

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

**ACO No. 256**

**IN THE MATTER OF BUCKEYE DISPOSAL, L.L.C.,**

**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 regulations 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 Buckeye Disposal, L.L.C. (hereinafter, "Operator") 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. Operator is a corporation doing business in New Mexico.
3. Operator operates wells within New Mexico under OGRID 222759.
4. Operator's address of record with OCD is P.O. Box 2724, Lubbock, TX 79408.
5. Operator is operator of record of the following well:
  - **New Mexico DU State No. 001; 30-015-24531; F-36-22S-27E**
6. OCD Rule 19.15.9.704(A)(5) NMAC ("Rule 704") states, "The injection well operator shall advise the division of the date and time any initial, five-year or special tests are to be commenced in order that such tests may be witnessed."
7. On October 14, 2008, OCD Deputy Oil and Gas Inspector Richard Inge sent a letter to Operator at Operator's address of record with OCD to inform Operator that the New Mexico DU State No. 001 was due for a Bradenhead test in November 2008 and that Operator was to contact Deputy Inspector Inge to schedule the test.
8. Deputy Inspector Inge received no response from Operator. As a result, on December 1, 2008, Deputy Inspector Inge sent Operator a letter of violation (LOV No. 02-08-171) which required Operator to take corrective action by December 15, 2008. The letter was sent to the same address as the October 14, 2008 letter. The

letter informed Operator that it would have to shut-in the well if it did not contact OCD by the corrective action due date. Lou Ann Bergstein signed for the letter which was sent certified mail (7007-2560-0002-2222-8339).

9. Deputy Inspector Inge received no response from Operator. As a result, on December 31, 2008, OCD issued Notice of Violation 02-08-24, alleging that Operator knowingly and willfully violated OCD Rule 704(A)(5) by not contacting OCD to schedule a Bradenhead test for the New Mexico DU State No. 001 after being advised to do so.
10. On January 20, 2009, an administrative conference was held on the Notice of Violation at the OCD's Artesia District Office. Tim Gum, Gerry Guye and Richard Inge were present in Artesia. James Millet, Operator's Operation Manager, participated in the conference by telephone. Daniel Sanchez, OCD Enforcement & Compliance Manager, and Sonny Swazo, OCD Assistant General Counsel, participated in the conference by telephone.
11. The following facts were presented at the conference:
  - Mr. Millet said he is not sure what happened to the October 14, 2008 letter but he did not receive it.
  - Mr. Millet said Operator's address has not changed during the time the letters were sent.
  - Lou Ann Bergstein signed for the letter of violation on December 5, 2008.
  - Mr. Millet said he received the letter of violation on December 15, 2008.
  - Mr. Millet said he was out of town the following week.
  - None of Operator's employees tried to contact OCD during December 5, 2008 to December 15, 2008.
  - Mr. Millet said he read the letter of violation on December 30, 2008, and he received the notice of violation around this time.
  - Mr. Millet said he contacted Tim Gum on January 7, 2009 to schedule the test.
  - The well underwent and passed a Bradenhead test on January 16, 2009.

## **II. CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Operator 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. NMSA 1978, Section 70-2-31(A) states, "Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate offense."
4. Operator is subject to civil penalties under NMSA 1978, § 70-2-31(A) for knowing and willful violations of OCD Rule 704.

### III. ORDER & CIVIL PENALTY ASSESSMENT

1. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty against Operator totaling **One Thousand Dollars (\$1,000.00)**.
2. Operator shall pay the **One Thousand Dollars (\$1,000.00)** civil penalty upon its execution of this Order. 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. By signing this Order, Operator expressly:
  - a. acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b. agrees to comply with the Order;
  - 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;
6. Nothing in this Order relieves Operator 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 Operator of its responsibility for compliance with any other federal, state or local laws and/or regulations.

Done at Santa Fe, New Mexico this 6<sup>th</sup> day of February 2008.<sup>9</sup>

By: \_\_\_\_\_


Mark Fesmire, P.E.

Director, Oil Conservation Division

### ACCEPTANCE

Buckeye Disposal, L.L.C., hereby accepts the foregoing Order, and agrees to all of the terms and provisions as set forth in the Order.

**Buckeye Disposal, L.L.C.**

By:   
Title: Operations Manager  
Date: 2-2-09