



MODRALL SPERLING

L A W Y E R S

May 15, 2015

VIA HAND DELIVERY

Pam Castaneda, Administrator
New Mexico Environment Department
1190 S. St. Francis Drive, S-2102
P.O. Box 5469
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WQCC 15-05 (CO)

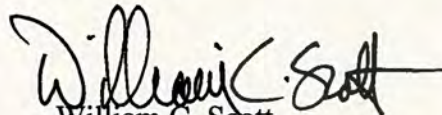
Re: In the Matter of Enterprise Products Operating, LLC, WQA-
OCD-CO-2015-1

Dear Ms. Castaneda:

Accompanying this letter is the original and one copy of Enterprise Products Operating, LLC's Request for Compliance Order hearing and Answer to Administrative Compliance Order in this case. I would appreciate it if you would file the original and provide a file-stamped copy to the courier delivering this package.

Thank you for your assistance.

Sincerely,


William C. Scott

WCS/bm

Enclosures

Cc w/encl.: Allison Marks

Modrall Sperling
Roehl Harris & Sisk
P.A.

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

WQCC 15-05(CO)
~~WQA-OCB-CO-2015-1~~



**IN THE MATTER OF Enterprise Products Operating, LLC,
a Texas limited liability company.**

**ENTERPRISE PRODUCTS OPERATING LLC'S REQUEST FOR
COMPLIANCE ORDER HEARING AND ANSWER TO
ADMINISTRATIVE COMPLIANCE ORDER**

Comes now Respondent, Enterprise Products Operating, LLC ("Enterprise"), pursuant to Water Quality Control Commission ("WQCC") Rule 20.1.3.19(A) and Section V of the Administrative Compliance Order ("ACO") dated April 17, 2015, and received by Enterprise on April 21, 2015, and hereby files this Request for Compliance Order Hearing and Answer to the ACO as follows:

I. Request for Compliance Order Hearing.

Enterprise hereby requests a Compliance Order Hearing pursuant to Rule 20.1.3.19(B). Enterprise further requests a waiver of the 90 day deadline to conduct the hearing in this matter.

II. Answer to Factual Assertions of the ACO.

1. Enterprise admits the assertions of paragraph 1 of the ACO.
2. Enterprise admits the assertions of paragraph 2 of the ACO.
3. Enterprise admits the assertions of paragraph 3 of the ACO.
4. Enterprise admits the assertions of paragraph 4 of the ACO.
5. Enterprise admits the assertions of paragraph 5 of the ACO.
6. Enterprise admits the assertions of paragraph 6 of the ACO.
7. Enterprise admits the assertions of paragraph 7 of the ACO.

8. Enterprise denies the assertions of paragraph 8 of the ACO that it is engaged in the business of exploring for natural gas and natural gas liquids. Enterprise admits the assertions of paragraph 8 of the ACO that it is engaged in the business of transporting natural gas and natural gas liquids in New Mexico.

9. Enterprise admits the assertions of paragraph 9 of the ACO.

10. Enterprise admits the assertions of paragraph 10 of the ACO.

11. Enterprise has no knowledge as to the assertions of paragraph 11 of the ACO and therefore denies the same.

12. Enterprise has no knowledge as to the assertions of paragraph 12 of the ACO and therefore denies the same.

13. Enterprise has no knowledge as to the assertions of paragraph 13 of the ACO and therefore denies the same.

14. Enterprise has no knowledge as to the assertions of paragraph 14 of the ACO and therefore denies the same.

15. Enterprise has no knowledge as to the assertions of paragraph 15 of the ACO and therefore denies the same.

16. Enterprise has no knowledge as to the assertions of paragraph 16 of the ACO and therefore denies the same.

17. Enterprise admits the assertions of paragraph 17 of the ACO.

18. Enterprise admits the assertions of paragraph 18 of the ACO.

19. Enterprise has no knowledge as to the assertions of paragraph 19 of the ACO and therefore denies the same.

20. Enterprise has no knowledge as to the assertions of paragraph 20 of the ACO and therefore denies the same.

21. Enterprise admits the assertions of paragraph 21 of the ACO.

22. Enterprise denies the assertions of paragraph 22 of the ACO, and clarifies that some of the hydrostatic test water discharged by the trucking services was applied within the pipeline right of way for dust abatement and irrigation of reclaimed areas based on the advice of Enterprise's consultant. A portion of the water was discharged by the trucking services on County Road 57A. Enterprise denies that the areas on which water was discharged are "illegal discharge areas."

23. Enterprise denies the assertions of paragraph 23 of the ACO.

24. With respect to paragraph 24, Enterprise denies that any water was being discharged from the pipeline. Enterprise has no knowledge as to the remaining assertions of paragraph 24 of the ACO and therefore denies the same.

25. Enterprise has no knowledge as to the assertions of paragraph 25 of the ACO and therefore denies the same.

26. Enterprise admits the assertions of paragraph 26 of the ACO.

27. Enterprise denies the assertions of paragraph 27 of the ACO.

28. Enterprise denies the assertions of paragraph 28 of the ACO as overly broad, and clarifies that paragraph 21 of the HIP-122 permit requires Enterprise to "implement best management practices to prevent unauthorized releases during the transfer/collection activities."

29. Enterprise admits the assertions of paragraph 29 of the ACO.

30. Enterprise admits the assertions of paragraph 30 of the ACO.

31. Enterprise denies the assertions of paragraph 31 of the ACO.

32. Enterprise denies the assertions of paragraph 32 of the ACO.

33. Enterprise admits the assertions of paragraph 33 of the ACO.

34. Enterprise has no knowledge as to the assertions of paragraph 34 of the ACO and therefore denies the same.

35. Enterprise admits that Condition 6 of the HIP-122 permit required it to submit test results of the hydrostatic test water to the OCD for review and approval or disapproval prior to discharge and that Enterprise did not submit the test results. Enterprise denies the remaining assertions of paragraph 35 of the ACO.

36. Enterprise admits the assertions of paragraph 36 of the ACO.

37. Enterprise denies the assertions of paragraph 37 of the ACO.

38. Enterprise denies the assertions of paragraph 38 of the ACO.

39. Enterprise denies the assertions of paragraph 39 of the ACO, and clarifies that Condition 15 of the HIP-122 permit required Enterprise to “have personnel on-site to oversee and control the transfer and utilize collection pans placed below the collection points to prevent an unauthorized release.”

40. Enterprise denies the assertions of paragraph 40 of the ACO.

41. Enterprise denies the assertions of paragraph 41 of the ACO.

42. Enterprise denies the assertions of paragraph 42 of the ACO.

43. Enterprise denies the assertions of paragraph 43 of the ACO.

44. Enterprise admits that OCD issued a Notice of Violation (“NOV”) on November 26, 2013, and has no knowledge as to the remaining assertions of paragraph 44 of the ACO and therefore denies the same.

45. Enterprise admits that paragraph 45 of the ACO accurately quotes the cited provisions of the NOV.

46. Enterprise admits the assertions of paragraph 46 of the ACO.

47. Enterprise admits the assertions of paragraph 47 of the ACO.

48. Enterprise admits the assertions of paragraph 48 of the ACO.

49. Enterprise admits the assertions of paragraph 49 of the ACO.

50. Enterprise admits the assertions of paragraph 50 of the ACO.

51. Enterprise has no knowledge as to the assertions of paragraph 51 of the ACO and therefore denies the same.

52. Enterprise has no knowledge as to the assertions of paragraph 52 of the ACO and therefore denies the same.

53. Enterprise has no knowledge as to the assertions of paragraph 53 of the ACO and therefore denies the same.

54. Enterprise has no knowledge as to the assertions of paragraph 54 of the ACO and therefore denies the same.

55. Enterprise has no knowledge as to the assertions of paragraph 55 of the ACO and therefore denies the same.

56. Enterprise denies the assertions of paragraph 56 of the ACO.

57. Enterprise has no knowledge as to the assertions of paragraph 57 of the ACO and therefore denies the same.

58. Enterprise admits that it submitted a notice of intent to discharge on October 7, 2013, but denies the remaining assertions of paragraph 58 of the ACO. Enterprise states that the amount of water the notice of intent explained would be used in the hydrostatic test was “[u]p to

300,000 gallons” and that the location of discharge (not the location of the pipeline) stated in the notice was approximately eight miles southeast of Loving, New Mexico.

59. Enterprise admits the assertions of paragraph 59 of the ACO.

60. Enterprise admits the assertions of paragraph 60 of the ACO.

61. Enterprise admits the assertions of paragraph 61 of the ACO.

62. Enterprise admits the assertions of paragraph 62 of the ACO.

63. Enterprise admits the assertions of paragraph 63 of the ACO.

64. Enterprise denies the assertions of paragraph 64 of the ACO, and states that hydrostatic testing of the Salt Lake project was completed on approximately March 22, 2014.

65. Enterprise admits the assertions of paragraph 65 of the ACO.

66. Enterprise admits the assertions of paragraph 66 of the ACO.

67. With respect to the assertions of paragraph 67 of the ACO, Enterprise admits that the hydrostatic test water was not acquired from the City of Carlsbad, New Mexico, but denies that this was a violation of HIP-126.

68. Enterprise admits the assertions of paragraph 68 of the ACO.

69. Enterprise admits the assertions of paragraph 69 of the ACO.

70. Enterprise admits the assertions of paragraph 70 of the ACO.

71. Enterprise admits the assertions of paragraph 71 of the ACO.

72. Enterprise admits the assertions of paragraph 72 of the ACO, but clarifies that RW Trucking LLC was hired by Enterprise’s contractor, D&D Pipeline Construction, Inc. Enterprise denies that it hired RW Trucking LLC for any purpose.

73. Enterprise denies the assertions of paragraph 73 of the ACO, and reiterates that RW Trucking LLC was not hired by Enterprise and that Enterprise did not direct the work of RW Trucking LLC.

74. Enterprise admits the assertions of paragraph 74 of the ACO.

75. Enterprise denies the assertions of paragraph 75 of the ACO, and clarifies that Matt Tschirhart is an independent contractor.

76. Enterprise denies that it discharged, or was responsible for the discharge of, any hydrostatic test water along Monsanto Road, but admits that water was discharged in such location as asserted in paragraph 76 of the ACO.

77. Enterprise has no knowledge as to the assertions of paragraph 77 of the ACO and therefore denies the same.

78. Enterprise denies the assertions of paragraph 78 of the ACO.

79. Enterprise admits that the Monsanto Discharge was not approved by OCD but denies the remaining assertions of paragraph 79 of the ACO.

80. Enterprise admits the assertions of paragraph 80 of the ACO.

81. Enterprise admits the assertions of paragraph 81 of the ACO.

82. Enterprise denies the assertions of paragraph 82 of the ACO.

83. Enterprise has no knowledge as to the assertions of paragraph 83 of the ACO and therefore denies the same.

84. Enterprise has no knowledge as to the assertions of paragraph 84 of the ACO and therefore denies the same.

85. Enterprise admits that Condition 12 required Enterprise to provide OCD with receipts from a saltwater disposal well, but denies the remaining assertions of paragraph 85 of the ACO.

86. Enterprise denies the assertions of paragraph 86 of the ACO.

87. Enterprise denies the assertions of paragraph 87 of the ACO.

88. Enterprise denies the assertions of paragraph 88 of the ACO.

89. Enterprise denies the assertions of paragraph 89 of the ACO, and clarifies that Condition 13 of HIP-126 states, "Enterprise will have personnel on-site to oversee and control the transfer and utilize collection pans placed below the collection points to prevent an unauthorized release."

90. Enterprise denies the assertions of paragraph 90 of the ACO.

91. Enterprise denies the assertions of paragraph 91 of the ACO.

92. Enterprise denies the assertions of paragraph 92 of the ACO.

93. Enterprise denies the assertions of paragraph 93 of the ACO.

94. Enterprise denies the assertions of paragraph 94 of the ACO.

95. Enterprise denies the assertions of paragraph 95 of the ACO.

96. Enterprise denies the assertions of paragraph 96 of the ACO.

97. Enterprise admits the assertions of paragraph 97 of the ACO.

98. Enterprise admits the assertions of paragraph 98 of the ACO.

99. Enterprise admits the assertions of paragraph 99 of the ACO.

100. Enterprise admits the assertions of paragraph 100 of the ACO.

101. Enterprise admits the assertions of paragraph 101 of the ACO.

102. Enterprise admits the assertions of paragraph 102 of the ACO.

- 103. Enterprise admits the assertions of paragraph 103 of the ACO.
- 104. Enterprise admits the assertions of paragraph 104 of the ACO.
- 105. Enterprise admits the assertions of paragraph 105 of the ACO.
- 106. Enterprise denies the assertions of paragraph 106 of the ACO because it is overly broad, but admits that the failure to provide trucking tickets within the designated time frame was a violation of HIP-126.
- 107. Enterprise denies the assertions of paragraph 107 of the ACO.
- 108. Enterprise denies the assertions of paragraph 108 of the ACO.
- 109. Enterprise admits that paragraph 109 of the ACO accurately quotes the language of WQCC Rule 20.6.2.1203(A)(4), and states the WQCC Rule speaks for itself.
- 110. Enterprise admits that paragraph 110 of the ACO accurately quotes the language of OCD Rule 19.15.59.10(A), (B), and states the OCD Rule speaks for itself.
- 111. Enterprise admits that paragraph 111 of the ACO accurately quotes the language of WQCC Rule 20.6.2.3104, and states the WQCC Rule speaks for itself.
- 112. Enterprise admits that paragraph 112 of the ACO accurately quotes the language of WQCC Rule 20.6.2.1203(A)(1), and states the WQCC Rule speaks for itself.

III. Response to Alleged Violations.

- 113. Enterprise denies the assertions of paragraph 113 of the ACO.
- 114. Enterprise denies the assertions of paragraph 114 of the ACO.
- 115. Enterprise denies the assertion of paragraph 115 of the ACO.
- 116. Enterprise denies the assertions of paragraph 116 of the ACO.
- 117. Enterprise denies the assertions of paragraph 117 of the ACO.
- 118. Enterprise denies the assertions of paragraph 118 of the ACO.

119. Enterprise denies every assertion contained in the ACO not specifically admitted herein.

IV. Affirmative Defenses.

First Affirmative Defense

The civil penalty contained in paragraph 122 of the ACO exceeds the OCD's statutory authority, is arbitrary and capricious, and is otherwise not in accordance with law.

Second Affirmative Defense

The civil penalty contained in paragraph 122 of the ACO is punitive.

Third Affirmative Defense

Enterprise is not responsible for the unauthorized discharges of its subcontractors based on principles of agency law.

Fourth Affirmative Defense

Enterprise is not responsible for the unauthorized actions of independent contractors.

Fifth Affirmative Defense

Enforcement action under HIP-126 is barred because no notice of violation was ever issued with respect to HIP-126.

Sixth Affirmative Defense

The water discharged is exempt from the WQCC's discharge permit requirements.

Seventh Affirmative Defense

The civil penalty is excessive and violates Enterprise's due process of law.

Eighth Affirmative Defense

Rule 20.6.2.1201 does not require a notice of intent to discharge to identify the source of hydrostatic test water.

Ninth Affirmative Defense

Enterprise has complied with all remediation requirements imposed on it by the OCD and no further remediation of the areas in which hydrostatic waste water was discharged is necessary.

Tenth Affirmative Defense

The alleged regulatory and/or permit violations are not severe enough to support the penalty OCD has proposed.

Eleventh Affirmative Defense

OCD is unable to establish a prima facie case that the violations asserted in the ACO occurred or that the proposed civil penalty is appropriate.

V. A Copy of the ACO is Attached.

A copy of the ACO is attached hereto as Exhibit A.

WHEREFORE, Enterprise respectfully requests the WQCC grant the following relief:

1. Grant Enterprise a Compliance Order Hearing pursuant to the Water Quality Act and the Rules of the WQCC;
2. Dismiss the ACO; and
3. Provide such other relief as the WQCC deems just and reasonable.

Respectfully submitted this 15th day of May, 2015.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

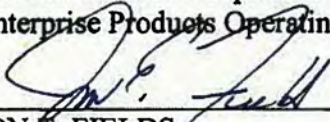
By: 

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Telephone: (505) 848-1800

Attorneys for Enterprise Products Operating, LLC

STATE OF Texas)
) ss.
COUNTY OF Harris)

I swear or affirm under oath that I have read this Request for Compliance Order Hearing and Answer to Administrative Compliance Order, that all the information contained therein is true and correct and complete to the best of my knowledge and belief, and that I am authorized by Enterprise Products Operating, LLC to make this declaration.


JON E. FIELDS

Subscribed and sworn before me this 14th day of May, 2015.


Notary Public

My commission expires: 02/22/2017



CERTIFICATE OF SERVICE

I certify that on the 15th day of May, 2015, service of the original foregoing Request for Compliance Order Hearing and Answer to Administrative Compliance Order was hand-delivered to:

Commission Administrator
Water Quality Control Commission
New Mexico Environment Department
Harold Runnels Building, Rm. N-120
1190 St. Francis Drive
Santa Fe, NM 87502

and to:

Allison Marks, Assistant General Counsel
New Mexico Energy Minerals and Natural Resources Department
Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

William C. Scott

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

WQA-OCD-CO-2015-1

**IN THE MATTER OF Enterprise Products Operating LLC,
a Texas limited liability company.**

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the Water Quality Act ("WQA"), NMSA 1978, Sections 74-6-1 through 74-6-17, as amended, the Energy, Minerals and Natural Resources Department's Director of the Oil Conservation Division ("OCD") issues this Administrative Compliance Order ("Order") to Enterprise Products Operating LLC ("Enterprise"). This Order assesses a civil penalty for violations of the WQA and WQA Rules.

I. FINDINGS

1. Pursuant to NMSA 1978, § 9-5A-3, Energy, Minerals and Natural Resources Department ("EMNRD") is an agency of the executive branch within the government of the State of New Mexico.
2. The OCD is a division of EMNRD and is charged with the administration and enforcement of the New Mexico Water Quality Control Commission ("WQCC") Rules as said rules apply to oil and gas activity in the state.
3. Pursuant to WQCC approved delegation, the OCD is a constituent agency of the WQCC.
4. Pursuant to NMSA 1978, § 74-6-10(A)(1), a constituent agency of the WQCC may issue a compliance order assessing a civil penalty whenever it determines that a person violated or is violating a regulation adopted pursuant to the WQA.
5. Enterprise is a Texas limited liability company doing business in the state of New Mexico under New Mexico Secretary of State Corporation No. 2916120.
6. Enterprise's principal office is located at 1100 Louisiana Street #1000, Houston, Texas 77002.
7. Enterprise is a "person" as defined by NMSA 1978, § 74-6-2(I).

8. Enterprise is engaged in the business of exploring for and transporting natural gas and natural gas liquids.
9. On October 9, 2013, OCD issued, pursuant to Enterprise's August 29, 2013 request, discharge permit No. HIP-122 directing approved methods for discharging approximately 850,000 gallons of hydrostatic test water in Santa Fe County, New Mexico associated with Enterprise's Western Expansion Pipeline III, Segment 3 project.
10. The HIP-122 permit placed, in part, the following conditions on Enterprise:
 1. Enterprise shall comply with all applicable requirements of the New Mexico Water Quality Control Commission Regulations (20.6.2 NMAC), the Oil and Gas Act (Chapter 70, Article 2 NMSA 1978), and all conditions specified in this approval and shall operate and close the project in accordance with the August 29, 2013 request ("Condition 1");
 6. Enterprise shall submit the test results via email or fax to the OCD for review and subsequent approval or disapproval for the test wastewater to be discharged ("Condition 6");
 7. If the final discharge of the wastewater is approved by the OCD, Enterprise will discharge the wastewater into a dewatering structure, constructed of non-woven geotextile and hay bales, to control erosion and contain the discharge is within Enterprise's pipeline easement right-of-way and allow the discharge to flow onto approximately 90,625 square feet of private property north and adjacent to Enterprise's pipeline easement right-of-way, both located within Unit N of Section 27, Township 10 North, Range 8 East, NMPM, Santa Fe County, New Mexico ("Condition 7");
 - 9.a. If final discharge of the wastewater is approved, no discharge shall occur: within 200 feet of a watercourse, lake bed, sinkhole or playa lake ("Condition 9a").
 10. If the waste water exceeds one [of] the standards as set forth in Subsections A, B, and C of the 20.6.2.3103 NMAC or background, whichever is greater, Enterprise will use an electro-coagulation cleaning process and a separate filtration system to treat the wastewater, in accordance with Appendix G of the August 29, 2013 request ("Condition 10").
 13. If the final discharge of the wastewater is not approved by the OCD after treatment, Enterprise will transfer the wastewater, via a system of flexible hoses and pump, from the pipeline into water trucks and hauled by Dawn Trucking, Co. (C-133-31), M&R Trucking, Inc. (C-133-399), Three Rivers Trucking, Inc. (C-133-335), or Triple S Trucking, Co. (C-133-372) for injection and disposal at Basin Disposal, Inc.'s Class II injection well (API 30-

045-26862/IPI-149-0), Agua Moss LLC's Non-Hazardous Class I injection well (UICI-005), or disposal at Gandy Marley Inc. (NM1-019) ("Condition 13");

15. Enterprise will have personnel on-site to oversee and control the transfer and utilize collection pans placed below the collection points to prevent an unauthorized release ("Condition 15");

21. Enterprise shall implement best management practices to prevent unauthorized releases during the transfer/collection activities ("Condition 21");

22. Enterprise shall ensure that the discharge/transfer/collection activities do not cause any fresh water supplies to be degraded or to exceed standards as set forth in Subsections A, B, and C of the 20.6.2.3103 NMAC (the New Mexico Water Quality Control Commission Regulations) ("Condition 22");

24. Enterprise shall report all unauthorized discharges, spills, leaks and releases of hydrostatic test water and conduct corrective action pursuant to OCD Rule 29 (19.15.29 NMAC) ("Condition 24").

11. On or about November 6, 2013, Michael Martinez, noticed several water hauling trucks discharging waste water on and around Santa Fe County Road 57A in Santa Fe County, New Mexico ("HIP-122 Illegal Discharge Area").
12. Mr. Martinez is a private landowner in Santa Fe County, New Mexico.
13. Mr. Martinez observed the discharge coming from an open pipe without the use of sprinklers, spreader arms, or a bermed dissipation structure.
14. Due to the flood damage to County Road 57A due to the discharge, Mr. Martinez reported the incident to the Santa Fe County Sheriff's Department, Santa Fe County Road Services, and the New Mexico Environment Department ("NMED").
15. On November 8, 2013, Erin Trujillo, of NMED's Surface Water Quality Bureau, conducted an onsite investigation and observed wet soils along county road ditches, ponded water in a constructed swale, and wet soils in a right of way to a headcut of a tributary.
16. NMED's Erin Trujillo compiled an NPDES Compliance Inspection Report dated December 6, 2013 (the "Compliance Report") on the discharge identifying Enterprise as the operator and hydrostatic test water from the Enterprise Mid-America Natural Gas Pipeline WEP III Project as the origin of the water.
17. The Compliance Report indicated that Enterprise hired Price Gregory International, Inc. as the general contractor for construction, including

hydrostatic testing, of the new natural gas pipeline and that Price Gregory subcontracted trucking services to haul the hydrostatic testing wastewaters to G&L Trucking LLC ("G&L").

18. G&L was not identified in the HIP-122 Permit Condition 13.
19. The Compliance Report indicated that Enterprise's hydrostatic wastewater had the potential to enter a tributary to the Rio Grande.
20. The Compliance Report noted minimal amounts of precipitation in Area of Discharge No. 1 on November 5 and November 7, 2013.
21. During NMED's investigation, Enterprise asserted that the application of the water was for "dust control."
22. Enterprise's "dust control" took place at or about the intersection of NM-14 N and NM-301 N/Santa Fe County Road 57A, approximately 31 miles away from the area identified in Condition 7 and in the HIP-122 Illegal Discharge Area.
23. Enterprise's discharge in the HIP-122 Illegal Discharge Area, including the discharge in a right of way to a headcut of a tributary, violated Condition 9a.
24. Upon learning that the waste water was being discharged from a natural gas pipeline, NMED contacted the OCD.
25. OCD began a subsequent investigation of the discharge on or about November 14, 2013.
26. Enterprise's HIP-122 permit allowed erosion control within Unit N of Section 27, Township 10 North, Range 8 East, NMPM, Santa Fe County, New Mexico (the "HIP-122 Permitted Discharge Area").
27. The "dust control" undertaken by Enterprise was not within the HIP-122 Permitted Discharge Area, in violation of Condition 7.
28. The HIP-122 permit required Enterprise to use best management practices to prevent unauthorized releases.
29. In Enterprise's Notice of Intent for a hydrostatic test submitted to the OCD on August 29, 2013, Enterprise provided an attachment entitled "Background Information."
30. Item h. of the "Background Information" contained a brief description of best management practices to be implemented to contain the discharge on

site and to control erosion, specifying use of a bermed dissipation structure and controlled flow rate to avoid scouring the landscape.

31. In violation of Condition 21, Enterprise did not implement its own best management practices that were provided to the OCD.
32. Enterprise did not use a sprinkler or a spreader arm or similar device when discharging its water, making any dust control not in accordance with other industry accepted best management practices for dust control.
33. Enterprise's Notice of Intent did not include any reference to dust control.
34. On November 14, 2013, James White, Senior Environmental Specialist for Enterprise, advised OCD's Brad Jones that Enterprise discharged a maximum of 330,000 gallons of water between November 5 and November 7, 2013 on Area of Discharge No. 1 and stated said water exceeded WQCC standards for iron and manganese.
35. In violation of Conditions 6 and 13, Enterprise did not submit test results of the hydrostatic test wastewater to OCD via email or fax for review and approval prior to being discharged.
36. Enterprise submitted its water to Hall Environmental Analysis Laboratory ("Hall") for analyses on or about October 29, 2013 and did not receive an analysis back from Hall until on or about November 12, 2013—at least seven (7) days after Enterprise began discharging water.
37. Enterprise violated Condition 6 by not obtaining approval or disapproval of the test wastewater to be discharged.
38. Enterprise discharged the wastewater prior to knowing whether the water needed to be treated.
39. Enterprise was required to have personnel on-site at the Western Expansion Pipeline III, Segment 3 project to prevent an unauthorized release.
40. Enterprise's personnel did not prevent an unauthorized release.
41. By failing to have personnel on site to prevent an unauthorized release, Enterprise violated Condition 15.
42. In violation of Conditions 10 and 22, Enterprise discharged waters exceeding WQCC regulation standards without first using any cleaning or filtration process.

43. Enterprise's failure to comply with its HIP-122 discharge permit and WQCC regulations resulted in a violation of Condition 1 of its HIP-122 permit.
44. After determining Enterprise had violated many conditions of its HIP-122 discharge permit, including Conditions 1, 6, 7, 9a, 10, 13, 21, and 22, the OCD, on November 26, 2013, sent Enterprise a Notice of Violation (the "NOV").
45. In addition to setting forth numerous violations of its HIP-122, the NOV required Enterprise to:
 1. . . .complete and file form C-141 as required by the HIP-122 and 19.15.29 NMAC. The initial C-141 should include a remediation plan for OCD approval. The initial C-141 should include a chronology of events leading to the discharge as well as exact locations of all discharges with an estimate of how many gallons were discharged at each location. The initial C-141 should include all documents relating to the discharges including, but not limited to: field notes, manifests, and photos. This must be completed within 15 days of receipt of this letter.
 2. The remediation plan must specify that Enterprise shall collect a sufficient number of composite samples to delineate the horizontal and vertical extent of any soil contamination at all discharge locations for metals and general chemistry parameters, including the arroyo where the wastewater was allowed to flow into. Enterprise shall also collect one composite sample of the background soils at a location up-gradient at each illegal discharge site. Enterprise will provide the depth to groundwater in all areas of the discharges. Enterprise shall submit the results to the OCD. This must be completed within 90 days of receipt of this letter.
 3. Enterprise shall submit a final C-141 within 30 days of performing all required actions above with all attached environmental information verifying that the investigation was completed and any proposed remedy(ies) based on the investigation shall be submitted to the OCD for approval. Enterprise will be required to remove all contaminated soil.
 4. Enterprise shall take any corrective action as required by the OCD under 19.15.29 NMAC or 19.15.30 NMAC if ground water has been impacted.
 5. Enterprise shall provide the OCD with all C-138 documents that show the remainder of the 850,000 gallons of waste water not illegally discharged was brought to a class II injection well site.
 6. All information related Permits HIP-119-0 and HIP-119-1 issued by the OCD to Enterprise including: amount of waste

water actually disposed or discharged, actual method of disposal or discharged, and proof of actual amount and method of disposal or discharge.

46. In response to the OCD's request, on December 13, 2013, Enterprise submitted form C-141 describing releases over CR 57A from November 5 through November 7, 2013. The C-141 stated that that the water exceeded WQCC 20.6.2.3103 NMAC limits for iron and manganese.
47. The C-141 submitted by Enterprise stated that a watercourse was possibly reached by the discharge and immediate notice was not given.
48. The C-141 submitted by Enterprise stated, under the field "date and hour of discovery", "11/7/2013."
49. The Hall analysis indicated that the water sample exceeded WQCC standards for ground water, as required by WQCC Rule 20.6.2.3103 NMAC, for the following contaminants:

Contaminant	Allowable Concentration (mg/L)	Tested Concentration (mg/L)
Chloride (Cl)	250.0	350
Sulfate (SO ₄)	600.0	950
Iron (Fe)	1.0	15
Manganese (Mn)	0.2	1.6
Total Dissolved Solids (TDS)	1000.0	1930

50. The Hall analysis indicated Enterprise's water exceeded more WQCC standards than Enterprise disclosed on its C-141.
51. On May 12, 2014, the OCD sent G&L a Letter of Violation for its involvement in the discharges in the HIP-122 Illegal Discharge Area.
52. In the May 12, 2014 Letter of Violation, the OCD requested all information available to describe the incident within 15 days of receipt of the letter.
53. G&L timely submitted all haul tickets for the Western Expansion Pipeline III, Segment 3 project in response to OCD's May 12, 2014, Letter of Violation.
54. OCD's review of G&L's haul tickets revealed that between the dates of November 4 and November 14, 2013, Enterprise allowed sub-contractors

to discharge approximately 50 loads of hydrostatic test waste water on and around Santa Fe County Road 57A in the HIP-122 Illegal Discharge Area.

55. OCD's review of G&L's haul tickets revealed that an additional 100 loads were discharged on the pipeline right-of-way ("ROW"), approximately 27 miles from the area identified in Condition 7.
56. A total of approximately 150 loads of Enterprise's hydrostatic test water were dumped in violation of the HIP-122 permit.
57. A review of G&L's haul tickets showed further discrepancies in the dates reported by Enterprise in its C-141 and the actual dates of the discharge.
58. On October 7, 2013, Enterprise submitted a notice of intent to discharge to OCD seeking authorization to discharge approximately 300,000 gallons of wastewater generated from a hydrostatic test of a new natural gas gathering system transmission pipeline located approximately eight miles southeast of Loving, New Mexico.
59. In Enterprise's October 7, 2013, notice of intent of authorization, Enterprise noted a proposed discharge/collection/retention location on private property, located within NE/4 and SE/4 of the NW/4 of Section 15, Township 24 South, Range 29 East, NMPM, Eddy County, New Mexico.
60. On January 14, 2014, pursuant to Enterprise's October 7, 2013 request, OCD issued discharge permit HIP-126 approving the discharge of hydrostatic test water subject to certain conditions.
61. The HIP-126 discharge permit was for an Enterprise project known as the Salt Lake Extension.
62. The HIP-126 permit placed, in part, the following conditions on Enterprise:
 1. Enterprise shall comply with all applicable requirements of the New Mexico Water Quality Commission Regulations (20.6.2 NMAC), the Oil and Gas Act (Chapter 70, Article 2 NMSA 1978), and all conditions specified in this approval and shall operate and close the project in accordance with the October 7, 2013 request ("HIP-126 Condition 1");
 3. Enterprise will acquire the hydrostatic test water from the City of Carlsbad, New Mexico ("HIP-126 Condition 3");
 4. Enterprise will generate approximately 300,000 gallons of hydrostatic test wastewater from the test event. The hydrostatic wastewater will remain in the pipeline while being sampled and

transferred into frac tanks while awaiting test results from a certified laboratory ("HIP-126 Condition 4");

5. Enterprise will slowly discharge the wastewater, via a system of flexible hoses and temporary piping, into twelve (15)(sic) 21,000 gallon frac tanks for temporary storage on the private property, in order to await test results from a certified laboratory ("HIP-126 Condition 5");

7. Enterprise shall analyze all samples of wastewater generated from the hydrostatic test to demonstrate the results do not exceed the standards as set forth in Subsections A, B, and C of the 20.6.2.3103 NMAC or background, whichever is great, except for Combined Radium 226 & Radium 228 due to pre-test results ("HIP-126 Condition 7");

8. Enterprise shall submit the test results via email or fax to the OCD for review and subsequent approval or disapproval for the test wastewater to be discharged (HIP-126 Condition 8");

9. If the final discharge of the wastewater is approved by the OCD, Enterprise will discharge the wastewater into a dewatering structure, constructed of non-woven geotextile and hay bales, to control erosion and contain the discharge on private property, located with NE/4 and SE/4 of the NW/4 of Section 15, Township 24 South, Range 29 East, NMPM, Eddy County, New Mexico ("HIP-126 Condition 9");

12. If the final discharge of the wastewater is not approved by the OCD, Enterprise will slowly transfer the wastewater from the frac tanks to an OCD approved C-133 water hauler for transport, injection, and disposal at Mesquite SWD, Inc.'s Class II injection well (AI 30-015-23728/Order SWD 247-A) and Enterprise will provide OCD billing receipts from the disposal facility within 14 days of disposal ("HIP-126 Condition 12");

13. Enterprise will have personnel on-site to oversee and control the transfer and utilize collection pans places below the collection points to prevent an unauthorized release ("HIP-126 Condition 13");

14. Enterprise will not be analyzing the hydrostatic test wastewater prior to disposal because of the following: the wastewater has been demonstrated to be RCRA exempt waste and the proposal it to transfer the wastewater to Mesquite SWD, Inc.'s Class II injection well for injection and disposal ("HIP-126 Condition 14");

18. Enterprise shall implement best management practices to prevent unauthorized releases during the transfer/collection activities (HIP-126 Condition 18");

21. Enterprise shall report all unauthorized discharges, spills, leaks and releases of hydrostatic test water conduct corrective action pursuant to OCD Rule 29 (19.15.29 NMAC) ("HIP-126 Condition 21").

63. The HIP-126 stated that the hydrostatic test will begin approximately March 1, 2014 and the HIP-126 will expire within 120 calendar days of its issue date.
64. Enterprise completed its hydrostatic testing on its Salt Lake Extension project or about March 23, 2014.
65. According to Enterprise's own sampling report, Enterprise acquired its hydrostatic test water for its Salt Lake Extension project from "31 Water."
66. 31 Water Sales is a known water seller outside of Loving, New Mexico, with a mailing address of PO Box 637, Loving New Mexico 88256.
67. Enterprise did not acquire its hydrostatic test water from the City of Carlsbad, in violation of HIP-126 Condition 3.
68. Enterprise never submitted test results, pursuant to HIP-126 Condition 8, to OCD.
69. Enterprise never sent the wastewater, pursuant to HIP-126 Condition 7, to a certified laboratory.
70. Enterprise did not analyze all samples of wastewater generated from the hydrostatic test in order to demonstrate the water did not exceed the standards set forth in Subsections A, B, and C of 20.6.2.3103 NMAC or background, in violation of HIP-126 Condition 7.
71. D & D Pipeline Construction, Inc., a New Mexico corporation, was hired by Enterprise as the general contractor on the Salt Lake Extension project.
72. R W Trucking L.L.C., a New Mexico limited liability company ("RW"), was hired to dispose of Enterprise's wastewater on the Salt Lake Extension project.
73. Prior to beginning work for Enterprise, RW was required to submit documentation demonstrating it had access to a local salt water disposal facility.
74. HIP-126 Condition 9 specified the location where Enterprise could discharge approved wastewater.
75. Before RW removed the test water from Enterprise's Salt Lake Extension site, an Enterprise employee named 'Matt' advised RW that he did not care what happened to the test water.
76. In violation of HIP-126 Condition 9, Enterprise discharged wastewater along approximately 1.9 miles of Monsanto Road (from approximately 32.124869 N, -103.674213 W to 32.123547 N, -103.706092 W), a road located southeast of Loving, in Lea County, New Mexico (the "Monsanto Discharge").

77. RW decided to apply the water to the Monsanto Discharge area, along with another Enterprise project north of Carlsbad.
78. RW discussed its discharge decision with Enterprise.
79. The wastewater used in Monsanto Discharge was not approved by OCD, in violation of HIP-126 Condition 9.
80. OCD was never given the opportunity to either approve or not approve the wastewater under Enterprise's HIP-126.
81. OCD did not disapprove Enterprise's wastewater pursuant to HIP-126 Condition 12.
82. In violation of HIP-126 Condition 12, Enterprise did not transport, inject, or dispose of all unapproved wastewater at Mesquite SWD, Inc.'s Class II injection well.
83. The discharge of Enterprise's water in the Monsanto Discharge area was in the opposite direction from the Mesquite SWD, Inc. injection well.
84. Thus, truckers had to drive away from the injection well when illegally discharging Enterprise's water.
85. If Enterprise elected to dispose of its wastewater at an SWD pursuant to HIP-126 Condition 12, Enterprise was required to provide OCD with billing receipts no later than April 6, 2014.
86. In June or July 2014, Matt, from Enterprise, contacted RW stating he needed disposal tickets from the Salt Lake Extension Project.
87. Matt, from Enterprise, asked RW to alter the disposal tickets in order to redact references as to how and where the water from the Salk Lake Extension project was disposed of.
88. After RW created altered tickets pursuant to Matt's request, Matt asked RW to recreate disposal tickets without any redaction.
89. Enterprise was required to have personnel on-site at the Salt Lake Extension project to prevent an unauthorized release.
90. Enterprise's personnel did not prevent an unauthorized release.
91. Enterprise's personnel not only failed to oversee collection and prevent unauthorized releases, Matt encouraged an unauthorized release.

92. Enterprise failed to oversee truckers and the activities of truckers on its facility.
93. Enterprise failed to oversee what truckers did with Enterprise's test water.
94. Enterprise did not implement best management practices when overseeing truckers hauling its test water.
95. By failing to implement best management practices, Enterprise allowed an unauthorized release in violation of HIP-126 Condition 18.
96. The actions by Enterprise's personnel violated HIP-126 Condition 13.
97. On or about November 24, 2014, Enterprise notified OCD that the test water subject to the HIP-126 permit had been improperly discharged.
98. On or about November 24, 2014, Enterprise advised OCD that truck drivers who Enterprise thought were taking test water from the Salt Lake Extension project to an approved salt water disposal well sprayed water from their trucks at the Monsanto Discharge.
99. The Monsanto Discharge was an unauthorized discharge and was required to be reported to OCD by rule.
100. On or about November 25, 2014, Enterprise provided OCD a proposed Soil Sampling Plan to investigate the section of the Monsanto Discharge.
101. At the time Enterprise submitted its proposed Soil Sampling Plan to investigate the section of the Monsanto Discharge, nearly eight months had passed since Enterprise's HIP-126 test water was first discharged.
102. Enterprise provided OCD with disposal tickets on December 24, 2014.
103. In violation of HIP-126 Condition 12, Enterprise did not provide OCD billing receipts from the disposal facility within 14 days of disposal.
104. The disposal tickets provided by Enterprise to OCD were altered.
105. When OCD finally received the required billing receipts from Enterprise, the receipts were more than eight months overdue.
106. Enterprise did not comply with WQCC Rules or the conditions of its HIP-126 permit thereby violating HIP-126 Condition 1.
107. Enterprise has never told OCD whether it intended to discharge under its HIP-126 pursuant to multiple methods or one method.

108. Enterprise has shown a pattern of disregard for OCD-issued discharge permits.

109. WQCC Rule 20.6.2.1203A(4) NMAC states, in relevant part:

"The oral and written notification and reporting requirements contained in this Subsection A are not intended to be duplicative of discharge and notification requirements promulgated by the ... OCD; therefore, any facility which is subject to ... OCD discharge notification and reporting requirements need not additionally comply with the notification and reporting requirements herein."

110. OCD Rule 19.15.29.10 NMAC states:

"A. The person operating or controlling either the release or the location of the release shall provide immediate verbal notification within 24 hours of discovery to the division district office for the area within which the release takes place. In addition, the person shall provide immediate verbal notification of a release of a volume that may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC to the division's environmental bureau chief. The notification shall provide the information required on form C-141.

B. The person operating or controlling either the release or the location of the release shall provide timely written notification within 15 days to the division district office for the area within which the release occurs by completing and filing form C-141. In addition, the person shall provide timely written notification of a release of a volume that may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC to the division's environmental bureau chief within 15 days after the release is discovered. The written notification shall verify the prior verbal notification and provide appropriate additions or corrections to the information contained in the prior verbal notification."

111. WQCC Rule 20.6.2.3104 NMAC states, in relevant part:

"Unless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary. **When a permit has been issued, discharges must be consistent with the terms and**

conditions of the permit. In the event of a transfer of the ownership, control, or possession of a facility for which a discharge permit is in effect, the transferee shall have authority to discharge under such permit, provided that the transferee has complied with Section 20.6.2.3111 NMAC, regarding transfers.”

112. WQCC Rule 20.6.2.1203(A)(1) NMAC states, in relevant part:

“As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the Chief of the Ground Water Quality Bureau of the department, or his counterpart in any constituent agency delegated responsibility for enforcement of these rules as to any facility subject to such delegation.”

II. VIOLATIONS

113. Enterprise violated 20.6.2.3104 NMAC by discharging waters inconsistent with the terms and conditions of its HIP-122 permit.
114. Enterprise violated 20.6.2.3104 NMAC by discharging waters inconsistent with the terms and conditions of its HIP-126 permit.
115. With respect to its HIP-122 permit, Enterprise violated 20.6.1203(A) NMAC by failing to report its discharge within 24 hours after learning of said discharge.
116. With respect to its HIP-126 permit, Enterprise violated 20.6.1203(A) NMAC by failing to report its discharge within 24 hours after learning of said discharge.
117. With respect to its HIP-122 permit, Enterprise violated 19.15.29.10 NMAC by failing to provide timely notice.
118. With respect to its HIP-126 permit, Enterprise violated 19.15.29.10 NMAC by failing to provide timely notice.

III. CORRECTIVE ACTION

119. Enterprise shall, upon receipt of this Order, cease and prevent all discharges that would be in violation of the WQCC's Ground and Surface Water Protection Regulations, 20.6.2 NMAC.
120. Upon receipt of this Order, Enterprise shall send a written report to OCD detailing the corrective action it has taken to include, at minimum:

- (a) a description of corrective actions taken by Enterprise to prevent future unauthorized discharges from occurring; and
- (b) a description of how Enterprise intends to monitor truckers performing work for them.

IV. CIVIL PENALTY

- 121. Section 74-6-10(C)(1) of the WQA authorizes the assessment of a civil penalty of up to \$15,000 per day for violations of the WQA, including any regulation adopted under said section of the WQA.
- 122. OCD hereby assesses a civil penalty in the amount of \$2,261,025 for the violations set forth above.
- 123. OCD calculated the penalty set forth in Paragraph 50 hereof after consulting NMED's Ground Water Quality Bureau's Civil Penalty Assessment Policy, while exercising its independent judgment as a constituent agency of the WQCC.
- 124. Payment of the civil penalty is due no later than 30 calendar days after this Order becomes final. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed (via certified mail) or hand delivered to OCD at the following address:

David Catanach, Director
Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505

Written notification of the payment shall also be provided to the following address:

Bill Brancard, General Counsel
Office of the Secretary
1220 S. St. Francis Dr.
Santa Fe, NM 87505

V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

- 125. Pursuant to § 74-6-10(G) of the WQA, along with the WQCC Adjudicatory Procedures, 20.1.3 NMAC, entities and/or persons receiving a Compliance Order may request a hearing by filing a written request for a public hearing with the Commission Administrator no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

- (a) Clearly and directly admit or deny each of the factual assertions contained in this Order. Where Enterprise has no knowledge of a particular assertion, Enterprise shall so state, and the assertion may be denied on that basis. Any allegation of this Order not specifically denied shall be deemed admitted. 20.1.3.19A(2)(a) NMAC.
 - (b) Assert any affirmative defenses upon which Enterprise intends to rely. Any affirmative defenses not asserted in the request for compliance order hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.3.19A(2)(b) NMAC.
 - (c) Be signed by a person authorized to do so.
 - (d) Include a copy of this Order.
126. The Answer and Request for Hearing shall be filed with the Hearing Clerk at the following address:

Commission Administrator
Water Quality Control Commission
New Mexico Environment Department
Harold Runnels Building, Rm. N-120
1190 St. Francis Dr.
Santa Fe, NM 87502

A copy of the Answer and Request for Hearing shall be served on counsel for
OCD.

VI. FINALITY OF ORDER

127. This Order shall become final unless a Request for Hearing and Answer is filed with the Commission Administrator within 30 days after the date of receipt of this Order. Failure to file an Answer constitutes an admission of all facts alleged in this Order and a waiver of the rights to a hearing under § 74-6-10(G) of the WQA with respect to this Order.

VII. SETTLEMENT

128. Whether or not an Answer is filed and a hearing is requested, persons receiving a Compliance Order may confer with the OCD concerning settlement. The OCD encourages settlement consistent with the provisions and objectives of the WQA. Settlement discussions do not extend the 30 day deadline for filing an Answer and Request for Hearing, or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to, or simultaneously with, the hearing proceedings. A person or entity may appear at a settlement conference on their own behalf or may be represented by legal counsel.

129. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and a stipulated final order must serve to resolve all issues raised in this Order, shall be final and binding on all parties to this Order, and shall not be appealable.
130. To explore the possibility of settlement in this matter, contact Allison Marks or Keith Herrmann, Office of the General Counsel, Energy, Minerals and Natural Resources Department, at 505-476-3206 or 505-476-3463, respectively.

VIII. COMPLIANCE WITH OTHER LAWS

131. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations to which Enterprise may be subject.

IX. TERMINATION

132. This Order shall terminate upon the earlier of a) Enterprise certifying that all requirements of this Order have been met, and OCD has approved such certification, or b) a settlement agreement being executed and a stipulated final order has been signed.

4/17/15
Date

By: David Catanach
David Catanach
Director, Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this 17th day of April, 2015, via Certified Mail, Return Receipt Requested, to the following:

William Scott
Modrall Sperlberg
500 Fourth Street NW, Suite 1000
Albuquerque, NM 87102

Cindy VanCleave
Enterprise Products Operating LLC
1100 Houston Street
Houston, TX 77210-4324

Shiver Nolan
Enterprise Products Operating LLC
PO Box 4324
Houston, TX 79701

By: Allison Marks
Allison Marks, Assistant General Counsel
Energy, Minerals and Natural Resources Department
Oil Conservation Division