

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

NMOCD-06-163<sup>7</sup>

**IN THE MATTER OF BLACK HILLS GAS  
RESOURCES, INC.**

**Respondent.**

**AGREED COMPLIANCE ORDER**

2007 MAR 1

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 rules 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 (hereinafter, "OCD") issues this Order to **BLACK HILLS GAS RESOURCES, INC.** (hereinafter "Black Hills") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

**I. FINDINGS**

- 1) The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
- 2) Black Hills is a foreign for profit Corporation doing business in New Mexico, registered with the Public Regulatory Commission Secretary of the State, under number 1232834. Black Hills is an active entity with a principal address at 999 18<sup>th</sup> Street, Suite 1700, Denver, Colorado 80202-2417. Its registered agent for service of process in New Mexico is Corporation Service Company, 125 Lincoln Avenue, Suite 223, Santa Fe, New Mexico 87501. In New Mexico, Black Hills' address is P.O. Box 249, Bloomfield, New Mexico 87413. Black Hills OGRID is 13925.
- 3) Black Hills is the operator of the Water Station #1, UL M, Sec. 27, T30N, R03W,
- 4) On October 25, 2006 Deputy Oil and Gas Inspector Brandon Powell received a phone message from Daniel Manus, on behalf of Black Hills, reporting a spill that was contained at the Black Hills Water Station #1. The spill occurred from a broken fitting on a water tank.

- 5) On October 27, 2006, Inspector Powell had a telephone conversation with Daniel Manus about the spill. Manus estimated the spill to be six hundred (600) barrels. He reported the spill location to be lined and that all the fluid was recovered immediately after the spill occurred.
- 6) On October 31, 2006, Inspector Powell inspected the site. He found approximately 1 inch of produced water and oil from the spill still inside the containment area. Two walk-through gates were open. Livestock prints were found in the mud inside the fenced area. Inspector Powell closed the gates to prevent further access by livestock. There was no sign identifying the site.
- 7) OCD Rule 116.D [19 15.3.116.D NMAC] requires that 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 corrective action plan submitted to and approved by the OCD."
- 8) Black Hills knowingly and willfully violated OCD Rule 116.D by failing to appropriately clean the site so that it did not constitute an endangerment to public health or the environment.
- 9) OCD Rule 310.B [19 15.3.310.B NMAC] requires that after "August 1, 1982, all oil tanks, tank batteries, automatic custody transfer systems, tanks used for salt water collection or disposal, and tanks used for sediment oil treatment or storage shall be identified by a sign posted on or not more than 50 feet from the tank, tank battery, or system. Such signs shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 50 feet and shall identify the name of the operator, the name of the lease(s) being served by the tank(s) or system, if any, and the location of such tank(s) or system by unit letter, section, township, and range."
- 10) Black Hills knowingly and willfully violated Rule 310.B by failing to have the required signage posted at the site.
- 11) At an Administrative Conference held on January 9, 2007 and in a letter dated January 15, 2007, Black Hills presented the following information:
  - a. The spill was caused by Black Hill's contract water hauler.
  - b. Within two weeks following the spill, Black Hills had presented a remediation plan to the OCD Aztec District Office. The plan was developed in association with the OCD and the Jicarilla Apache Environmental Protection Office.
  - c. Black Hills did immediately attempt to remove all fluids from the containment area. However, between October 27, 2006 and OCD's inspection on October 31, 2006, it had rained; this rain water filled the pit, leaving excessive liquids in the pit on the day of the OCD inspection.

- d. The tank continued to leak until October 31, 2006. Black Hills believes that fluids from the tank continued to leach out of the solids in the tank. Since that time, the inside of the tanks have been steamed cleaned.
- e. A photograph taken after the initial cleanup shows that the majority of the fluid had been removed.
- f. Black Hills stopped the cleanup, as it was waiting further instructions from non-OCD personnel as to how to proceed with the cleanup.
- g. Black Hills removed all the material on top of the existing liner, transporting it and the liner to the TNT disposal facility near Lindrith, New Mexico.
- h. The material under the pit liner was removed down to where soil samples measured less than 100 ppm for total TPH. Excavated material was disposed of off-site.
- i. The pit has been re-contoured, a new liner put in place, and clean fill placed on top of the liner.
- j. Black Hills has instituted the following measures to prevent this situation from occurring in the future:
  - 1) Access to Water Station 1 is now controlled by lock and key.
  - 2) All Black Hills personnel and subcontractors have been instructed to lock the gate at all times when not in use.
  - 3) Black Hills has ordered identifying signs for all six of its water stations.
  - 4) Water Station 1 has been re-engineered to prevent future spills.

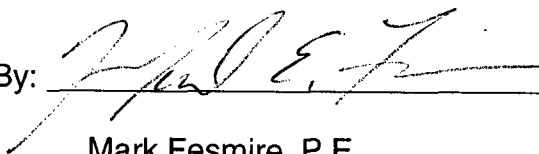
## **II. CONCLUSION**

- 1) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 2) Black Hills is a person as defined by NMSA 1978, § 70-2-33(A) that may be subject to civil penalties under NMSA 1978, §70-2-31(A).
- 3) Black Hills is subject to civil penalties under NMSA 1978, § 70-2-31(A) at Water Station #1 for knowing and willful violations of OCD Rule 116.B (failing to adequately clean up a spill so that material from the release endangered public health or the environment) and Rule 310.B (failing to identify the water station by a posted sign).

### III. ORDER AND CIVIL PENALTY

- 1) Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Black Hills totaling **One Thousand Dollars (\$1,000.00)** for one violation of Rule 116.D. Because of the actions taken by Black Hills the penalty for Rule 310.B is waved.
- 2) The **One Thousand Dollar (\$1,000.00)** civil penalty shall be paid at the time Black Hills executes this Order. Payment shall be made by 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.
- 3) By signing this Order, Black Hills expressly:
  - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b. agrees to comply with Ordering paragraph 2;
  - 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;
- 4) Nothing in this Order relieves Black Hills of its liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment. In addition, nothing in this Order relieves Black Hills of its responsibility for compliance with any other federal, state or local laws and/or regulations.

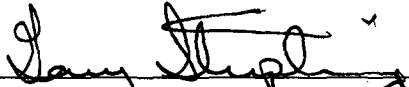
Done at Santa Fe, New Mexico, this 7<sup>th</sup> day of <sup>March</sup>~~January~~ 2007.

By:   
Mark Fesmire, P.E.  
Director, Oil Conservation Division

## **ACCEPTANCE**

**Black Hills Gas Resources, Inc.** hereby accepts the foregoing Order and agrees to all of the terms and provisions set forth in the Order.

**Black Hills Gas Resources, Inc.**

By: 

Title: Production Superintendent

Date: 2-13-07