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M E M O R A N D U M

TO: Cindy Padilla, Division Director
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FROM: James Bearzi, Chief
Hazardous Waste Bureau

**SUBJECT: EPA COMPLIANCE ORDER
GIANT REFINING COMPANY
BLOOMFIELD (SAN JUAN) REFINERY**

DATE: October 13, 2005

The purpose of this memorandum is to summarize the EPA Compliance Order issued to Giant Refining Company, Bloomfield Refinery (Giant) on September 30, 2005, and to address the issues you may want to bring up to John Blevins (EPA) under the NMED-EPA Partnering Agreement.

- EPA issued Giant a Compliance Order resulting from inspections conducted August 2000 and February 2001. EPA collected samples from the following waste streams: the API Separator outfall, Aeration Pond #s 1 and 2, and the two Evaporation Ponds and the injection well.
- EPA found that Giant is in violation of 40 CFR 262.11 for failure to make a hazardous waste determination for waste present in the API Separator and the Aeration Ponds 1 and 2, the two Evaporation Ponds and the injection well. NMED does not agree, as Giant had knowledge of process that benzene would indeed be found at the Separator and Aeration Ponds. Giant had sample results for influent to the Evaporation Ponds and the injection well. EPA also found that waste is characteristic for benzene in the API Separator and Aeration Pond. NMED does not dispute this fact. EPA found that placement of waste into the aeration ponds constitutes land disposal in a surface impoundment and the aeration ponds do not meet the design requirements set forth in 40 CFR 264.221. NMED does not believe the ponds are disposal units (they are treatment units), and even if they are, they meet the substantive requirements under 264 (e.g., double liners and release detection).

October 13, 2005

Page 2

- NMED received the Compliance Order the week before the Compliance Order was issued. NMED left a phone message with Mr. Ron Shannon of EPA on 9/23/05 notifying EPA that NMED was unable to thoroughly review the Compliance Order until the first week of October. In addition, NMED contacted Mark Hanson of EPA on 9/29/2005 requesting that EPA refrain from issuing the compliance order until a conference call could be scheduled between EPA and NMED. NMED does not believe such short notice is appropriate under the partnering guidelines.
- NMED and EPA discussed the Compliance Order during two conference calls conducted during the week of 10/4/05. In those conference calls NMED stated the position:
 - that Giant was not in violation of 40 CFR 262.11 because Giant made hazardous waste determinations through process knowledge listed in their Permit Application Parts A and B (1994 and 1996) and also identified in EPA's 1992 Consent Order.
 - that both NMED and Giant expect, and agree with EPA, that waste in the API Separator and Aeration Pond 1 will be characteristic for benzene. It is NMED's opinion that the process of aggressive biologic treatment (ABT) will remove the F037 and F038 listing for the waste and at the same time remove the characteristic for benzene
 - that the placement of waste into the aeration ponds does not constitute land disposal in a surface impoundment because Giant meets the conditions required in 40 CFR 268.4 (268.4(a)(2)(ii) *sampling and testing* (met by process knowledge) and 268.4(a)(2)(ii) *removal* (met by the volume throughput exemption)
 - that the aeration ponds meet the design requirements set forth in 40 CFR 264.221. This information is provided in the Giant's Part B Permit Application dated 1994 and 1996 which was provided to EPA by NMED 10/7/05.
- Quarterly testing of aeration pond 3 effluent samples demonstrates that the wastewater is no longer hazardous prior to disposal in an injection well. EPA did not sample from this location, which is the single relevant sampling location. NMED did sample from this location.
- NMED does not agree that there is basis for issuing this Compliance Order. NMED does not agree that the characteristic for benzene must be removed in the API Separator nor does NMED agree that treatment in the aeration ponds constitutes land disposal in surface impoundments. EPA advocated both these point in the conference calls.
- NMED is an authorized state for implementation of the RCRA program. While NMED does not dispute EPA's authority for conducting inspections and issuing enforcement actions in an authorized state, NMED believes EPA should have consulted with NMED beforehand, and not issued any enforcement action with which NMED did not agree.

October 13, 2005

Page 3

- NMED believes EPA's action will adversely affect ongoing cleanup strategies at Giant for addressing real environmental problems, such as the hydrocarbon plume impacting the San Juan River. The API separator and aeration ponds not only are not environmental problems, but are performing as designed by producing non-hazardous waste water suitable for injection.
- NMED believes that EPA should withdraw this Compliance Order. In the future EPA should give NMED more time to review a Compliance Order that was over four years in preparation.

All these issues (and more) were discussed in the conference calls. Attendees included me and Mark Hanson, the Branch Chief for Hazardous Waste Enforcement. Pursuant to the August 2005 "NMED/EPA Elevation Protocol", the second Management Level has met. As EPA issued the Order over NMED's unequivocal objections, I recommend this issue be elevated to the third Management Level.