

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF
Giant Refining Company

COMPLIANCE ORDER
NM-OCD 2006-001

Respondent.

November 15, 2005

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended (hereinafter, "Act") and the Water Quality Act, NMSA 1978, Sections 74-6-1 to 74-6-17, as amended (hereinafter, "WQA"), the Director of the New Mexico Oil Conservation Division (hereinafter, "OCD"), issues this Order to **GIANT REFINING COMPANY (hereinafter, "Giant")**, directing compliance with the Act, the OCD Rules, WQA and the Water Quality Control Commission (hereinafter, "WQCC") Rules, and assessing a penalty for violations of the Act, OCD Rules, WQA and WQCC Rules.

I. BACKGROUND

A. Parties

1. The OCD, a division of the New Mexico Energy, Minerals and Natural Resources Department, is the state division charged with administration and enforcement of the Oil and Gas Act (hereinafter, "Act"), NMSA 1978, Section 70-2-12B(22), as amended, and OCD Rules, including the administration and enforcement of the WQA and the WQCC Rules as pertaining to New Mexico's oil and gas activity, which includes oil refineries.
2. Giant is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 1690171.

B. Relevant Rules and Statutes

3. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
4. Rule 19.15.3.116 NMAC (hereinafter, "OCD Rule 116") stipulates that the OCD "shall be notified of any unauthorized release occurring during the ... servicing or processing of crude oil, natural gases ... in the State of New Mexico...." Notification

must be made directly to the OCD. The Rule further requires that the responsible person for the release must remediate the site in accordance with an OCD approved plan or Rule 19.15.1.19 NMAC.

5. OCD Rule 19.15.1.19 NMAC (hereinafter, "OCD Rule 19") requires the abatement of water pollution, and specifies that the WQCC standards set out in Rule 20.6.2.3103 NMAC (hereinafter, "WQCC Rule 3103"), shall be met.
6. WQCC Rule 20.6.2.1203 NMAC (hereinafter, "WQCC Rule 1203") requires notification of discharges that may affect groundwater and/or surface water.
7. The Act, Section 70-2-31(A), NMSA 1978 authorizes penalties of up to **one thousand dollars (\$1,000.00) per day per** violation for any knowing and willful violation of any provision of the Act or any rule adopted pursuant to the Act.
8. Section 74-6-10(A), NMSA 1978 of the Water Quality Act provides for civil penalties of up to **ten thousand dollars (\$10,000.00) per day** for violations of the WQA. The OCD is authorized to enforce these penalties as they relate to the protection of groundwater. *See 74-6-2, NMSA 1978.*

C. Findings of Fact

9. Giant owns and operates the Bloomfield Oil Refinery located in the NW/4 NE/4 and the S/2 NE/4 and the N/2 NE/4 SE/4 of Section 27, and the S/2 NW/4 and the N/2 NW/4 SW/4 and the SE/4 NW/4 SW/4 and the NE/4 SW/4 of Section 26, Township 29 North, Range 11 West, NMPM, San Juan County, New Mexico.
10. The Bloomfield Refinery is permitted by the OCD pursuant to 20.6.3104 NMAC (hereinafter, "WQCC Rule 3104") and Giant is the current holder of discharge permit GW-01.
11. The discharge permit does not authorize discharges of effluent or leachate that may move directly or indirectly into groundwater or surface water. It does require certain best management practices and proper handling of all waste in order to protect fresh water, address stormwater runoff, vadose zone and water pollution, and requires that all spills/releases shall be reported, remediated and abated pursuant to both OCD and WQCC rules. In addition, the permit requires Giant abide by the information submitted and commitments in the discharge permit application.
12. On August 11, 2004, OCD employees Bill Olson, Wayne Price and Denny Foust discovered active discharges of hydrocarbon in two small tributaries (draws) on the north side of the refinery. Hydrocarbon saturated stained soil and dead vegetation were noted during inspection of the draws. The contamination had migrated down the draws to within a few feet of the San Juan River.

13. In addition, a new seep was noted in the embankment at the Hammond Ditch Tank 37 collection area. The Tank 37 area is easily accessed by the Hammond ditch road and should have been a red flag to Giant employees that contamination was not being contained properly.
14. Discharge permit condition #15 requires Giant to report all spill/releases pursuant to OCD Rule 116 and WQCC Rule 1203. Giant did not report this contamination to the OCD and failed to properly contain the contamination.
15. Other water contaminants and toxic pollutants that may affect human health have been present in the ground water beneath the Site. These include phase separated hydrocarbons, benzene, toluene, ethylbenzene, xylenes, heavy metals and inorganic salts. Standards for contaminants in ground water are set forth in WQCC Rule 3103 and toxic pollutants in 20.6.2.7VV NMAC (hereinafter, "WQCC Rule 7.VV). The OCD is concerned that pollution from the site will continue to enter the San Juan River and tributaries with an adverse impact on public health and the environment.
16. The OCD instructed Giant to initiate emergency clean-up actions and construct barriers to protect the San Juan River and downstream water users. During Giant's emergency remedial actions, initial soil samples collected from the two small tributaries (draws) on the north side of the refinery showed levels of benzene (1.190 mg/l) that exceed the WQCC groundwater standard of .01 mg/l. Benzene is a toxic pollutant as defined in by WQCC Rule 7.VV, and is a chemical constituent of crude oil and by-products manufactured at Giant's oil refinery.
17. Part 1.8 of Giant's discharge Plan renewal of July 6, 1999 required that Giant provide containment or diversionary structures or equipment to prevent oil from reaching navigable waters. Part 1.9 of the plan provided that Giant would perform inspections on a continuous basis. Giant has failed to perform these functions and is in violation of condition # 2 of its discharge permit.
18. By letter dated December 30, 2002, the OCD approved conditions for groundwater remediation and monitoring by Giant. Condition number 19 required Giant to notify the OCD of the discovery of separate-phase hydrocarbons or the exceedance of a WQCC standard in any down gradient monitor well where separate phase hydrocarbons were not present or where containment concentrations did not exceed WQCC standards during the preceding monitoring event, pursuant to OCD Rule 116. Giant's April 2004 Groundwater Remediation and Monitoring Annual Report shows that monitoring point P-5 is the final monitoring point for the sheet-piling project located within a few feet of the San Juan River. Groundwater in this area is obviously hydraulically connected to the San Juan River. Giant failed to address this issue pursuant to permit approval condition number 17a. Giant also failed to install recovery systems to prevent this contamination from entering the river.

II. CONCLUSIONS of LAW

19. The OCD has jurisdiction over Giant and the subject matter in this Order pursuant to the Act (NMSA 1978, Section 70-2-12B(22), as amended), OCD Rules, the WQA and WQCC Rules.
20. Giant is a person as defined in the Act (NMSA 1978, Section 70-2-33A), the WQA and WQA Rule 20.6.2.7II NMAC.

III. ALLEGED VIOLATIONS

21. Giant knowingly and willfully violated OCD Rule 116 and WQCC Rule 1203 by failing to notify the OCD of discharges that may affect groundwater and/or surface water. The OCD has determined that there are three violations of this rule, which are failure to notify the OCD of contaminants in the two tributaries and the Tank # 37 area. The OCD recommends a civil penalty for each violation of \$10,000.00, for a total of penalty of \$30,000.00.
22. Giant knowingly and willfully violated 20.6.4 NMAC on three occasions, by allowing hydrocarbon and toxic constituents to seep into two tributaries to the San Juan River and allowing toxic pollutants to enter the San Juan River. This is also a violation of the terms of its permit. The OCD recommends a civil penalty of \$10,000.00 per violation, for a total penalty of \$30,000.00
23. Giant knowingly and willfully violated WQCC Rule 3104 on two occasions by failing to comply with the terms and conditions of their permit. Giant violated Part 1.8 of their discharge plan by failing to prevent oil from reaching navigable waters, and condition 17a of their approval conditions by failing to install recovery systems to prevent the contamination from entering a river, which is also a violation of the New Mexico Standards for Interstate and Intrastate Surface Water Standards, 20.6.4 NMAC. The OCD recommends a civil penalty of \$15,000.00 for each violation, for a total of \$30,000.00.
24. On September 16, 2005, the OCD issued an Administrative Compliance Order, alleging the above violations, assessing a civil penalty and ordering Giant to take corrective action.

IV. COMPROMISE and SETTLEMENT

25. Giant neither admits fault or liability for the alleged violations or findings of fact but acknowledges it is a person as defined by NMSA 1978, Section 70-2-33(A) and may be subject to civil penalties under NMSA 1978, Section 70-2-31(A), if found to be in violation of OCD rules or the WQCC.

26. The parties have engaged in settlement discussions to resolve the dispute described above, and desire to resolve the issues raised by the Administrative Compliance Order without the necessity of litigation and the costs associated therewith.
27. Taking into account both aggravating and mitigating factors, the OCD hereby assesses a civil penalty of **Ninety Thousand Dollars (\$90,000.00)** against Giant for three (3) knowing and willful violations of OCD Rule 116 and WQCC Rule 1203 (failure to notify the OCD of discharges that may affect groundwater and/or surface water); three (3) knowing and willful violations of 20.6.4 NMAC (allowing hydrocarbon and toxic constituents to seep into two tributaries to the San Juan River and allowing toxic pollutants to enter the San Juan River); and two (2) knowing and willful violations by failing to comply with the terms and conditions of their permit, which resulted in two (2) knowing and willful violations of 20.6.4 NMAC.
28. **Sixty Thousand Dollars (\$60,000.00)** of the penalty will be waived provided that:
- (a) Giant provides to the OCD, no later than December 22, 2005, an acceptable assessment, remediation, and contingency plan for the entire area north of the slurry wall barrier to the San Juan River, inclusive of the Jackson Lake Terrace formation. The plan shall contain a schedule for Giant to accomplish the recommendations of the plan. Both the plan and schedule are subject to OCD conditions. Giant may request a time extension for accomplishing recommendations. The OCD, in its sole discretion, may grant any requested extension for good cause shown by Giant.
 - (b) By July 1, 2006, Giant shall develop an operation, checking and maintenance schedule spreadsheet for the refinery. This schedule shall include an investigation schedule to determine all sources of contamination within the refinery, and will include testing of the large petroleum storage tanks, all above and below ground tanks, pressure testing process lines, sumps and other possible above and underground sources of contamination in the refinery, finished products terminal, tank farm areas and pits. Testing of the entire facility shall be completed within five (5) years, which under this Order is a one-time testing requirement. Exempted from this testing requirement are large tanks that have been or are due to be tested under other regulatory agency rules, regulations or guidelines, provided that these tanks shall be identified in the spreadsheet and test dates and results provided to the OCD.
 - (c) No later than July 1, 2006, Giant shall submit a modified discharge plan to GW-01 permit application to the OCD. The application shall include a comprehensive ground water monitoring and remediation plan (hereinafter, "Plan"), which shall include the items required in subparagraphs (a) and (b), above. The Plan shall include a long-term monitoring and remediation plan for both the refinery and the area outside the refinery north of the recently installed slurry wall, to and including all seeps, existing or potential, along the bluff. It shall account for all remediation systems and safeguards in place site-wide, including the French drain collection system, the 2600 foot underground slurry barrier wall and associated collection and observation wells, the sheet-piling and

underground slurry barrier wall in the river terrace area, periodic sampling of the river and bio-venting system to be constructed on the river terrace.

Giant may request a time extension for accomplishing recommendations. The OCD, in its sole discretion, may grant any requested extension for good cause shown by Giant.

29. In the event these conditions are not met by the designated deadlines, **Twenty Thousand Dollars (\$20,000.00)** of the conditionally waived penalty shall immediately become due and payable for each of the three above designated deadlines.
30. Giant shall pay the **Thirty Thousand Dollars (\$30,000.00)** civil penalty by December 21, 2005. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division" and mailed or hand delivered to the New Mexico Oil Conservation Division, Attention: Director, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.
31. The parties agree to this Order for the sole purpose of settling the Administrative Compliance Order and Giant expressly agrees it shall pay the civil penalty set out above and meet all the terms and conditions of the Compromise and Settlement Paragraphs 1 through 5.

V. OTHER TERMS AND CONDITIONS

32. Waiver. By signing this Order, Giant expressly waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order.
33. Enforcement. The OCD retains the right to pursue relief authorized by the Act or the WQA for any violation not addressed herein. The OCD retains the right to enforce this Order by suit or otherwise to the same extent and with the same effect as a final Order of the Division entered after notice and hearing in accordance with all terms and provisions of the Act. The laws of New Mexico shall govern the construction and interpretation of this Order.
34. Binding Effect. This Order shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees or receivers.
35. Integration. This Order merges all prior written and oral communications between the parties concerning the subject matter of this Order, and contains the entire agreement between the parties. This Order shall not be modified without the express written consent of the parties.
36. Mutual Release. The parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and legal

conclusions alleged above. Nothing in this Order relieves Giant of liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water, surface water, human health or the environment. In addition, nothing in this Order relieves Giant of its responsibility for compliance with any federal, state or local laws and/or regulations.

- 37. Waiver of State Liability. Giant shall assume all costs and liabilities incurred in performing any obligation under this Order. The OCD, on its own behalf or on behalf of the Department of Energy, Minerals and Natural Resources, shall not assume any liability for Giant's performance of any obligation under this Order.
- 38. Disclosure to Successors-in-Interest. Giant shall disclose this Order to any successor-in-interest to the Facility and shall advise such successor-in-interest that this Order is binding on the successor-in-interest until such time as Giant complies with its terms and conditions or it is terminated by written agreement of the parties.
- 39. Effective Date. This Order shall become effective upon execution by the Division Director of the OCD.

Done at Santa Fe, New Mexico this ____ day of December 2005.

By: _____
MARK FESMIRE, P.E., Director
Oil Conservation Division

ACCEPTANCE

GIANT REFINING COMPANY hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

GIANT REFINING COMPANY

By: _____

Title: _____

Date: _____

APPROVED:

ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

By: _____
Cheryl O'Connor
Assistant General Counsel
OCD

GIANT REFINING COMPANY

By: _____
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