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JUN 10 1989  
EID DIRECTORS OFFICE

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June 8, 1989

Mr. Richard Mitzelfelt  
Director  
Environmental Improvement Division  
1190 St. Francis Drive, Room 4050 North  
Santa Fe, New Mexico 87503

RECEIVED  
JUN 09 1989  
EID DIRECTOR'S OFFICE

Re: Giant Refining Company  
Docket No. NMHWA 881001

Dear Mr. Mitzelfelt:

I am writing to bring to your attention a matter of concern to Giant Refining Co. The EID issued a Compliance Order to Giant in October, 1988, and Giant has been attempting to resolve this matter with your staff. By letter dated May 12, 1989, Giant was informed that the EID was not willing to reduce its proposed \$10,000 penalty assessment any further and that unless Giant accepted this assessment the EID would appoint a hearing officer and would proceed with a hearing on this matter.

Giant regrets that this decision has been made. We continue to believe that the proposed assessment is not reasonably related to any perceived failure to comply with regulatory requirements, or to any concern about injury to the public interest. Because we do not believe the penalty assessment is reasonably related to any of these factors, Giant is unwilling to resolve this matter on the terms your staff has proposed. Nevertheless, we continue to believe that this matter should be resolved without the necessity of a hearing.

Giant's position in this matter is that alleged violations of regulations have been promptly addressed by Giant after any technical questions have been presented to the agency and discussed with agency representatives. Rather than continuing these discussions, the agency has instead sought to impose an unreasonable penalty assessment.

In the notice of violation initially served upon Giant in this matter, six allegations of regulatory violations were specified. By letter dated August 1, 1988, Giant responded to each of these alleged areas of violation and in each case sought additional information from the Environmental Improvement Division if the agency still believed that such violations existed. Rather than respond to that August 1, 1988 letter, the Environmental Improve-

ment Division subsequently served upon Giant the compliance order in this matter which: (1) found that corrective action had been taken, or that citation was not appropriate, as to three of the alleged violations; and (2) sought to impose a penalty of \$20,000 upon Giant for failure to correct the three outstanding alleged violations on which Giant had sought additional information.

The three areas still outstanding at the time that the compliance order was issued involved:

1. The need for documentation that certain matters had been included in the company's training program. Although Giant does not agree that these matters fall within the scope of the cited regulation, this documentation has been provided.
2. The allegation that certain test results were not reported in the proper format. As soon as the Environmental Improvement Division staff provided to Giant the format in which it sought the reporting of this data, this data was reformatted and resubmitted.
3. The Compliance Order also required the installation of tensiometers and lysimeters to sample soil for moisture. Giant responded to his item in its August 1, 1988 letter indicating that Giant had attempted to obtain soil-pore moisture to sample and been unable to do so. A technical dispute exists between Giant and the Environmental Improvement Division Staff over the usefulness of installing the equipment being required by the Environmental Improvement Division staff. Pursuant to Staff request, Giant has contracted with an independent soils engineering firm who has indicated to Giant that at this time the installation of the equipment being required by the Environmental Improvement Division is unwise and premature. This information was provided to your Staff. This consultant has suggested a much more extensive and elaborate testing procedure which will provide more reliable results, and Giant is committed to performing the study which was proposed by the independent expert. As soon as the results of these tests are available, Giant will provide this information to the Environmental Improvement Division Staff.

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It is on the basis of these three matters that the Division proposes a penalty of \$10,000. We wish to take this opportunity to again state our belief that this penalty is entirely unreasonable, and that it is not an appropriate use of the regulatory process to heavily penalize regulated entities who have attempted to provide the necessary information to the regulatory agency, have attempted to comply with the regulatory agency's reasonable requests for information, have attempted to provide the most reliable technical data which is relevant to the areas of agency concern, and are willing to expend funds far in excess of the amount necessary to implement actions proposed by the agency.

Despite its disagreement with the agency's position, Giant has offered to proceed with the installation of the equipment which the Staff has requested and has indicated that it will agree to pay an administrative assessment to compensate the agency for its costs associated with this matter.

Based upon our interest in working with the agency, we again restate this offer, and we encourage you and your staff to reconsider this proposal. Thank you for your attention to this matter.

Sincerely yours,



Carl D. Shook  
*Vice President Refinery Operation  
and Corporate Development*

cc: Tracy Hughes  
Perry Pearce