

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

NMOCDD - 06-112

IN THE MATTER OF LOURAY OIL COMPANY, 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"), the Director of the Oil Conservation Division (hereinafter, "OCD") issues this Order to **LOURAY OIL COMPANY, LLC** (hereinafter, "LouRay"), directing compliance with the Act and the 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. LouRay is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 2209252.
3. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
4. LouRay is the operator of record for the Government "E" Well #1, SWD & Tank Battery, Unit Letter N, Section 25, Township 19 South, Range 34 East, in Lea County, New Mexico (the "site" or "well site").
5. On August 1, 2005, OCD Environmental Engineer Paul Sheeley visited the Government "E" Well site and found there had been an unauthorized release of produced water and oil. The tank battery was standing in oil and salt water inside the secondary containment; the synthetic liner in the secondary containment was ripped and not anchored, allowing fluids to soak into the ground. The release was estimated to be greater than twenty-five barrels.
6. In addition, the loading pad was saturated with what appeared to be production fluids, a release of about 25 barrels.
7. LouRay had not given verbal or written notification to the OCD of the unauthorized releases.

8. Louis Edgett, LouRay, telephonically advised Mr. Sheeley that each truck that loads at the pad spills about half a barrel on the ground.
9. Based on Mr. Edgett's spill estimate, the OCD estimates that each month since 2004 there has been a fifty (50) barrel spill at the loading pad.
10. Mr. Sheeley returned to the site on August 16, September 1 and November 4, 2005. Fluids were still on the ground, with no remediation.
11. A Letter of Violation (hereinafter, "LOV") dated September 14, 2005 was sent to LouRay detailing OCD's findings of August 1, 2005, which constituted OCD Rule 116 [19.15.3.116 NMAC] violations.
12. As required by OCD Rule 116, in the LOV the OCD required that LouRay submit a C-141 spill report by September 30, 2005.
13. LouRay failed to respond to the September 14, 2005 letter, submit a C-141 report or remediate the August 1, 2005 spill at the area below the pit contaminated from the ripped liner, or the loading pad spill.
14. In November 2005, a remediation plan was finally submitted for the August 1, 2005 spills. It was not approved by the OCD and remediation was not completed.
15. On September 15, 2005, the OCD received verbal notification from LouRay of an unauthorized release in progress, estimated to be 350 barrels. A C-141 was subsequently received for the September 15th release and also for a September 1, 2005 release.
16. Remediation plans for the September releases were not adequate and therefore not approved by the OCD. LouRay then failed to delineate the area of contamination and failed to adequately remediate the spill sites. Further, LouRay failed to notify the OCD prior to sampling required for delineation, clean up and closure approval. These are OCD Rule 116.C and D violations.
17. As a result of the September 15, 2005 release, LouRay constructed an emergency pit northwest of the battery.
18. Emergency pit construction is permitted under OCD Rule 50.D(1). However, pursuant to OCD Rule 50.D(4), it may be "used only for the duration of the emergency. If the emergency lasts more than forty-eight (48) hours, the operator must seek approval from the OCD for continued use of the pit." LouRay sought and received OCD permission to use the pit beyond 48 hours.
19. Between August 18, 2005 and September 16, 2005 the (emergency) dyke area south of the battery was reconstructed and enlarged.

20. LouRay did not hold a permit for the construction of the original pit south of the battery. Nor did it have a permit allowing the reconstruction and enlargement of the pit. Pursuant to OCD Rule 50.D(5), an "emergency Pit" cannot be constructed as a precautionary matter to contain a spill in the event of a release, unless the operator holds a permit, issued pursuant to OCD Rule 50, or the "pit is described in a spill prevention, control and countermeasure (SPCC) plan required by the United States Environmental protection agency, all fluids are removed from the pit within 24 hours, and the operator has filed a notice of the location of the pit with the division." LouRay did not file a SPCC plan.
21. The OCD has no record of a below-grade pit at the Government "E" Well #1 being registered, as required by OCD Rule 50.
 - a. OCD Rule 50.B(3)(b) states that "[f]or each pit or below grade tank in existence [on] April 15, 2004, the operator shall submit a notice not later than April 15, 2004 indicating either that use of the pit or below grade tank is to be continued or that such pit or below grade tank will be closed."
 - b. LouRay failed to register the below grade tank, submit an approved plan with a diagram for the pit construction, or notify the OCD of the below grade tank so inspections could be conducted, as required by OCD Rule 50.
22. On March 1, 2006, the OCD issued a Notice of Violation (hereinafter, "NOV") to LouRay for violating OCD Rules 50.A, D (3), (4), (5) and 116.A and C.
23. An administrative conference between the OCD and LouRay was held on March 30, 2006. At the administrative conference, LouRay presented the following:
 - a. LouRay has been in operation only since November 2002.
 - b. August 1, 2005 was the first time it had ever had a spill. However, since the Government "E" Well #1, SWD & Tank Battery operation had a previous owner, some of the contamination is pre-existing, perhaps dating back to as far as 1985.
 - c. Any rule violation was due to ignorance, not willful violation of OCD Rules.
 - d. Since receiving the NOV, LouRay has become familiar with OCD Rules and will act in compliance with them.
 - e. LouRay submitted a remediation plan on November 8, 2005. It was denied by the OCD.
 - f. Nonetheless, LouRay contracted with an outside company to remediate the site. This company failed to contact the OCD regarding the remediation or to complete the cleanup.
 - g. LouRay stated they have completed some cleanup of the site; dirt has been removed and hauled to a disposal. To date, LouRay has spent approximately \$38,000.00 remediating the site.

- h. LouRay has now contracted with Phoenix Environmental to complete the remediation, and anticipates spending in excess of \$50,000.00 for the cleanup, including installation of a fully automated loading dock, which should eliminate the spills at the pad.

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. LouRay is a "person" subject to civil penalties for knowing and willful violations of the Oil and Gas Act and OCD Rules.
3. Pursuant to OCD Rule 12 [19.15.1.12 NMAC] LouRay was required to become familiar with OCD regulations prior to beginning operations. Further, LouRay was put on notice as to certain violations pursuant to OCD's September 14, 2005 LOV and requested to take corrective action. Therefore, LouRay knowingly and willfully violated OCD Rule 116 by failing to file written reports on at least two (2) unauthorized major releases, untimely submission of spill reports (C-141s) and remediation plans, and failure to remediate the site in compliance with an OCD approved remediation plan.
4. LouRay knowingly and willfully violated OCD Rule 50 by reconstructing and enlarging the emergency pit without the proper approval.
5. A second knowingly and willful OCD Rule 50 violation occurred when LouRay failed to register its below-grade pit at the Government "E" Well #1. (*See* OCD Rule 50.B(3)(b).) It further failed to submit an approved plan with a diagram for the pit construction, or notify the OCD of the below grade tank so inspections could be conducted.
6. LouRay again knowingly and willfully violated OCD Rule 50 by constructing the original pit south of the battery without a permit, and again when it reconstructed and enlarged the pit.

ORDER AND CIVIL PENALTY

1. The OCD hereby assesses a civil penalty of **Thirteen Thousand Dollars (\$13,000.00)** against LouRay for twice failing to report unauthorized releases, two untimely submission of spill reports (C-141s), five failures to remediate spill sites in compliance with an OCD approved remediation plan (OCD Rule 116 violations), and four (4) Rule 50 violations (failing to register a below-grade pit; no permit for the construction of a pit south of the battery and no permit to reconstruct and enlarge it; and reconstructing and enlarging the emergency pit without a permit).
2. However, taking into consideration the good faith effort of LouRay and the money already expended in remediating the site and their commitment to delineate and cleanup the spills around the loading dock and the tank battery and to rebuild the loading dock, the OCD will waive a total of Seven Thousand Dollars (\$7,000.00) of the penalty, thereby reducing the civil penalty to **Six Thousand Dollars (\$6,000.00)**, provided that:

- (a) LouRay shall prepare and submit delineation and remediation work plans for the two areas described above, i.e., the tank batter and loading dock areas, no later than May 1, 2006 and is subject to OCD review and required additional conditions;
- (b) LouRay shall delineate and remediate the two above described areas in accordance with an OCD approved plan by June 1, 2006; and
- (c) LouRay shall submit a delineation and remediation work plan for the remainder contaminated areas of the facility as follows: for the un-lined bermed containment area southwest of the battery; the salt saturated ground around the SWD and the pump areas, including addition of secondary containment for the pump; the dead pasture area south of the un-lined bermed containment area southwest of the battery, including a reseeding plan. The work plan must be submitted to the OCD no later than June 1, 2006, and is subject to OCD review and required additional conditions. The work plan shall be completed in accordance with the OCD approved plan by August 1, 2006.
- (d) LouRay shall rebuild the loading dock, putting in an automated dock, no later than October 1, 2006.

In the event that either item (a), (b) or (c) is not completed within the time specified, the OCD shall *reinstate Two Thousand Dollars (\$2,000.00)* of the conditionally waived penalty; if item (d) is not completed within the time specified, the OCD shall *reinstate One Thousand Dollars (\$1,000.00)* of the conditionally waived penalty. Specified times to complete tasks may be extended by the OCD for good cause shown by LouRay.

- 3. The Six Thousand Dollar (\$6,000.00) civil penalty shall be paid at the time LouRay executes this Order. Payment shall be made by certified check 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.
- 4. LouRay shall perform the work specified in the remediation plan submitted by them and subject to OCD approval and conditions by June 1, 2006. This time may be extended by the OCD for good cause shown by LouRay.
- 5. By signing this Order, LouRay 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);
 - 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 18th day of ^{may}~~April~~ 2006.

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

ACCEPTANCE

LOURAY OIL COMPANY, LLC hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

LOURAY OIL COMPANY, LLC

By: 

Title: OWNER

Date: 5-12-2006