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**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,
SURFACE WATER QUALITY BUREAU,**

Complainant,

v.

No. SWQB 20 - 16 (ACO)

**MATADOR PRODUCTION COMPANY and
SAN MATEO MIDSTREAM, LLC,**

Respondents.

**ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE
AND ASSESSING A CIVIL PENALTY**

The Water Protection Division (“Division”) of the New Mexico Environment Department (“Department”) issues this Administrative Compliance Order (“Order”) to Matador Production Company and San Mateo Midstream, LLC (“Respondents”) on behalf of the Department’s Surface Water Quality Bureau (“Bureau”). This Order is issued pursuant to Section 74-1-10 of the Environmental Improvement Act (“Act”) and the Interstate and Intrastate Standards for Surface Water (“Regulations”) found at 20.6.4 NMAC. The Secretary of the Department has delegated the authority to issue this Order to the Director of the Division.

FINDINGS OF FACT

1. Respondent Matador Production Company is an oil and gas exploration and production company, with its headquarters in Dallas County, Texas. Respondent San Mateo Midstream, LLC is a joint venture formed by Matador Resources Company and Five Point Capital Partners to operate and grow midstream assets in the Delaware Basin.

2. The Department is an executive agency of the State of New Mexico and is authorized to enforce the provisions of the Act and the Regulations.

3. Respondents were performing work at a location approximately 1/2 mile due west of Hwy 285, equidistant between Loving and Malaga, New Mexico at coordinates 32.240150 North Latitude, -104.089572 East Longitude (“Discharge Site,” or “Site”).

4. Beginning in February 2020 Respondents were drilling a borehole and installing a pipeline approximately 37 feet below ground surface, under the Black River at the Site.

5. The Bureau received preliminary notification on February 25, 2020 from Vertex Resource Group, acting on Respondents’ behalf, regarding the release of a drilling fluid into the Black River from the pipeline construction activity at the Site.

6. The Department is in possession of satellite imagery that appears to show the origination of the spill occurred on or around February 10, 2020, and that operations continued until February 25, 2020, when Vertex, on behalf of the Respondents, verbally reported the incident to the Department and other state agencies.

7. The drilling fluid consisted of bentonite clay mixed with soda ash (sodium carbonate, pH 11.3) and consequently had a high pH outside of the normal range for streams.

8. Release of the drilling fluid into the Black River caused violations of the State of New Mexico Water Quality Standards.

9. Surface water quality standards and protection regulations in the New Mexico Administrative Code (“NMAC”) adopted pursuant to the Water Quality Act (Chapter 74, Article 6, New Mexico Statutes Annotated (“NMSA”) 1978) apply at all times.

10. Applicable standards include, but are not limited to:

20.6.4.13 GENERAL CRITERIA: General criteria are established to sustain and protect existing or attainable uses of surface waters of the

state... Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

A. Bottom deposits and suspended or settleable solids:

(1) Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom.

(2) Suspended or settleable solids from other than natural causes shall not be present in surface waters of the state in quantities that damage or impair the normal growth, function or reproduction of aquatic life or adversely affect other designated uses...

J. Turbidity: Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water. Activities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than twenty percent when the background turbidity is more than 50 NTU.

11. The Pecos River Basin, as described in 20.6.4.202 NMAC, includes the main stem of the Pecos River from the mouth of the Black River upstream to lower Tansil Dam, including perennial reaches of the Black River, the Delaware River and Blue Spring.

12. The Black River is a perennial water of the state subject to 20.6.4.202 NMAC with the designated uses of industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

13. Observations made by New Mexico Department of Game and Fish personnel on February 25, 2020 indicated discolored water and a tan-colored, pudding-like mixture approximately six inches thick covering the bottom of the stream immediately downstream of the Site. Attachment1. Substantial visible contrasts with the natural appearance of the Black River

also occurred downstream of the Site. Attachment 2.

14. Observations recorded by New Mexico Department of Game and Fish showed that immediately downstream of the discharge location, no benthic organisms were recorded due to the thick layer of bentonite in place on the river bottom.

15. Historic water quality data collected by the Bureau in the Black River in 2013 indicates a median background (upstream) turbidity level of 12.2 nephelometric turbidity units (“NTU”). Data from Respondent on February 27, 2020 indicated a turbidity value of 126.10 NTU 100 yards downstream of the Site. Turbidity data from the day of discharge is not available.

CONCLUSIONS OF LAW

16. The Department has jurisdiction over Respondents pursuant to the Act and the Regulations.

17. Violations of state Water Quality Standards can lead to penalties under Section 74-6-10.1 B of the New Mexico Water Quality Act, which states, "Any person who violates any provision of the Water Quality Act [Chapter 74, Article 6 NMSA 1978] other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation."

18. Respondents are in violation of Section 20.6.4.13(A) and 20.6.4.13(J) NMAC and are jointly and severally liable for these violations.

COMPLIANCE

19. Consistent with requirements communicated to the Respondent from the Oil Conservation Division of the Energy, Minerals, and Natural Resources Department (“OCD”), the Respondent must take the following actions immediately:

- a. Limit access to the affected area as necessary to protect human health and the environment.
- b. Contain the released materials to prevent further threat to public health and the environment.
- c. Continue regular water quality monitoring to ensure that the released materials (bentonite drilling mud) are effectively contained at a frequency established by the OCD.
- d. Provide the Bureau with turbidity data, analytical results and any additional sampling plans.
- e. Commence remediation as soon as possible after approval of the remediation plan required in Paragraph 20(c) of this Order.
- f. Recover the released materials (bentonite drilling mud) and dispose of them in a proper manner.
- g. Collect water quality samples upstream and downstream for analysis after remediation and report these results to the Bureau within 7 days of sampling.

20. If the Respondent intends to resume the pipeline construction activities, the Respondent shall first submit a Notice of Intent (“NOI”) to the Bureau as specified in 20.6.2.1201 NMAC. The NOI must include the following:

- a. A detailed description of the activity to be conducted, including expected duration of the pipeline construction activity and quantity of material (bentonite drilling mud) to be potentially discharged,
- b. Ongoing monitoring and water quality surveillance that will be conducted while the activities are ongoing,

c. A specific remediation plan to address the bentonite clay that was deposited in the Black River, as well as any additional drilling mud/bentonite clay materials that may be discharged into the Black River as a result of completing pipeline construction activities at the Site. A remediation plan shall include:

1. A description of the measures taken to manage the discharge during completion of the pipeline construction project, specifically the type of impermeable material to be used in the sandbag structure to capture the bentonite drilling mud and capacity/size of the vacuum pump to ensure it will be able to siphon the materials out of the river;

2. A description of the oversight measures to monitor the activities and decision points where on-site staff, in coordination with OCD and/or Department staff, will shut down or constrain the drilling operation, for example, how to determine when “significant bubbling” is occurring or water quality standards are violated;

3. A description of specific measures taken to clean up any remaining bentonite materials left in the river, not just the material caught within the sandbag structure, including a description of the on-site storage container to be used to collect the vacuumed materials and identification of the off-site disposal facility;

4. A description of the types of materials that eventually will be delivered through the pipe; and,

5. The Respondents’ monitoring plan for the Black River after the remediation is complete. For six months after remediation is complete, the Respondents must monitor monthly for the following water quality parameters: pH, dissolved oxygen, chlorides, sulfates, BTEX, total suspended solids, and total dissolved solids. Based on information provided to the Department in the NOI pursuant to Paragraph 20.c.4 of this Order, the Department may

require the Respondents to monitor for other constituents expected to be present in the materials being transported through the pipeline after the conclusion of remediation. Sample collection and analysis must be done in accordance with approved methods in 20.6.4.14 NMAC.

21. The Respondents shall not resume efforts to pull pipeline through the completed casing until the NOI described above and included remediation plan are approved by the Department.

22. The Respondents shall clean-up the bentonite drilling mud in the Black River until it is effectively gone. The Respondents will use turbidity measurements five to 20 feet upstream of the Site and five to 20 feet downstream of the Site to determine when the bentonite drilling mud is effectively gone. Pursuant to 20.6.4.13(J) NMAC, “[a]ctivities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than twenty percent when the background turbidity is more than 50 NTU.”

23. The Respondents shall copy the Department on OCD reports related to:

- a. analytical results of the water samples;
- b. the lateral extent of the area affected by the release;
- c. corrective actions completed or in progress; and
- d. the nature of actions taken or to be taken.

24. Within 10 days from the receipt of this Order, Respondents shall submit their complete NOI as described above.

25. Within 90 days of receipt of this Order, Respondents shall complete remediation of the Site in accordance with the remediation plan approved by the Department.

26. NMSA 1978, Section 74-6-10(F) provides for a penalty of \$25,000 per day for

each instance of failure to comply with an administrative compliance order issued by the Department.

CIVIL PENALTY

27. NMSA 1978, § 74-1-10 authorizes the Secretary to issue a compliance order assessing a civil penalty for a violation of the Regulations, and the Secretary has delegated this authority to the Director of the Division.

28. NMSA 1978, Section 74-1-10(C) authorizes the Secretary to assess a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of the Regulations.

29. The Division assesses a total civil penalty in this matter against Respondent of **Twenty Thousand Dollars** (\$20,000) for the above violations.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

30. You may request a hearing by filing a written request for a public hearing with the hearing clerk no later than thirty (30) days after receipt of this Order. The request for hearing shall include an Answer:

a. Admitting or denying each alleged finding of fact. Any alleged finding of fact which is not specifically denied shall be deemed to be admitted. You may assert that you have insufficient knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;

b. Asserting any affirmative defense upon which you intend to rely. Any affirmative defense not asserted in the Answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed to be waived;

c. Signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and

d. Attaching a copy of this Order.

31. This Order shall become final upon your receipt of the Order unless you file a Request for Hearing and Answer as set forth above. You may file a Request for Hearing and Answer at the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

32. The public hearing shall be governed by the Department's Adjudicatory Procedures, 20.1.5 NMAC (copy attached as Exhibit A).

SETTLEMENT CONFERENCE

33. You may confer with the Division regarding settlement at any time, but a settlement conference or request for a settlement conference shall not extend or waive the deadline for filing a Request for Hearing or Answer. You may appear at a settlement conference either *pro se* or through legal counsel. The Director of the Division shall execute any settlement as a Stipulated Final Order. A Stipulated Final Order shall resolve all issues raised in this Order, shall bind all parties to this Order, and shall not be appealable. To confer regarding settlement, contact:

Andrew P. Knight, Esq.
Office of General Counsel
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Telephone: (505) 222-9540

TERMINATION

34. This Order shall terminate upon the approval of the Director of the Division of a

Stipulated Final Order.

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION**

BY: 

Rebecca Roose, Director

DATE: 3/20/20