

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT
DEPARTMENT,
Complainant,**

v.

**ORTEGA'S SHELL PLAZA, INC.,
ENTS #: 17261
Respondent.**

**ADMINISTRATIVE ORDER
NO. HWB-24-02**

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act ("HWA"), New Mexico Statutes Annotated ("NMSA") 1978, §§ 74-4-1 to -14, the Hazardous Waste Bureau ("HWB") of the Resource Protection Division ("Division") of the New Mexico Environment Department ("NMED"), issues this Administrative Compliance Order ("Order") to Ortega's Shell Plaza, Inc. ("Ortega's Shell Plaza", "Respondent"). This Order requires that Ortega's Shell Plaza comply with the HWA, and assesses charges for costs incurred by the division in cleanup of cleanup of the hazardous substance incident that occurred on Respondent's Property on September 18, 2023.

I. FINDINGS

A. PARTIES

1. Pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New Mexico.
2. NMED, through its HWB, is charged with administration and enforcement of the HWA.
3. Respondent is a New Mexico corporation with its principal place of business at

518 Johnson Lane, Santa Fe, New Mexico.

4. Respondent is the owner of the property at 3700 W. Route 66, Tucumcari, New Mexico, 88401 (“Property”).

5. Respondent is a “person” within the meaning of NMSA 1978, Section 74-6-2(I) of the Act.

B. HISTORY OF NONCOMPLIANCE

6. NMED’s Groundwater Quality Bureau (“GWQB”) has sent 6 correspondence documents to Ortega’s Shell Plaza attempting to gain voluntary cooperation in the 21 years prior to September 18, 2023:

- a) On June 16, 2003, GWQB sent Ortega’s Shell Plaza a notification of unauthorized discharge of petroleum hydrocarbons, and requirement for a corrective action workplan proposal.
- b) On September 2, 2003, GWQB sent Ortega’s Shell Plaza a Notice of Violation, citing a failure to perform corrective actions to address petroleum hydrocarbon contamination and failure to submit a Corrective Action Report.
- c) On September 30, 2009, GWQB sent Ortega’s Shell Plaza a Notice of Violation, citing a failure to perform corrective actions to address petroleum hydrocarbon contamination and failure to submit a Corrective Action Report.
- d) On May 21, 2010, GWQB sent Ortega’s Shell Plaza a disapproval of accepting a Phase I environmental site assessment in lieu of performing remediation and corrective actions.
- e) On February 16, 2018, GWQB sent Ortega’s Shell Plaza a Notice of Violation, citing a failure to remediate known contamination on the property

and a failure to submit a Corrective Action Report to the Department.

- f) On March 18, 2019, GWQB sent Ortega's Shell Plaza a Notice of Violation, citing a failure to respond, failure to remediate known contamination on the property and a failure to submit a Corrective Action Report to the Department.

7. NMED's Petroleum Storage Tank Bureau ("PSTB") performed 1 inspection of the Property in the 10 years prior to September 18, 2023. Ortega's Shell Plaza has not addressed the violations observed during this inspection. On the inspection dated December 28, 2016 PSTB inspectors observed 13 violations:

- a) Ortega's Shell Plaza failed to operate and maintain the secondary containment for an Aboveground Storage Tank ("AST") system, in violation of Petroleum Storage Tank Regulation ("PSTR") 5.10. PSTB observed 4 occurrences of this violation.
- b) Ortega's Shell Plaza failed to operate and maintain cathodic protection for temp closed AST systems, in violation of PSTR 8.9.A[3]. PSTB observed 4 occurrences of this violation.
- c) Ortega's Shell Plaza failed to install leak detection equipment for a single-walled AST system with no secondary containment, in violation of PSTR 4.29[1]. PSTB observed 3 occurrences of this violation.
- d) Ortega's Shell Plaza failed to install secondary containment for piping, in violation of PSTR 4.24. PSTB observed 4 occurrences of this violation.
- e) Ortega's Shell Plaza failed to install under-dispenser containment for dispensers in an AST system, in violation of PSTR 4.32. PSTB observed 4 occurrences of this violation.

- f) Ortega's Shell Plaza failed to operate and maintain release detection for temporary closed AST systems, in violation of PSTR 8.9.A[4]. PSTB observed 2 occurrences of this violation.
- g) Ortega's Shell Plaza failed to meet the deadline for Operator Training, in violation of PSTR 18.12.A. PSTB observed 7 occurrences of this violation.
- h) Ortega's Shell Plaza failed to adopt an Operations and Maintenance Plan, in violation of PSTR 5.9. PSTB observed 7 occurrences of this violation.
- i) Ortega's Shell Plaza failed to provide proof of Financial Responsibility, in violation of PSTR 9.903.A. PSTB observed 7 occurrences of this violation.
- j) Ortega's Shell Plaza failed to repair, replace or modify a storage tank system, in violation of PSTR 5.17. PSTB observed 1 occurrence of this violation.
- k) Ortega's Shell Plaza failed to have an Underground Storage Tank ("UST") used as an AST recertified by August 15, 2003, in violation of PSTR 5.4.17. PSTB observed 4 occurrences of this violation.
- l) Ortega's Shell Plaza failed to meet the performance standards for AST systems in vaults, in violation of PSTR 4.31.A. PSTB observed 4 occurrences of this violation.
- m) Ortega's Shell Plaza failed to register an existing AST by September 14, 2002, in violation of PSTR 2.8.B. PSTB observed 7 occurrences of this violation.

C. ENVIRONMENTAL INCIDENT AND RESPONSE – September 18, 2023

8. On the evening of September 18, 2023, New Mexico State Police ("NMSP") notified the NMED Hazardous Waste Bureau's Incident Response Coordinator of a release of a large quantity of used oil from two damaged Aboveground Storage Tanks ("ASTs") at the

Property. No contact information for property ownership could be located at that time. NMED and NMSP coordinated with the New Mexico Department of Transportation and City of Clovis hazardous materials team to perform initial spill containment.

9. On September 19 and 20, 2023, NMED attempted contact with Ortega's Shell Plaza, but could not locate any valid contacts for Ortega's Shell Plaza.

10. On September 21, 2023, NMED performed a Compliance Evaluation Inspection ("Inspection").

11. During the Inspection, NMED observed a large area of spilled oil and oil-stained soil that had emanated from two damaged 1,500-gallon ASTs. The oil traveled approximately 235 feet across the property before turning and running parallel to the highway for about 30 feet before entering a culvert underneath the Route 66 highway. The oil exited the culvert and traveled down the surface water drainage area between the Route 66 highway and the adjacent railway tracks before terminating in the vegetation.

12. On September 22, 2023, NMED obtained contact information for the attorney representing Property ownership and attempted contact via phone and email. NMED did not receive a response to this attempt to contact Ortega's Shell Plaza.

13. On September 24, 2023, the NMED Secretary authorized and directed cleanup of the Property, using the Hazardous Waste Emergency Fund and a remediation firm under contract with NMED, for the purpose of responding to an Environmental Incident that could threaten human health or the environment pursuant to the authority granted the Department in NMSA 1978, Section 74-4-7.

14. On September 28, 2023, NMED's contracted remediation firm began site assessment and cleanup activities to ensure protection of human health and the environment.

15. On October 3, 2023, the attorney representing Ortega's Shell Plaza contacted NMED, stating that Ortega's Shell Plaza was not aware of the release at the Property.

16. On October 23, 2023, NMED sent Ortega's Shell Plaza via attorney representation a Request for Information ascertaining several remaining points of information, including additional information regarding the controlling entity and Respondent's knowledge of the environmental condition of the property and the nature of the incident on September 18, 2023.

17. On November 7, 2023, Ortega's Shell Plaza via attorney representation sent NMED a response to the Request for Information. This response provided additional information regarding the ownership of the property, provided a statement that no tenants had been authorized to occupy the property, stated that Respondent did not have any knowledge of the incident in question until October 3, 2023, and stated that Respondent did not have adequate financial resources to perform cleanup of the used oil release.

18. On November 17, 2023, NMED's contracted remediation firm completed cleanup of the Property related to the release of used oil from September 18, 2023. As a result of these cleanup efforts, NMED HWB expended a total of \$333,891.13 to protect human health and the environment from this release that occurred on Respondent's Property.

II. CHARGES FOR COSTS INCURRED

19. Section 74-4-7(C) of the HWA authorizes assessment of charges against Respondent for costs incurred by NMED in cleanup of hazardous substance incidents.

20. The Department hereby assesses charges against Respondent in the amount of \$331,891.13 for renumeration of costs incurred by the Department in performing cleanup of the oil discharged at the Property on September 18, 2023.

21. No later than 30 days after this Order becomes final, Respondent shall make payment to the State of New Mexico-Hazardous Waste Emergency Fund by certified check, bank draft or other guaranteed negotiable instrument, and mailed to or hand delivered to:

Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505.

A copy of the transmittal letter shall be sent to counsel for the Department.

III. NOTICE OF OPPORTUNITY TO APPEAL TO DISTRICT COURT

22. Pursuant to Section 74-4-7 of the HWA, Respondent may appeal the assessment to the district court within 30 days of receipt of notice of the assessment.

IV. FINALITY OF ORDER

23. This Order shall become final unless Respondent files an appeal to district court within 30 days after the date of receipt of this Order.

24. Unless Respondent files an appeal to district court, the assessment proposed in the Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

V. SETTLEMENT

25. Respondent may confer with the NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the HWA. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Andrew Knight
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Andrew.Knight@env.nm.gov

26. Settlement discussions do not extend the 30-day deadline for appeal to district court, nor alter the deadlines for compliance with this Order.

27. Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

28. Any settlement reached by the Parties shall be finalized by written settlement agreement and stipulated final order. A settlement agreement must serve to resolve all issues raised in the Order, shall be final and binding on all parties to the Order, and shall not be appealable.

VI. COMPLIANCE WITH OTHER LAWS AND WAIVER

29. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

VII. DISCLOSURE TO SUCCESSORS IN INTEREST

30. Respondent shall disclose this Order to any and all successors in interest. The

requirements and penalties of this Order shall be binding upon any and all successors in interest, either owners or operators, of the Property.

VIII. TERMINATION

31. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

Ricardo Maestas Digitally signed by Ricardo Maestas
Date: 2024.03.21 15:50:11 -06'00'

DATE: 03/21/2024

RICARDO MAESTAS, ACTING CHIEF
HAZARDOUS WASTE BUREAU

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this 22nd day of March 2024, via Certified Mail, Return Receipt Requested, to the following:

Shay Elizabeth Meagle, Counsel, 6801 Jefferson St. NE, Suite 210, Albuquerque, NM 87109

A handwritten signature in black ink, appearing to read "Andrew Knight", is written over a horizontal line.

Andrew Knight, Assistant General Counsel
New Mexico Environment Department