

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

NMOCD-ACO 206

IN THE MATTER OF GLEN A. DEVILBISS.

Respondent.

AGREED COMPLIANCE ORDER

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 GLEN A. DEVILBISS. (hereinafter "DeVilbiss") directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

I. FINDINGS

- 1) OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
- 2) DeVilbiss's OGRID is 9098.
- 3) DeVilbiss is the Operator of Record for the Wild Swede #1 well, Unit Letter H, S06 T30N, R15W, API # 30-045-27007, San Juan County, New Mexico.
- 4) On May 9, 2006, OCD Deputy Oil and Gas Inspector Monica Kuehling traveled to the Glen A. DeVilbiss Wild Swede #1 well.
 - a. Inspector Kuehling observed staining on the access road.
 - b. Inspector Kuehling followed the staining from the access road to a tank fifty (50) feet from the wellhead.
 - c. Several pools of oil and water were located ten (10) to twenty (20) feet from the tank.
 - d. An open, earthen pit was observed at the site.
- 5) A subsequent OCD investigation found the following:

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- a. DeVilbiss had provided no verbal notification of the release to the OCD.
- b. On May 10, 2006, Deputy Oil and Gas Inspector Denny Foust conducted a telephone interview with R. E. Sitta Jr. an employee of DeVilbiss. During the interview, Mr. Sitta admitted to having notified Glenn DeVilbiss on May 8, 2006 regarding the release that had resulted from a disconnected tank that had been shot.
- c. A follow-up inspection by Deputy Inspector Foust and Deputy Inspector Brandon Powell confirmed that the tank had indeed been shot.
- d. On May 11, 2006, Deputy Inspector Foust telephonically advised Glen DeVilbiss to immediately address the release.
- e. A review of OCD records revealed that DeVilbiss had failed to submit a pit registration or permit for the inactive earthen pit at the Wild Swede #1 as required by OCD Rules. DeVilbiss is therefore required to immediately close the pit to OCD standards.
- f. OCD Rule 50.B(3)(b) requires that for "each pit or below-grade tank in existence on April 15, 2004 that has not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice not later than April 15, 2004 indicating either that use of the pit or below-grade tank will continue or that such pit or below grade tank will be closed. If use of a pit or below-grade tank is to be discontinued, discharge into the pit or use of the below-grade tank shall cease not later than June 30, 2005."
- g. DeVilbiss is in violation Rule 50.B(3)(b) for failing to close an unregistered and non-permitted earthen pit in a vulnerable area.
- h. OCD Rule 116.B requires that "a Major Release shall be reported by giving both immediate verbal notice and timely written notice pursuant to Subsection C, Paragraphs (1) and (2) of 19.15.3.116 NMAC." A Major Release is defined as being an unauthorized release greater than twenty-five (25) barrels, or an unauthorized release of any volume that,
 - (ii) will reach a watercourse;
 - (iii) may with reasonable probability endanger public health; or
 - (iv) results in substantial damage to property or the environment.
- i. OCD Rule 116.C(1) Requires that "immediate verbal notice" be given to the OCD District Office "within twenty-four (24) hours of discovery" of the release.

- j. Rule 116.C(2) Requires that timely written notification of the release be given to the OCD within fifteen (15) days, by completing and filing Form C-141.
 - k. Rule 116.D requires the responsible person must submit a remediation plan to the OCD and complete OCD approved corrective action for required releases.
 - l. DeVilbiss violated Rules 116.B.(1)(b)(ii) and C(1) by failing to provide immediate verbal notification of the release within 24 hours.
 - m. DeVilbiss violated OCD Rule 116.C(2) by failing to submit written notification of the release within fifteen (15) days.
 - n. DeVilbiss violated OCD rule 116.D by failing to submit a remediation plan and complete OCD-approved corrective action.
 - o. As a result of its investigation, the OCD issued Notice of Violation (3-06-33) to DeVilbiss on June 22, 2006, alleging violation of Rule 116.B.1. and 116.C.
- 6) At the Administrative Conference on this matter conducted on August 23, 2006, DeVilbiss presented the following additional information:
- a) He had a man go to the location and clean up the area; he had no way to know it was not satisfactory to the OCD.
 - b) He does not think it is right to be required to clean up the mess that was caused by vandalism and also be fined.

II. CONCLUSION



- 1) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 2) DeVilbiss 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) DeVilbiss is subject to civil penalties under NMSA 1978, § 70-2-31(A) at the Wild Swede #1 for knowing and willful violation of OCD Rules 116.B, 116.C.(2) and 116.D.

III. ORDER AND CIVIL PENALTY

Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against DeVilbiss totaling **One Thousand Dollars (\$1,000.00)**. This penalty is based on violations of OCD rules 116.B, 116.C.(2) and 116.D.

- 1) The civil penalty shall be paid at the time DeVilbiss 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.
- 2) Complete clean up of the oil release from vandalism by October 20, 2007.
- 3) DeVilbiss will close the pit to meet OCD standards before November 20, 2007.
- 4) DeVilbiss will submit a C-144 within 60 days after completion of closure.
- 5) By signing this Order, DeVilbiss expressly:
 - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b. agrees to comply with Ordering paragraph 1, 2, 3 and 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;
 - 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;
- 5) Nothing in this Order relieves DeVilbiss 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 DeVilbiss of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico, this 8th day of ~~August~~ November 2007.

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

ACCEPTANCE

GLEN A. DEVILBISS. hereby accepts the foregoing Order, and
agrees to all of the terms and provisions set forth in the Order.

GLEN A. DEVILBISS.

By:

Glen A. Devilbiss

Title:

Owner

Date:

10-31-07