

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

ACO 07- *212*

**IN THE MATTER OF PHOENIX HYDROCARBON OPERATING CORP.,
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"), 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 ("OCD") issues this Order to Phoenix Hydrocarbon Operating Corp. ("Phoenix") directing compliance with the Act and OCD rules, and assessing a penalty for violations of the Act and OCD rules.

I. FINDINGS & DETERMINATIONS BY THE OCD

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Phoenix is a corporation operating wells in New Mexico under OGRID 188483.
3. Phoenix is the Operator of Record of the New Mexico BB State #002 well, API No. 30-025-21475, located at Unit Letter J, Section 14, Township 10S, Range 32E, Lea County, New Mexico ("well").
4. On March 26, 2007, the OCD received a complaint regarding a spill at the well. Environmental Engineer Larry Johnson inspected the site that day and saw oil and water standing inside the dike, with spray and puddles outside the fence surrounding the well. Cattle and wildlife were in the area. Mr. Johnson called Alan Standifer of Phoenix regarding the spill. Phyllis Gunter of Phoenix called back and stated that the spill had been reported on March 23, 2007.
5. On March 27, 2007, the OCD received a Form C-141 release notification from Phoenix regarding the spill, dated March 23, 2007. Phoenix reported that on March 23, 2007 it discovered a release of 25 barrels of crude oil due to a tank overflow. It reported recovering 18 barrels. Phoenix stated that it would scrape up a small area outside the berm and bring in new soil; remediate the area inside the berm using peat sorb material; and treat the area outside the tank battery with soapy fresh water.

6. Environmental Engineer Larry Johnson approved the initial C-141 on June 5, 2007, with the condition that a final C-141 needed to be submitted by August 5, 2007. A final C-141 is used to report completed remediation work.
7. Deputy Inspector Maxey Brown inspected the Tank Battery on June 20, 2007 and August 6, 2007. On both occasions he found that the site had not been remediated. It appeared that contaminated soil had been used to build the dike around the site. He also found a deteriorated tank, separator and heater-treater at the site.
8. On August 7, 2007, two days after the final C-141 was due, the OCD issued a letter of violation to Phoenix based on Mr. Brown's inspections, instructing Phoenix to remove the soil contamination outside the fence using vertical and horizontal delineation to determine the extent of the affected area, and to send a report and work plan to Larry Johnson for approval. The letter also instructed Phoenix to remove idle or junk equipment from the tank battery. The letter required corrective action by September 9, 2007, and instructed Phoenix to contact District Supervisor Chris Williams if it needed additional time or desired an administrative conference.
9. On August 14, 2007, the OCD received a C-141 from Phoenix, marked "Final Report" and dated August 13, 2007. Although the C-141 was marked "Final Report" it described a cleanup plan and indicated "Cleanup action to began (sic) upon approval by Oil Conservation Commission." The plan addressed only contamination outside the battery, and did not include soil testing.
10. The OCD denied the C-141 "Final Report" stating that a final report could not be approved until work is completed and documentation submitted. The OCD also stated that soil testing was required and that the tests should be submitted by September 24, 2007, noting that all the work should have been completed by August 5, 2007.
11. Rule 116.D [19.15.3.116 NMAC] provides:

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 remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with Section 19 of 19.15.1 NMAC.
12. NMSA 1978, §70-2-33(A) defines "person" for purposes of the Act to include corporations.
13. NMSA 1978, §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 any rule adopted pursuant to the Act.
14. As a result of its investigation, the OCD issued Notice of Violation (1-07-07) to Phoenix, alleging a knowing and willful violation OCD Rule 116.D.

II. STATEMENTS & ADDITIONAL INFORMATION PROVIDED BY THE OPERATOR, PHOENIX HYDROCARBON OPERATING CORP.

Phoenix provided the following supplemental information and statements at the October 24, 2007 Administrative Conference on the Notice of Violation:

1. When Phoenix became aware of the release, it performed preliminary cleanup work.
2. Phoenix was waiting for approval of its cleanup proposal, and did not realize that it needed to look on the internet for the approval.
3. Phoenix has now removed the idle equipment from the site, obtained soil samples and is working with a contractor to submit a formal cleanup proposal.

III. CONCLUSIONS OF THE OCD

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Phoenix 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. Phoenix is subject to civil penalties under NMSA 1978, §70-2-31(A) at the New Mexico State BB #002 for the violation of OCD Rule 116.D.

IV. ORDER & CIVIL PENALTY ASSESSMENT

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Phoenix totaling \$1,000 for the violation of OCD Rule 116.D.
2. In addition, if it has not already done so, Phoenix is instructed to submit a cleanup plan by January 30, 2008 for approval by the OCD, and complete the cleanup described in an approved plan no later than June 30, 2008.
3. The civil penalty shall be paid at the time Phoenix 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.
4. By signing this Order, Phoenix expressly:
 - a. acknowledges the accuracy of the above "Findings & Determinations" and "Conclusions" and recognizes the authority of the OCD to issue the "Order & Civil Penalty Assessment";

- b. agrees to comply with the Order, specifically as articulated in Section "IV" Paragraphs 2 and 3, above;
- 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 Phoenix 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 Phoenix of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 13th day of December 2007.

By: _____

Mark Fesmire, P.E.

Director, Oil Conservation Division

ACCEPTANCE

Phoenix Hydrocarbon Operating Corp. (OGRID No. 188483), Operator of New Mexico BB State #002, API 30-025-21475, hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

**PHOENIX HYDROCARBON
OPERATING CORP.**

By: _____

Title: _____

Date: _____