

9/30/05



ENTERED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

SEP 20 11 41 24

JUDICIAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF

San Juan Refining Company
d/b/a Giant Refining Company
Bloomfield Refinery

50 County Road 4990
Bloomfield, New Mexico 87413

EPA ID NO. NMD089416416

RESPONDENT

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DOCKET NO. RCRA-06-2005-0918

**COMPLAINT, COMPLIANCE ORDER, AND NOTICE
OF OPPORTUNITY FOR HEARING**

The Complainant, the Director of the Compliance Assurance and Enforcement Division, issues this COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") to San Juan Refining Company, d/b/a Giant Refining, ("Respondent").

I.

STATEMENT OF AUTHORITY

This Complaint is issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Section 3008(a) of RCRA authorizes the Administrator of the Environmental Protection Agency ("EPA") to issue a complaint whenever the Administrator has information that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e.

The requirements of Subtitle C include the requirements of the authorized program in a State, which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On January 25, 1985 (49 Fed. Reg. 48300) the State of New Mexico

received final authorization for its base RCRA program, and there have been subsequent authorized revisions to said base program. With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), new requirements imposed pursuant to the authority of HSWA are immediately applicable in the authorized states upon the federal effective date. The New Mexico Environment Department ("NMED") is the designated State Agency responsible for carrying out said RCRA program.

NMED regulations were promulgated and titled the New Mexico Administrative Code ("NMAC"). However, the NMAC has incorporated by reference, with few exceptions, Title 40 Parts 260 to 280 of the Code of Federal Regulations ("C.F.R.") in its Title 20, Chapter 4 Hazardous Waste, Hazardous Waste Management regulations. Citations to the Code of Federal Regulations are here used for ease of reference.

The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6, who is the person to whom the authority has been delegated to issue such Complaints in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

II.

NOTICE TO THE STATE

Notice of this action has been given to the State of New Mexico prior to the issuance of this Complaint pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III.

ALLEGATIONS

1. San Juan Refining Company is a wholly owned subsidiary of Giant Industries Arizona, Inc., an Arizona corporation that was qualified to do business in New Mexico as a foreign corporation on February 20, 1974.

2. The Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 20 NMAC 4.1.100 and 40 C.F.R. § 260.10.
3. The Respondent’s Registered Agent for service is CT Corporation System, 123 East Marcy, Santa Fe, NM 87501.
4. The Respondent owns and operates a Petroleum Refinery company along with all contiguous land and structures, other appurtenances and improvement located at 50 County Road 4990, Bloomfield, New Mexico 87413 (“Plant”).
5. Respondent is the “owner” and “operator” of the Plant as defined at 20 NMAC 4.1.100 and 40 C.F.R. § 260.10.
6. Pursuant to RCRA § 3007, 42 U.S.C. § 6927, on August 18, 2000, EPA conducted a Compliance Evaluation Inspection (“Inspection”) at the Respondent’s Plant as part of a multi-media inspection.
7. Pursuant to RCRA § 3007, 42 U.S.C. § 6927, on February 5 through 6, 2001, EPA conducted a follow-up Compliance Evaluation Inspection at the Respondent’s Plant, the focus of which was to collect samples from Respondent’s waste streams.
8. During the Inspection and the follow-up Compliance Evaluation Inspection, (collectively “Inspections”), EPA inspectors concluded that Respondent operates a petroleum refinery that includes an API Separator, three Aeration Lagoons, and two Evaporation ponds.
9. Wastewater flowing from the API Separator is sent to a series of three Aeration Lagoons and subsequently to a series of two Evaporation ponds before it is eventually deep well injected.

10. EPA representatives observed Respondent's acceptance of crude oil received via trucks and pipelines, which are subsequently recycled and refined. Petroleum products are thereafter shipped out by trucks.

11. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), Respondent filed its Notification of Hazardous Waste Activity with the State of New Mexico, identifying itself as a Large Quantity Generator of hazardous waste on December 12, 2002.

12. Respondent's Plant and its operations thereon is a "Facility" as is defined at 20 NMAC 4.1.100 and 40 C.F.R. § 260.10.

IV.

VIOLATIONS

COUNT 1: FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION IN VIOLATION OF 20 NMAC 4.1.300, [40 C.F.R. § 262.11]

13. Paragraphs 1 through 12 are hereby incorporated by reference.

14. Pursuant to 20 NMAC 4.1.300, [40 C.F.R. § 262.11] a person who generates a solid waste as defined at 20 NMAC 4.1.200, [40 C.F.R. § 261.2] must determine if that waste is a hazardous waste.

15. During the Inspection of February 5 through 6, 2001 at the Facility, EPA inspectors collected samples from the API Separator Outfall, Aeration Pond #s 1 and 2, the two Evaporation Ponds and the Injection Well.

16. Using the Toxicity Characteristic Leaching Procedure ("TCLP") method set forth at 20 NMAC 4.1.200, [40 C.F.R. § 261.24], the samples were tested and four samples were over the Toxicity Characteristic ("TC") level for benzene.

17. The TC level for benzene is 0.5 (mg/L) and the analytical results from the sampling events are [11.7 (mg/L), 13.6(mg/L)] and [1.74 (mg/L), and 1.69(mg/L)], respectively from the API Separator and Aeration Pond #1.

18. Respondent therefore violated 20 NMAC 4.1.300, [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on all solid waste generated at its facility.

**COUNT II: DISPOSAL OF RESTRICTED HAZARDOUS WASTE IN VIOLATION OF
20 NMAC 4.1.900, 20 NMAC 4.1.500 and 20 NMAC 4.1.800, [40 C.F.R. §§ 270.1,
270.10, 40 C.F.R. PARTS 264 & 268]**

19. Paragraphs 1 through 18 are hereby incorporated by reference.

20. Pursuant to 20 NMAC 4.1.900, [40 C.F.R § 270.1(c)], a RCRA permit is required for the “treatment,” “storage,” and/or “disposal,” of any “hazardous waste” as identified or listed in 20 NMAC 4.1.200, [40 C.F.R part 261].

21. 20 NMAC 4.1.900, [40 C.F.R. Part 270 Subpart B] sets forth the general application requirements that owners and/or operators who treat, store, and/or dispose of hazardous waste must fulfill.

22. Pursuant to 20 NMAC 4.1.800, [40 C.F.R. § 268.2(c)], the application or placement of waste into a surface impoundment is defined as land disposal.

23. 20 NMAC 4.1.500, [40 C.F.R. 264.221] sets forth the design and operating requirements that are applicable to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste.

24. The Aeration Pond is a “Surface Impoundment” as defined by 20 NMAC 4.1.100, [40 C.F.R. § 260.10].

25. Pursuant to 20 NMAC 4.1.200, [40 C.F.R. § 261.24], benzene exhibits the TC if using the TCLP test Method set forth therein the sample result is equal to or greater than 0.5 (mg/L).

26. Pursuant to 20 NMAC 4.1.800, [40 C.F.R. §§ 268.40(a) and 268.6], benzene is a prohibited hazardous waste that cannot be land disposed unless it has been treated first or the generator seeks and obtains a no-migration variance¹, or treats the waste in accordance with the treatment standards set forth at 20 NMAC 4.1.800, [40 C.F.R. § 268.48].

27. Respondent's surface impoundments do not meet the design and operating requirements set forth at 20 NMAC 4.1.500, [40 C.F.R. § 264.221].

28. Respondent does not have a no migration variance.

29. The exceptions set forth in 20 NMAC 4.1.500, [40 C.F.R § 264.1] are not applicable to Respondent in its capacity as owner and operator of the surface impoundments identified herein.

30. Respondent does not satisfy the exceptions set forth in 20 NMAC 4.1.800, [40 C.F.R. § 268.4] for the treatment of wastes in its surface impoundments.

31. The Land Disposal Restrictions treatment standard for benzene wastewater is 0.14 (mg/L²) and the analytical results from the sampling events conducted in the Aeration Pond #1 are 1.74 (mg/L) and 1.69(mg/L)].

32. Respondent violated 20 NMAC 4.1.800, [40 C.F.R. Part 268] by disposing of prohibited hazardous waste in its surface impoundment.

¹ All tentative and final EPA decisions on these no-migration variances are published in the Federal Register, as required by 20 NMAC 4.1.800, [40 C.F.R. § 268.6(j)].

33. Respondent disposed of hazardous waste in its surface impoundment (the Aeration Pond) without a permit in violation of 20 NMAC 4.1.900 and 20 NMAC 4.1.500, [40 C.F.R. §§ 270.1 & 270.10 and 40 C.F.R. Part 264].

V.

COMPLIANCE ORDER

34. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby ORDERED to take the following actions listed in subparagraphs A through D; and provide evidence of compliance within the time period specified in each subparagraph.

- A. Within 60 days of the effective date of this Order, submit to EPA a plan that will ensure that the surface impoundments are in compliance with 40 C.F.R. § 268.4.
- B. Within 60 days of the effective date of this Order, submit and implement a plan to minimize benzene releases during the period before the implementation of the plan identified in sub-paragraph A above.
- C. Within 90 days of the effective date of this Order, implement the plan identified in sub-paragraph A above to include any comments that is provided by the EPA regarding the surface impoundments on site, i.e., the three Aeration ponds and the two Evaporation Ponds.
- D. Respondent should immediately implement a process that will ensure hazardous waste determination on all solid waste generated by Respondent.

35. In all instances in which this CAFO requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official":

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

36. For the purpose of this certification, a "responsible official" of a

Respondent means a person with the authority to bind the Respondent as to the truth, accuracy, and completeness of all certified information.

37. Copies of all documents required by this ORDER shall be sent to the following

persons:

Carol Peters-Wagnon, Section Chief
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Ron Shannon

Marcia E. Moncrieffe (6RC-EW)
Attorney
Office of Regional Counsel
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

State Enforcement Contacts
Ms. Anna Maestas
Mr. Dave Cobrain
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Bldg.
Santa Fe, NM 87505

NOTICE: If you fail to take the required action(s) within the time specified in the Order, you may be liable for an additional penalty fo up to THIRTY-TWO THOUSAND FIVE HUNDRED

(\$32,500) DOLLARS for each day of continued noncompliance, and may be subject to further enforcement action, including an injunction from any further generation, transportation, treatment, storage or disposal of hazardous waste and such other and further relief as may be necessary to achieve compliance with Subtitle C of RCRA, all pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(c).

Notwithstanding any other provision of this Complaint, an enforcement action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.

VI.

PROPOSED CIVIL PENALTY

Section 3008 of RCRA authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each violation of RCRA and the regulations promulgated thereunder. The Complainant proposes to assess a civil penalty of Eight Hundred and Ninety Thousand Nine Hundred Dollars (\$890,900) against Respondent. The computation of this amount is based upon the seriousness of the violations, any good faith efforts by the Respondent to comply with the applicable regulations, and the RCRA Civil Penalty Policy. The individual penalties for the violations are:

COUNT I: FAILURE TO MAKE HAZARDOUS WASTE DETERMINATION IN VIOLATION OF 20 NMAC 4.1.300, [40 C.F.R. § 262.11]

1. Gravity-based penalty from matrix - \$24,750
 - (a) Potential for Harm - Major
 - (b) Extent of Deviation - Major

- 2. **Number of days of violation – 0 days**
- 3. **Economic Benefit - 0**
- 4. **Total gravity-based penalty - \$24,750**

COUNT II: DISPOSING RESTRICTED HAZARDOUS WASTE IN VIOLATION 20 NMAC 4.1.900, 20 NMAC 4.1.500, and 20 NMAC 4.1.800 [40 C.F.R. §§ 270.1, 270.10, AND 40 C.F.R. PARTs 264 & 268]

- 1. **Gravity-based penalty from matrix - \$24,750**
 - (a) **Potential for Harm - Major**
 - (b) **Extent of Deviation - Major**
- 2. **Number of days of violation – 179 days
(179 x \$3,300) = \$590,700**
- 3. **Economic Benefit - \$250,000**
- 4. **Total gravity-based penalty - \$865,450**

SUMMARY OF PROPOSED PENALTY

COUNT I: \$24,750

COUNT II: \$865,450

TOTAL PROPOSED PENALTY - \$890,200

VII.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Where Respondent (1) contests any material fact, upon which the Complaint is based;

(2) contends that the amount of the penalty proposed in the Complaint is inappropriate; or

(3) contends that it is entitled to judgment as a matter of law, Respondent shall file a written

Answer to the Complaint with the Regional Hearing Clerk, Region 6, within twenty (20) days

after receipt of the Complaint.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

The Answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. A hearing upon the issues raised by the Complaint and Answer shall be held upon request of the Respondent in the Answer.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. § 552 et seq.), and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22. A copy of these Rules is enclosed. Respondent may retain counsel to represent it at the hearing.

The Regional Hearing Clerk's address is:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

A copy of this answer shall also be sent to Ms. Marcia E. Moncrieffe, Assistant Regional Counsel (6RC-EW), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

VIII.**DEFAULT ORDER**

If Respondent fails to file an Answer within twenty (20) days of receipt of the Complaint, it may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 3008 of RCRA, 42 U.S.C. § 6928, concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings thirty (30) days after issuance of a Final Order upon Default. Upon issuance of the Final Order upon Default, Respondent must immediately comply with the Order provisions in the Complaint.

IX.**SETTLEMENT CONFERENCE**

Whether or not the Respondent requests a hearing, it may confer with Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of RCRA and applicable regulations. A request for a settlement conference does not extend the twenty (20) day period during which the written Answer and a request for hearing must be submitted. The settlement conference procedure may be pursued as an alternative to and simultaneous with the formal hearing procedures. Respondent may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be finalized upon the issuance of a written Consent Order by the Regional Administrator, EPA Region 6, in accordance with 40 C.F.R. § 22.18. The issuance of a Consent Order shall constitute a waiver of Respondent's

right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Ms. Marcia E. Moncrieffe, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, or by telephone call at (214) 665-7343.



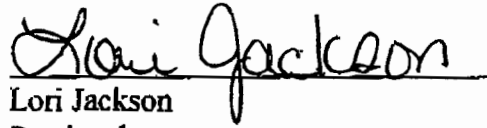
John Blevins
Director
Compliance Assurance and
Enforcement Division, U.S. EPA, Region 6

Dated this 30 day of September 2005, at Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that on the original of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing concerning San Juan Refining Company d/b/a/ Giant Refining, Bloomfield Refinery, New Mexico, was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, on this 30th day of September 2005. A true and correct copy of such Complaint will be placed in the United States mail, postage prepaid, certified mail, return receipt requested, the week of October 3rd 2005, addressed to the following:

CT Corporation System
Registered Agent for Service
123 East Marcy
Santa Fe, NM 87501


Lori Jackson
Paralegal