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GRCD

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION



**IN THE MATTER OF
GIANT REFINING COMPANY,**

Respondent.

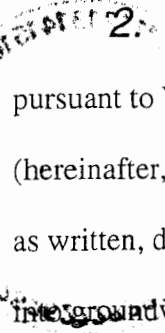
~~February 23, 2006~~

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act (hereinafter, "WQA"), NMSA 1978, §§ 74-6-1 to 74-6-17, the Director of the New Mexico Oil Conservation Division (hereinafter, "OCD") issues this Administrative Compliance Order (hereinafter, "Order") to Respondent Giant Refining Company (hereinafter, "Giant Refining") to enforce the WQA and the Water Quality Control Commission (hereinafter, "WQCC") Rules, 20.6.2 NMAC, for violations of the WQA and WQCC Rules.

I. FINDINGS OF FACT

1. The OCD is an agency of the executive branch of New Mexico Energy, Minerals, and Natural Resources Department and is charged with administration and enforcement of the Oil and Gas Act, NMSA 1978, Section 70-1-5, *et seq.* (hereinafter, "OGA"), and OCD Rules, including administration and enforcement of the WQA and the WQCC Rules when specifically pertaining to New Mexico's Oil and Gas activity, which includes oil refineries. 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.



2. The Bloomfield Refinery (also referred to as the "Site") is permitted by the OCD pursuant to WQCC Rule 20.6.2.3104 NMAC. Giant is the holder of discharge permit GW-001 (hereinafter, "Permit"). The Permit contains certain conditions, to which Giant must adhere, and as written, does not authorize discharge 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 storm water 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 to abide by the information submitted and commitments made in the discharge permit application.

3. On August 11, 2004, OCD employees Bill Olson, Wayne Price and Denny Foust discovered active discharges of hydrocarbon in two small tributaries (i.e., draws) on the north side of the refinery. Hydrocarbon saturated stained soil and dead vegetation was noted during inspection of the draws. The contamination had migrated down the draws to within a few feet of the San Juan River. In addition, a new seep was noted in the embankment at the Hammond Ditch Tank 37 collection area. The Hammond ditch road easily accesses the Tank 37 area. Therefore, the new seep should have been discovered by Giant and should have been a "Red Flag" to Giant employees that contamination was not being contained properly.

4. Discharge permit condition number 15 requires Giant to report all spill/releases pursuant to OCD Rule 19.15.3.116 NMAC and WQCC Rule 20.6.2.1203 NMAC. Giant did not report this contamination to OCD, and Giant failed to properly contain the contamination.

5. Water contaminants and toxic pollutants that may affect human health have been present in the ground water beneath the Site. These water contaminants and toxic pollutants include phase separated hydrocarbons, benzene, toluene, ethylbenzene, xylenes, heavy metals and inorganic salts. *See* 20.6.2.3103 NMAC (setting forth numeric standards for contaminants for ground water) and 20.6.2.7.VV NMAC (setting forth toxic pollutant standards). The OCD is concerned that Giant has lost control of the contamination beneath the Site, and that pollution will

continue to enter the San Juan River and tributaries, with an adverse impact on public health and the environment. Giant has not adequately investigated, controlled, remediated and abated the pollution.

6. Immediately following the discovery outlined above, 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 were collected from the two small tributaries, i.e., draws, on the north side of the refinery. The analytical results indicated that levels of benzene (1.190 mg/l) were found which exceeded the WQCC groundwater standard of .01 mg/l. Benzene is a chemical constituent of crude oil and by-products manufactured at the oil refinery. Benzene is considered a toxic pollutant, as defined by WQCC Rule 20.6.2.7.VV NMAC.

7. Giant's discharge permit condition number 2, "Commitments," requires Giant to abide by all commitments submitted in the discharge plan renewal dated July 06, 1999 and supplemental information. As part of its Permit application, Giant submitted a Spill Prevention Control and Countermeasure Plan. Part 1.8 of this plan provided that Giant would 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 the required inspections on a continuous basis. Giant has failed to perform these functions and is in violation of Permit condition number 2.

8. In a letter issued to Giant on December 30, 2002, the OCD approved conditions for ground water remediation and monitoring. Pursuant to OCD Rule 19.15.3.116 NMAC, Permit 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 contaminant concentrations did not exceed

WQCC standards during the preceding monitoring event. In reviewing Giant's April 2004 Groundwater Remediation and Monitoring Annual Report, the OCD discovered that monitoring point P-5 had a benzene content of 1.4 mg/l, which exceeds the groundwater standard of .01 mg/l. Monitoring point P-5 is the final monitoring point for the sheet-piling project located within a few feet of the San Juan River. In addition, the 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 of the December 30, 2002 letter. Also required under condition 17a is a requirement that Giant install a recovery system to prevent contamination from the Refinery from entering the river. This was never done. Thus, Giant is discharging toxic pollutants into the San Juan River, a violation of the State of the New Mexico Standards for Interstate and Intrastate Surface Water Standards 20.6.4 NMAC and is, accordingly, in violation of the Permit conditions.

II. CONCLUSIONS OF LAW

1. The OCD has jurisdiction over Giant and over the subject matter of this Order pursuant to NMSA 1978, Section 70-2-12.B(22) of the OGA, the WQA and WQCC Rules.
2. Giant is a "person" as defined in NMSA 1978, Section 74-6-2.I of the WQA and 20.6.2.7.ii NMAC.
3. WQCC Rule 20.6.2.1203 NMAC required Giant to provide notification of discharges that may affect ground and/or surface water. Giant has three separate violations of this Rule by failing to notify the OCD of contaminants in the two tributaries and at Tank #37. *See* Finding No. 3, *supra*.

The civil penalty for these violations is \$10,000 per violation, for a total of \$30,000.

4. By allowing hydrocarbon and toxic constituents to seep into two tributaries of the San Juan River, Giant is in violation of the State of New Mexico Standards for Interstate and Intrastate Surface Water Standards set out in 20.6.4 NMAC. *See* Finding No. 5, *supra*. It is also in violation by allowing toxic pollutants to enter the San Juan River. *See* Finding No. 5, *supra*.

The civil penalty for the violations is \$10,000 per violation for a total of \$30,000.

5. Twice, Giant violated WQCC Rule 3104, requiring the permittee to comply with the terms and conditions of the 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 was also a violation of the New Mexico Standards for Interstate and Intrastate Surface Water Standards, 20.6.4 NMAC. *See*, Findings No. 7 and 8. The civil penalty for these permit violations is \$15,000 per violation, for a total of \$30,000.

NOW, THEREFORE, THE OCD HEREBY ORDERS:

III. COMPLIANCE ORDER

1. Based upon the foregoing findings of fact and conclusions of law, Giant Refining Company is ordered to comply with the following schedule of compliance.

2. Within 30 days of the date of this Order, Giant Refining Company shall submit for OCD approval an application for a major modification of the current discharge permit including all required fees. The modification shall include a comprehensive action plan describing how Giant intends to prevent hydrocarbons and toxic pollutants from entering into groundwater and migrating into the San Juan River and its tributaries. The plan shall include all of the requirements listed in OCD's Emergency Action Directive dated August 13, 2004 and include a commitment to continue the investigation, remediation of contaminated soils and abatement of existing groundwater contamination on and off site. The plan shall also include additional monitoring and recovery wells throughout the plant area, including at the slurry wall and sheet-piling projects near the San Juan River.

IV. CIVIL PENALTY

3. The OCD hereby assesses a civil penalty against the Respondent in this Order of **Ninety Thousand Dollars (\$90,000.00)**. This penalty amount is derived as shown under Conclusions of Law items 1-5 and has taken into account mitigating circumstances and good faith effort performed to date. This penalty shall be due within 30 days of the date of this Order.

4. If Giant Refining Company fails to comply with the Schedule of Compliance set forth above, the Director of OCD may assess an additional civil penalty of up to \$25,000 for each day of noncompliance with the Order. NMSA 1978, § 74-6-10(F)(1).

V. RIGHT TO ANSWER AND REQUEST A HEARING

5. Pursuant to Section 74-6-10.G of the WQA, Respondent has the right to answer this Order and to request a hearing. If the Respondent (a) contests any material or legal matter upon which the Order is based, (b) contends that the Respondent is entitled to prevail as a matter of law, or (c) otherwise contests the appropriateness of the Order, the Respondent may request a hearing by mailing or delivering within 30 days of receipt of this Order, a written Request for Hearing and Answer to the Order to:

Water Quality Control Commission Hearing Clerk
C/o New Mexico Environment Department
Harold Runnels Building, Rm. 2050 South
1190 Saint Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

Respondent must attach a copy of this Order to the Request for Hearing.

6. The Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Order with regard to which the Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state, and the Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

7. The Respondent's Answer shall also include any affirmative defense upon which the

Respondent intends to . Any affirmative defense not asserted the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

VI. FINALITY OF ORDER

8. This Order shall become final unless the Respondent files a Request for Hearing and Answer with the WQCC within 30 days of receipt of this Order. Failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of WQA concerning this Order. Unless the Respondent requests a hearing and files an Answer, the Schedule of Compliance set forth in this Order shall become final.

VII. SETTLEMENT CONFERENCE

9. Whether Respondent requests a hearing and files an Answer, the Respondent may confer with the OCD concerning settlement. The OCD encourages settlement consistent with the provisions and objectives of the WQA and applicable WQCC rules. Settlement discussions do not extend the thirty (30) day deadline for filing the Respondent's Answer and a request for hearing, or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference itself and/or be represented by legal counsel.

10. Any settlement reached by the parties shall be finalized by a written, stipulated final order, which must resolve all issues raised in the Order, shall be final and binding all parties to the Order, and shall not be appealable. If reached more than thirty days following the issuance of this Compliance Order, the Water Quality Control Commission must approve a stipulated final order.

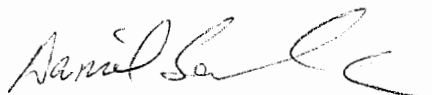
11. To explore the possibility of settlement in this matter, contact Wayne Price, Environment Director, New Mexico Oil Conservation Division, 1220 St. Francis Drive, Santa Fe, New Mexico 87505, 505-476-3487.

12. Compliance with the requirements of this Order does not relieve Respondent

of the obligation to comply with all other applicable laws and Rule

VIII. TERMINATION

13. This Order shall terminate when Respondent certifies that all requirements of this Order have been met and the OCD has approved such certification, or when the parties have entered into a stipulated final order, which has been, if applicable, approved by the Water Quality Control Commission.



for

Mark Fesmire, Director
Oil Conservation Division