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COGCC

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE) CAUSE NO. 1V
RULES AND REGULATIONS OF THE COLORADO OIL)
AND GAS CONSERVATION COMMISSION BY) ORDER NO. 1V- 333
TOP OPERATING COMPANY,)
BOULDER COUNTY, COLORADO)

ADMINISTRATIVE ORDER BY CONSENT

(Pursuant to Rule 522.b.(3) of the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1)

FINDINGS

1. In 1982, Calvin Petroleum Company drilled and completed the Rider Family Trust #1 Well (aka the Rider #1-36 Well, the "Well," API #05-013-06096), located in the NE¼ SE¼ of Section 36, Township 3 North, Range 69 West, 6th P.M.

2. On September 1, 1986, TOP Operating Company ("TOP," Operator #39560) became the operator of the Well.

3. On July 17, 2006, Engle Homes, the residential developer of the surface, submitted to the staff ("Staff") of the Colorado Oil and Gas Conservation Commission ("COGCC" or "Commission") a complaint and a Phase II environmental report by CTL Thompson, Inc., which indicated contamination of soil and ground water by TOP's oil and gas operations.

4. The state water quality standard for benzene in ground water is 5 micrograms per liter (µg/l). 900-Series Rules, Table 910-1. The standard was exceeded at two locations near the Well (MW-2 and MW-3) which measured 491 µg/l and 34.3 µg/l, respectively. The contamination did not exceed COGCC soil standards.

5. On July 21, 2006, Staff sent a letter to TOP, requiring submittal of a Site Investigation and Remediation Work Plan, Form 27. On August 17, 2006, TOP submitted an initial work plan which was not acceptable to Staff.

6. On December 7, 2006, Staff issued Notice of Alleged Violation ("NOAV") #200100371, to TOP for violation of the following Rules:

RULE NO.	DESCRIPTION OF ALLEGED VIOLATION(S)
324A.a.	Failing to take precautions to prevent the unauthorized discharge or disposal of E&P waste
324A.b.	Conducting oil and gas operations that constitute a violation of water quality standards or classifications established by the Water Quality Control Commission ("WQCC") for waters of the state
906.a.	Failing to investigate and clean up spills/releases as soon as practicable
906.d.	Failing to remediate spills/releases to meet the allowable concentrations in Table 910-1 (Water Quality Control Commission standards for organics in ground water)
909.a.	(Applicability of the section Rule 909 provisions to sites impacted by E&P waste management practices) [sic]
909.b.	Failing to manage E&P waste in accordance with Rule 907 (which requires operators to ensure that E&P waste is properly stored, handled, transported, treated, recycled or disposed to prevent threatened or actual significant adverse environmental impacts or to the extent necessary to ensure compliance with the allowable concentrations and levels in Table 910-1, with consideration to WQCC ground water standards and classifications)
909.c.	Failing to submit a Site Investigation and Remediation Workplan, Form 27

7. The NOAV required TOP to submit a Site Investigation and Remediation Work Plan, Form 27, by December 22, 2006, to address the nature and extent and remediation of the E&P waste contamination in the vicinity of the Well.
8. On December 10, 2006, TOP submitted a Site Investigation and Remediation Work Plan, Form 27, which was satisfactory to Staff. On December 15, 2006, Staff approved the plan as Remediation Project #3743.
9. On January 30, 2007, TOP submitted a letter to Staff, indicating that weather conditions were causing a delay in the work and that TOP would commence work as soon as weather permitted.
10. From December 2007 to early January 2008, Engle Homes began the process of selling the property and sought information from COGCC about the status of TOP's remediation. Engle Homes determined that TOP had not performed remediation work in 2007.
11. On January 17, 2008, Engle Homes sent TOP a letter demanding immediate performance of the remediation work. TOP replied on January 22, 2008 that it was reassessing the site to determine how to proceed.
12. On January 28, 2008, Engle Homes complained to Staff about TOP's lack of responsiveness, lack of remediation of the site, and demanded that an enforcement action proceed. On the same day, Staff sent a letter to TOP demanding that it perform remediation within 45 days.
13. On February 4, 2008, TOP responded, stating it would perform testing at one of the monitoring well sites (MW-2) and trenching at the other site. (TOP was unable to sample MW-3, which could not be found, presumably due to destruction by mowing activities.) TOP also committed to weekly updates on remediation activities.
14. On February 20, 2008, TOP submitted water quality data from the sampled monitoring well (MW-2). The water sample showed benzene at a concentration of 170 µg/l, still significantly higher than the 5 µg/l state standard.
15. On February 22, 2008, and in March and April 2008, Engle Homes demanded that Staff undertake enforcement against TOP for failure to comply with its remediation obligations.
16. On March 7, 2008, TOP sent a letter to Staff, seeking approval of a delay in performing the work until the end of the school year because of the proximity of the site to a school. Staff responded on March 21, 2008, agreeing to the delay if the work could not be done safely at the site.
17. On April 23, 2008, Engle Homes sent a demand letter to TOP to perform the remediation work within 30 days. According to Engle Homes, TOP did not respond.
18. On May 6, 2008, Staff sent a letter to TOP demanding a written schedule for remediation activities and an update on the status of work. TOP responded to COGCC on May 8, 2008, reporting that it had commenced trenching work at the site on April 25, 2008. To this date, TOP had failed in its commitment to provide weekly updates or the written schedule for work required by Staff.
19. On June 13, 2008, Engle Homes visited the site and determined that no active remediation activities were being performed and advised Staff of TOP's inactivity.
20. On July 30, 2008, Cordilleran Compliance Services ("Cordilleran") on behalf of TOP, conducted soil and groundwater sampling at the site. On August 14, 2008, Cordilleran submitted a report to TOP, indicating soil samples did not exceed COGCC standards and the benzene concentration in the ground water at MW-2 monitoring well was 53 µg/l, still significantly higher than the 5 µg/l state standard but declining from the February 20, 2008 measurement of 170 µg/l.
21. TOP failed to perform timely remediation under Remediation Project #3743; as a result, benzene continues to exceed allowable concentrations in Table 910-1 (Water Quality Control Rule 906.d. at the Well. Commission standards for organics in ground water), which constitutes a continuing violation of

22. The COGCC should find TOP in continuing violation of Rule 906.d.

23. Rule 523. specifies a base fine of One Thousand dollars (\$1,000) for each day of violation of Rule 906.d.

24. The COGCC should impose a fine of \$10,000 on TOP for the continuing violation of Rule 906.d. and require TOP to timely perform Remediation Project #3743, as it may be amended by Staff, including prompt installation of the three additional monitoring wells required by letter, dated September 5, 2008, from Staff to TOP.

25. TOP should execute this Administrative Order by Consent no later than 10 days after the date it is executed by Staff for recommendation to the Commission for expedited approval. Fines may increase if this matter is not recommended for expedited approval.

ORDER

NOW, THEREFORE, IT IS ORDERED, that TOP Operating Company shall be found in continuing violation of Rule 906.d. for failing to perform timely remediation required by Remediation Work Plan #3743 at the Rider Family Trust #1 Well (aka the Rider #1-36 Well, the "Well," API #05-013-06096), located in the NE¼ SE¼ of Section 36, Township 3 North, Range 69 West, 6th P.M.

IT IS FURTHER ORDERED, that, TOP Operating Company shall be assessed a total fine of Ten Thousand dollars (\$10,000) for violation of Rule 906.d., which shall be payable within thirty (30) days of the date this order is approved by the Commission.

IT IS FURTHER ORDERED, that, TOP Operating Company shall timely perform Remediation Project #3743, as it may be amended by Staff, including prompt installation of the three additional monitoring wells required by letter, dated September 5, 2008, from the staff of the Commission to TOP Operating Company.

IT IS FURTHER ORDERED, that TOP Operating Company shall execute this Administrative Order by Consent no later than ten (10) days after the date it is executed by the Staff for recommendation of expedited approval by the Commission.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above orders.

RECOMMENDED this 12th day of September, 2008.

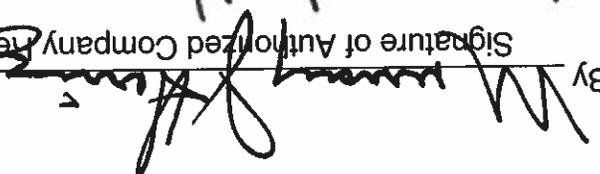
IN THE NAME OF THE STATE OF COLORADO
OIL AND GAS CONSERVATION COMMISSION

By Carol Harmon
Carol Harmon, Enforcement Officer

Dated at Suite 801
1120 Lincoln St.
Denver, Colorado 80203
September 12, 2008

AGREED TO AND ACCEPTED this 17th day of September, 2008.

TOP OPERATING COMPANY

By 
 Signature of Authorized Company Representative

Murray J. Haring
 Print Signatory Name

Vice President
 Title