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11-36/84
Plateau file

General Correspondence
Hammond water

July 23, 1984
RECEIVED

JUL 26 1984

Mr. Charles Nylander
Chief, Surface Water Quality Bureau
New Mexico Environmental Improvement Division
Post Office 968
Santa Fe, New Mexico 87504-0968

GROUND WATER/HAZARDOUS WASTE
BUREAU

Re: NPDES Permit Question

Dear Mr. Nylander:

Thank you for your May 15, 1984 letter to Mr. Dwight Stockham regarding the possible need for an NPDES permit for point source discharges at the Bloomfield Refinery. Pursuant to the conditions of the Water Discharge Plan approved by the Oil Conservation Division, Mr. Stockham has contacted EPA Region VI regarding the possible need for an NPDES Permit. We are unaware of any agreement or delegation in which EPA has authorized the NMEID to act on NPDES permit matters. Nevertheless, we are responding to your letter to explain why we do not believe the Bloomfield refinery has a point source discharge to waters of the United States so as to require an NPDES permit.

As you know, non-point sources are not subject to the NPDES permit requirements and attendant effluent limitations, because of the recognized difficulty of containing and treating such discharges. All process wastewaters and drains at the Bloomfield refinery are routed through an API separator, a system of polyethylene-lined ponds and ultimately to solar evaporation ponds and a bermed land application area. There is no point source of discharge from any of these facilities.

You mentioned specifically the possibility of discharges from the refinery to the Hammond Ditch and to the San Juan River. Let me address each separately. As described in the Water Discharge Plan, the Hammond Ditch plays an important role in the hydrogeology of the site. It is a line source of recharge to the cobblebed formation underlying the refinery. During the irrigation season when the ditch is full, seepage from the ditch flows to the cobblebed with a portion accumulating as bank storage. This constant discharge of water from the ditch to the cobblebed is the primary reason for the presence of water in surrounding soil. When present, this water flows by gravity along the subcrop contour of the impermeable Nacimiento Formation. When flow through the ditch ceases at the end of the irrigation season, accumulated bank storage seeps slowly back into the ditch along its length. Pursuant to the Water Discharge Plan, Plateau dams the ditch at the downstream property line to contain and collect any returning seepage and then pumps the collected water to the API separator.

This seepage back into the ditch does not require Plateau to obtain an NPDES permit for several reasons. As your letter implicitly acknowledged, the ditch is not "waters of the United States"; the seepage is not a point source; the natural return back to the ditch of bank storage from the ditch without active human intervention is not a discharge; and Plateau does not exercise any dominion or control over the ditch water in bank storage.

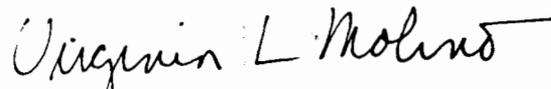
The raw water ponds, solar evaporation ponds, and land application area all may contribute seepage to the cobblebed. Discharges to groundwater such as this seepage are not, however, subject to the NPDES permit program. See Exxon Corp. v. Train, 554 F.2d 1310, 1329-31 (5th Cir. 1977). To the extent that underground seepage from these areas may migrate into the ditch when it is not carrying irrigation water, * such infiltration would not require an NPDES permit for many of the same reasons noted above.

The situation with respect to the San Juan River is somewhat different. There is no possibility of direct underground seepage from the site into the river, because the Nacimiento Formation and the hydrostatic pressure from the river act as effective barriers. Instead, water originating at the ditch and possibly the other on-site sources identified above, flows by gravity along the subcrop contour of the impermeable Nacimiento Formation.

Seeps occur along the boundary between the cobblebed and the Nacimiento above the river. Analyses of this water have demonstrated the presence of hydrocarbons which presumably are in the cobblebed, as described in the Water Discharge Plan. The probable migration of this material from areal sources in sheet flow across the surface and into the river, however, does not constitute a point source or point sources. In addition, there is no present, active intervention by human forces in either contributing contaminants or in collecting or channelizing the flow that makes it amenable to regulation and control under NPDES.

For these reasons, Plateau does not believe that an NPDES permit is required at this site. The Company does plan, however, additional site investigations and evaluation that we believe will confirm the conclusions presented in the Water Discharge Plan and reflected in this letter.

Very truly yours,



Virginia L. Molino
Secretary & General Counsel

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- * The hydraulic force of the seepage from the ditch during the irrigation season makes it unlikely that any of this water would migrate into the ditch until it is empty.

cc: USEPA, Mr. Bob Hanneschlager, 6W-P
NMOCD, Mr. Joe Ramey
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