA and the WQCC Rules as pertaining to New Mexico's oil and gas activity, which includes disposal facilities, such as community or lease salt water disposal systems.
2. NMSW is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 1690171.
3. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
4. OCD Rule 19.15.3.116B(1)(d) and C(1)(2) NMAC (hereinafter, "OCD Rule 116"), stipulates that "*a release of any volume which may with reasonable probability be detrimental to water or cause an exceedance of the standards in Section 19, Subsection B, Paragraphs (1) and (2) or (3) of 19.15.1 NMAC*" constitutes a major release. OCD Rule 116C(1), (2) requires the person operating or controlling either the release or the location of the major release to immediately make a verbal report of the release and then timely submit a written report on OCD Form C-141 to the OCD's local district office and to the OCD's Environmental Bureau Chief in Santa Fe.
5. OCD Rule 19.15.1.19 NMAC (hereinafter, "OCD Rule 19") specifies that the WQCC groundwater standards, set out in 20.6.2.3103 NMAC (hereinafter, "ED Rule 3103"), shall be met.

6. Section 70-2-31(A), NMSA 1978 of the Act 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 Act or any rule adopted pursuant to the Act.
7. Section 74-6-10(A), NMSA 1978 of the WQA provides for civil penalties of up to \$10,000.00 per day for violations of the WQA. The OCD is authorized to enforce these penalties as they relate to the protection of groundwater. *See Section 74-6-2, NMSA 1978.*
8. NMSW is the operator of record for Pumping Station # 11.
9. On May 6, 2003, NMSW reported a release of produced water from a storage tank at its Pumping Station #11. The 20 barrel release occurred inside a storage tank berm on April 17, 2003.
10. By requirement imposed by the State Land Office, on April 1, 2004 NMSW submitted an Environmental Site Assessment (hereinafter, "ESA") to the State Land Office. In its ESA, NMSW reported that a perched water zone was encountered in one of the soil borings (Soil Boring 4A), and that a sample taken from the perched water zone contained elevated levels of chlorides and total dissolved solids. These levels exceeded the ground water standards set out in 19.15.1.19 NMAC. Within the meaning of OCD Rules 19 and 116, the perched water constitutes ground water. NMSW disagrees that pursuant to OCD Rules 19 and 116 that perched water constitutes ground water.

One ground water sample shows the total dissolved solids (hereinafter, "TDS") concentration to be approximately 70,000 milligrams per liter (hereinafter, "mg/l") and the chlorides concentration to be approximately 45,000 mg/l. WQCC Regulations specify acceptable concentrations of 1000 mg/l and 250 mg/l, respectively, for TDS and chlorides.

11. The OCD has determined that the ESA shows that NMSW knew or should have known by April 1, 2004 that the spills had exceeded WQCC standards for ground water. However, NMSW failed to report the ground water contamination to the OCD, violating OCD Rule 116B(1)(d) and C(1)(2).
12. As NMSW knew or should have known by April 1, 2004 that the spill exceeded WQCC standards, NMSW violated Rule 116 by knowingly and willfully failing to report the ground water contamination to the OCD for approximately 530 days.
13. NMSW violated OCD Rule 19 and WQCC Rule 20 by exceeding acceptable ground water concentrations of TDS and chloride; it has been in violation for at least 530 days.
14. Since the April 17, 2003 release of produced water, NMSW has reported on OCD Form C-141 five (5) additional releases on the system to the OCD Hobbs District Office. This number of releases in twenty-five (25) months indicates that NMSW has significant problems with a degrading infrastructure and/or operating procedures.

15. NMSW disagrees with the OCD that it knowingly and willfully failed to timely report ground water contamination.

II. CONCLUSIONS of LAW

1. The OCD has jurisdiction over NMSW and over the subject matter in this Order pursuant to the Act (NMSA 1978, Section 70-2-12B(22), as amended), OCD Rules, the WQA and WQCC Regulations.
2. NMSW is a person as defined in the Act (NMSA 1978, Section 70-2-33A), the WQA and 20.6.2.7(II) NMAC.
3. NMSW's Pumping Station # 11 is a source for water contaminants that are being discharged directly or indirectly into surface or groundwater, as defined in the WQA (NMSA 1978, Section 74-6-2M).
4. NMSW knowingly and willfully violated OCD Rule 116 by failing to report unauthorized releases to the OCD for a minimum of 530 days; untimely submission of spill reports (C-141s); and failure to remediate ground water contamination. NMSW disagrees that it knowingly and willfully violated OCD Rule 116.
5. NMSW violated OCD Rule 19 and WQCC Regulation 3103 by exceeding acceptable ground water concentrations of TDS and chloride; it has been in violation for at least 530 days.

III. ORDER and CIVIL PENALTY

1. The OCD hereby assesses a civil penalty of **Twenty-five Thousand Dollars (\$25,000.00)** against NMSW for violations of OCD Rule 116 (failure to report unauthorized releases to the OCD and untimely submission of spill reports (C-141s)) and OCD Rule 19B (contaminating ground water by exceeding standards set out in 20.6.2.3103 NMAC).
2. NMSW shall pay the **Twenty-five Thousand Dollars (\$25,000.00)** by the end of November 2005. 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 87505.
3. NMSW must submit a Stage 1 abatement plan proposal to the OCD Santa Fe Office, with a copy provided to the OCD Hobbs District Office, no later than November 30, 2005. All submittals to OCD must be sent from NMSW rather than being submitted by a consultant. NMSW shall provide one paper copy and one electronic copy of all future work plans and/or reports relating to the cleanup to the OCD Santa Fe Office and the Hobbs District Office.
4. NMSW shall install a shut-off valve at its North Dumping Station; install a digital electronic alarm at Pumping Stations 8 and 11 and the North Dumping Station; and develop written

operational guidelines and training for its personnel to aid in the operation and maintenance of this site. This work shall be completed no later than March 15, 2006.

5. NMSW shall submit a report on the state of its infrastructure and operating procedures to the OCD Santa Fe Office, with a copy to the OCD Hobbs District Office, by December 16, 2005, which shall be subject to the OCD's review and reasonable comments and approval. This report shall include a plan to repair and/or upgrade its infrastructure and improve its operating procedures to prevent human error. The plan shall also address NMSW's requirement to install a shut-off at its North Dumping Station; install digital electronic alarms at Pumping Stations # 8 and # 11 and the North Dumping Station; and develop written operational guidelines and training for its personnel to aid in the operation and maintenance of this site. Nothing in this paragraph or Order is intended to limit or prohibit the OCD from requiring NMSW address maintenance, repair and operation of its facilities to bring them into compliance with applicable rules and regulations.
6. The OCD retains the right to pursue relief authorized by the Act or the WQA for any violation not addressed herein. The OCD retains the right to enforce this Order 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 Act.
7. The laws of New Mexico shall govern the construction and interpretation of this Order.
8. NMSW shall assume all costs and liabilities incurred in performing any obligation under this Order. The OCD, on its own behalf or on behalf of the Department of Energy, Minerals and Natural Resources, shall not assume any liability for NMSW's performance of any obligation under this Order.
9. NMSW shall disclose this Order to any successor-in-interest to the facility and shall advise such successor-in-interest that this Order is binding on the successor-in-interest until such time as NMSW complies with its terms and conditions or it is terminated by written agreement of the parties.
10. By signing this Order, NMSW expressly:
 - a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraphs (2) through (4), (8) and (9);
 - 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; and
 - 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 (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico this 12th day of ~~December~~ ^{Jan 2006} 2005.

By: 
MARK FESMIRE, P.E., Director
Oil Conservation Division

ACCEPTANCE

NEW MEXICO SALT WATER DISPOSAL CO., INC. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

NEW MEXICO SALT WATER DISPOSAL 
COMPANY, INC.

By: 

Title: President

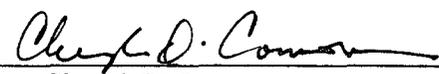
Date: 12/30/05

APPROVED:

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

By: 
Gary Larson
Attorney for New Mexico Salt Water Disposal Co., Inc.

ENERGY, MINERALS and NATURAL RESOURCES DEPT.
OIL CONSERVATION DIVISION

By: 
Cheryl O'Connor
Attorney for the OCD