



August 7, 2015

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Via E-mail: pam.castaneda@state.nm.us

Ms. Pam Castaneda
Administrator to Boards and Commissions
Environmental Improvement Board
Water Quality Control Commission
1190 St. Francis Drive, Room S2102
Santa Fe, NM 87502

Re: In the Matter of Enterprise Products Operating, LLC

Dear Ms. Castañeda:

Accompanying this letter are the original and 15 copies of Enterprise Products Operating, LLC's Opposed Motion to Conduct Additional Discovery in this case. I would appreciate it if you would file the original and provide a file-stamped copy in the stamped, self-addressed return envelope.

Thank you for your assistance.

Sincerely,

William C. Scott

WCS/bm

Enclosures

cc: Allison Marks

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**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**



WQCC-15-05 (CO)

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

**ENTERPRISE PRODUCTS OPERATING LLC'S OPPOSED MOTION
TO CONDUCT ADDITIONAL DISCOVERY**

Comes now Respondent, Enterprise Products Operating, LLC (“Enterprise”), and pursuant to Rule 20.1.3.19(I)(1) of the Water Quality Control Commission (“WQCC”), hereby requests an order permitting Enterprise to conduct depositions and serve interrogatories to gather information necessary to respond to the assertions made by the Oil Conservation Division (“OCD”) in its Administrative Compliance Order (“ACO”) in this matter.

WQCC Rule 20.1.3.19(F) and (H) expressly permits two types of discovery: requests for production of documents and requests for admission served on any party. The Rules provide that the hearing officer may permit other discovery, including interrogatories and depositions, upon a determination that such discovery will not unreasonably delay the proceeding, that the information is not otherwise reasonably obtainable, and that there is a substantial reason to believe that the information sought will be admissible at hearing or will be likely to lead to discovery of admissible evidence. Rule 20.1.3.19(I)(1). This Motion invokes the exceptions provided for in the Rule, because additional discovery is necessary for Enterprise to fully defend against the assertions in the ACO and claimed penalty of Two Million Two Hundred Sixty-One Thousand, Twenty-five Dollars (\$2,261,025.00). Counsel for the Oil Conservation Division does oppose this Motion.

A. Additional Discovery Requested.

As described in this Motion, permitting Enterprise to conduct additional discovery is necessary for Enterprise to fully defend against the ACO in the hearing. Enterprise will conduct the following types of discovery if this Motion is granted:

1. Depositions

Enterprise will depose members of the OCD regarding OCD's investigation and penalty calculation. Enterprise will also seek to depose representatives from G&L Trucking LLC and/or Greg Lopez, representatives from RW Trucking LLC and/or Dan Taylor, representatives from ACD Trucking, Michael Martinez, and other individuals identified during discovery, which is ongoing, that appear to have information relevant to the ACO, OCD's assertions, and Enterprise's defenses from whom deposition testimony is necessary.

2. Interrogatories

Enterprise will serve interrogatories on the OCD that seek information about OCD's investigation and penalty calculation.

B. Background.

The ACO contains 108 paragraphs of factual assertions based on the alleged violations of two OCD permits, HIP-122 and HIP-126. HIP-122 permitted Enterprise to discharge 850,000 gallons of wastewater generated from a hydrostatic test of a brand new pipeline located northwest of Moriarty, New Mexico, in Santa Fe County (the "WEP III Project"). The ACO alleges HIP-122 was violated when Enterprise permitted the discharge of the wastewater in areas not designated in the permit. The basis for the ACO's allegations are a report by a Mr. Michael Martinez, a private landowner in Santa Fe County (who may have been reporting observations by his brother, and does not have first-hand knowledge), *see* ACO ¶¶ 11-14, and the actions of a

trucking company, G&L Trucking LLC (“G&L”), hired by Price Gregory International, Inc. the general contractor for the project, *see id.* ¶¶ 17-18. The ACO asserts it obtained information to support its factual assertions from requests for information made to G&L. *See id.* ¶¶ 51-57. G&L and OCD entered into an agreed compliance order based on G&L’s discharge, in which G&L “agree[d] to testify to the facts of this incident before . . . the WQCC . . . if requested by the OCD.” *In the matter of G&L Trucking, LLC*, p. 4 ¶ 5, NMOCD-ACO-283 (July 3, 2014).

HIP-126 authorized the discharge of wastewater from a hydrostatic test of a brand new pipeline, in the amount of 300,000 gallons southeast of Loving, New Mexico, in Eddy County (the “Salt Lake Project”). The ACO alleges HIP-126 was violated by water discharges in areas not designated by the permit. The ACO bases these assertions with respect to the violation on information from RW Trucking LLC (“RW”), the trucking company hired by D&D Pipeline Construction, Inc., the general contractor for the project. *See* ACO ¶¶ 71-78. The ACO makes assertions of the acts of Enterprise and an Enterprise employee identified as “Matt” based on conversations with RW, including that Matt directed RW to take certain actions and that RW had certain conversations with Matt and “Enterprise.” *See id.* Counsel for OCD has indicated that OCD has interviewed a number of individual truckers about these assertions, and Enterprise expects the identities of these individuals to be revealed in response to requests for production.

The ACO imposes a civil penalty in the amount of \$2,261,025, which OCD claims was calculated “after consulting NMED’s Ground Water Quality Bureau’s Civil Penalty Assessment Policy, while exercising its independent judgment” ACO ¶¶ 122-123.

C. The Circumstances Necessitate Enterprise Taking Additional Discovery.

Enterprise intends to take full advantage of the discovery tools expressly permitted by the WQCC Rules, served requests for production on the OCD on June 10, 2012, and will serve

requests for admission on the OCD. The circumstances of OCD's investigation and penalty calculation, however, make it necessary for Enterprise to conduct additional discovery in order to fully and fairly defend against the assertions in the ACO and the penalty.

Enterprise will use interrogatories and depositions to discover information about OCD's interviews with and information obtained from G&L and/or Mr. Lopez, RW and/or Mr. Taylor, other trucking companies and individual truckers, and Mr. Martinez, and to discover information solely within the possession of those trucking companies or their employees. Such information will assist Enterprise in presenting its defenses that it had no contractual or employment agreement with either G&L or RW and thus cannot be liable for the errors of the trucking companies. Furthermore, G&L agreed to testify if requested to do so by OCD, and it is unknown if RW made a similar promise to OCD. Mr. Taylor, provided OCD with an affidavit that OCD intends to introduce into evidence at a hearing on this matter. Enterprise's due process rights would be violated by essentially being surprised by such testimony at a hearing; Enterprise should be allowed to depose representatives of G&L, RW, other trucking companies and individual truckers prior to the hearing. Enterprise may also depose Erin Trujillo of the New Mexico Environment Department Surface Water Quality Bureau, as Ms. Trujillo conducted the investigation on which OCD relied for its WEP III notice of violation.

Requests for admission and production are insufficient to obtain the above-described information. G&L, Mr. Lopez, RW, Mr. Taylor, and Mr. Martinez are not parties, and therefore Enterprise cannot serve them with written evidence; taking their depositions will be necessary to discover any relevant evidence or information that would lead to evidence they may have. Enterprise could, however, depose the representatives of G&L and/or Mr. Lopez and RW and/or Mr. Taylor as well as Mr. Martinez and Ms. Trujillo as non-party deponents, to obtain

representatives, in particular the individuals who conducted the investigations into the alleged permit violations and who calculated the penalty, are necessary.

Granting this motion will not result in unreasonable delay. On May 15, 2015, Enterprise filed its Answer and Request for Hearing. The parties stipulated to a waiver of the 90 day hearing deadline. The WQCC will consider whether to schedule the hearing for December 8, 2015 at its August 11 meeting, and granting this motion will not require rescheduling of any deadlines or hearings. Enterprise intends to be circumspect in its discovery requests, and, presuming cooperation by the OCD and non-party deponents and no unforeseen scheduling issues, reasonably believes discovery could be completed in two months.

The discovery Enterprise seeks by this Motion will be admissible at the hearing or will likely lead to the discovery of admissible evidence. All information sought relates directly to the claims against or defenses of Enterprise. The OCD has relied on statements by G&L, RW, ACD, Mr. Martinez, and Ms. Trujillo in developing the assertions made in the ACO, but Enterprise can only avoid evidentiary rules against hearsay by obtaining the statements of G&L, RW, Mr. Martinez, and Ms. Trujillo from them directly. Information that will be obtained with respect to the OCD investigation and OCD penalty calculation will be admissible.

D. The Information Expected to Be Discovered Is Relevant to Claims and Defenses.

Enterprise expects to discover the following information if this Motion is granted:

1. Mr. Martinez: Who, where, and when he saw water being discharged by trucks in Santa Fe County; if the trucks discharging the water were owned by G&L or belonged to a separate company; when he reported observation of the discharge to OCD; the content of his report to OCD and to whom he made the report.

2. G&L 30(b)(6) representative and/or Greg Lopez: Who hired G&L and the instructions G&L received with respect to transporting and discharging water; who gave such instructions; who at G&L was responsible for communicating instructions to all drivers; how many truckloads of water were discharged on the right-of-way and how many were discharged on County Road 57A; the extent of communications G&L had with Enterprise employees.

3. RW 30(b)(6) representative and/or Dan Taylor : Who hired RW and the instructions RW received with respect to transporting and discharging water; who gave such instructions; who at RW was responsible for communicating instructions to all drivers; how many truckloads of water were discharged at a place other than a disposal well; the extent of communications RW had with Enterprise employees.

4. ACD Trucking 30(b)(6) representative: Who hired ACD and the instructions ACD received with respect to transporting and discharging water; who gave such instructions; who at ACD was responsible for communicating instructions to all drivers; how many truckloads of water were discharged at a place other than a disposal well; the extent of communications ACD had with Enterprise employees.

5. Rudy Spedalieri, former employee of Ochoa Trucking: -Details regarding transport of water used in Salt Lake hydrostatic test; who directed truckers to discharge water on roadway, who directed preparation of trucking tickets; who gave instructions to truckers; the extent of communication with Enterprise employees.

6. Representatives of other trucking companies identified during discovery: Information regarding instructions received as to transport and discharge of water; relationship with Enterprise.

7. Other individual truckers identified during discovery: Information regarding instructions received as to transport and discharge of water; relationship with Enterprise.

8. Representatives of D&D Construction identified during discovery: Information regarding instructions received as to transport and discharge of water; relationship with Enterprise.

9. Representatives of Price Gregory Construction identified during discovery, including but not limited Mike "Catfish" Phillips: Information regarding instructions received as to transport and discharge of water; relationship with Enterprise; conversations with representatives of Enterprise and representatives of trucking companies regarding discharge of water.

10. Keith Hermann and/or Glenn Von Gonten, OCD: Information related to OCD investigation; materials, guidelines, prior cases OCD relied on to calculate the penalty imposed on Enterprise; the factors or information that contributed to OCD's "independent judgment" in calculating the penalty.

11. OCD: Written interrogatories with respect to penalty calculation.

12. Erin Trujillo: Investigation and analysis undertaken in preparing December 6, 2013 report; characterization of WEP III discharge as minor; notes and data relied on in preparing report.

E. Proposed Time and Place for Discovery to Take Place.

Enterprise will consult with deponents and counsel to determine the time and place for depositions that are convenient to all involved. Depositions likely will be taken at Modrall's Albuquerque or Santa Fe office and will comply with the time limits set forth in Rule 1-

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

By: _____
William C. Scott

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