

3/1/06

GRCB

STATE OF NEW MEXICO  
NEW MEXICO OIL CONSERVATION DIVISION

ENTERED



IN THE MATTER OF  
GIANT REFINING COMPANY,

Respondent.

**STIPULATED FINAL ORDER**

The New Mexico Oil Conservation Division (hereinafter, "OCD") and Giant Industries Arizona, Inc., d/b/a Giant Refining Company (hereinafter, "Giant"), stipulate and agree to resolve the Administrative Compliance Order NM-OCD 2006-100 (hereinafter, "Compliance Order") on the terms and conditions in this Stipulated Final Order (hereinafter, "Order"). For the purposes of this Order, Giant admits the jurisdictional allegations of the Compliance Order under the Water Quality Act (hereinafter "Act"), NMSA 1978 Sections 74-6-1 *et seq.*, and the Water Quality Control Commission Regulations ("WQCC Rules"), and consents to the relief specified in this Order.

**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 Act and the WQCC Rules, as pertaining to New Mexico's oil and gas activity, which includes oil refineries.

2. Pursuant to NMSA 1978 Section 70-2-6 OCD is a constituent agency of the Water Quality Control Commission (hereinafter, "Commission"), NMSA 1978 Section 74-6-2.J(4).

3. Giant is an Arizona corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 0796037.

**B. Relevant Rules and Statutes**

4. WQCC Rule 20.6.2.1203 NMAC (hereinafter, "WQCC Rule 1203") requires notification of discharges that may affect groundwater and/or surface water.

5. Section 74-6-10, NMSA 1978 of the Act provides for civil penalties of up to **ten thousand dollars (\$10,000.00) per day** for violations of the Act. The OCD is authorized to enforce these penalties as they relate to the protection of groundwater, human health and the environment. *See Sections 74-6-2, 74-6-4, NMSA 1978.*

**C. Background of Dispute**

6. Giant owns and operates the Bloomfield Oil Refinery (hereinafter "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.

7. The Refinery is permitted by the OCD pursuant to WQCC Rule 3104 [20.6.2.3104 NMAC]. Giant is the current holder of discharge permit GW-01.

8. On August 11, 2004, OCD employees Bill Olson, Wayne Price and Denny Faust inspected Giant's Refinery.

9. As a result of the inspection, the OCD issued the Compliance Order dated February 23, 2006 against Giant, captioned as Administrative Compliance Order, NM-OCD 2006-100. A copy is attached as Exhibit A and is incorporated into this Order as if fully set forth herein.

**II. CONCLUSIONS of LAW**

10. The OCD has jurisdiction over Giant and the subject matter in this Order pursuant to the Act and WQCC Rules.

11. Giant is a person as defined in the Act (NMSA 1978, Section 74-6-2.H) and in WQCC Rule 20.6.2.7II NMAC.

**III. ALLEGED VIOLATIONS**

12. Giant violated 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 were three violations of this rule, which were 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.

13. Giant 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 was 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.

14. Giant 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 was 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.

#### IV. COMPROMISE and SETTLEMENT

15. Giant admits neither fault nor liability for the alleged violations or findings of fact set forth in the Compliance Order or in this Order, but acknowledges it is a person as defined by NMSA 1978, Section 74-6-2.H and may be subject to civil penalties under NMSA 1978, Section 74-6-10, if found to be in violation of the Act or WQCC Rules.

16. The parties have engaged in settlement discussions to resolve the dispute described above, and desire to resolve the issues raised by the Compliance Order without the necessity of litigation and the costs associated therewith.

17. 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) alleged violations of WQCC Rule 1203 (failure to notify the OCD of discharges that may affect groundwater and/or surface water); three (3) alleged 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) alleged violations of WQCC Rule 3104 (failing to comply with the terms and conditions of their permit).

18. **Sixty Thousand Dollars (\$60,000.00)** of the penalty will be waived provided that:

(a) No later than December 22, 2005, Giant provides to the OCD an acceptable assessment, remediation, and contingency plan for the entire area of the Refinery 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. The OCD acknowledges that Giant submitted a draft plan to the OCD on December 22, 2005. In response to OCD's concerns and comments regarding that plan, Giant submitted a revised plan to the OCD on February 3, 2006. The OCD is in the process of reviewing the revised plan to determine if it meets the OCD's concerns.

(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 shall include testing of all large petroleum storage tanks, 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. Exempted from this one time testing requirement to be completed within five (5) years are large tanks that have been tested within the past five (5) years or are due to be tested within the next five (5) years under other regulatory agency rules, regulations or guidelines, or under any other standards accepted by regulatory agencies, such as API Code 653, provided that these tanks shall be identified in the spreadsheet and test dates and results provided to the OCD. Giant may request a time extension for accomplishing requirements or recommendations, which the OCD, in its sole discretion, may grant for good cause shown by Giant.

(c) No later than July 1, 2006, Giant shall submit an application to modify discharge plan GW-01 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 proper and the area 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 (the OCD acknowledges that the bio-venting system has been constructed). Giant may request a time extension for accomplishing these conditions of waiver, which the OCD, in its sole discretion, may grant for good cause shown by Giant.

19. 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.

20. Giant shall pay the **Thirty Thousand Dollars (\$30,000.00)** civil penalty upon execution of this Order. Payment shall be made by company, 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.

21. The parties agree to this Order for the sole purpose of settling the Compliance Order. 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 15 through 20, including all subparts.

V. OTHER TERMS AND CONDITIONS

22. Waiver. By signing this Order, Giant expressly waives any right, pursuant to the Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order.

23. Enforcement. The OCD retains the right to pursue relief 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 Water Quality Control Commission entered after notice and hearing in accordance with all terms and provisions of the Act. 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. The laws of New Mexico shall govern the construction and interpretation of this Order.

24. Binding Effect. This Order shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees or receivers.

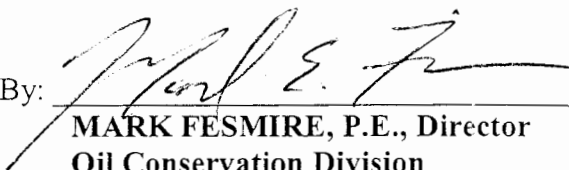
25. Integration. This Order supersedes all prior written and oral communications between the parties concerning the subject matter of this Order, and contains the entire agreement between the parties. This Order shall not be modified without the express written consent of the parties.

26. 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.

27. Disclosure to Successors-in-Interest. Giant shall disclose this Order to any successor-in-interest to the Refinery 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.

28. Effective Date. This Order shall become effective upon execution by the Division Director of the OCD.

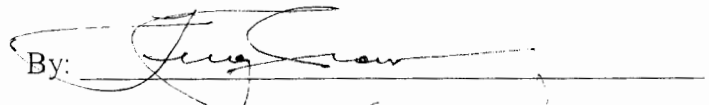
Done at Santa Fe, New Mexico this 1<sup>st</sup> day of March 2006.

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

ACCEPTANCE

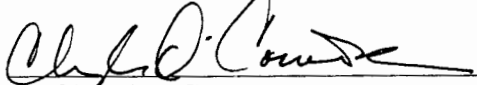
GIANT REFINING COMPANY hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

GIANT INDUSTRIES ARIZONA, INC. D/B/A  
GIANT REFINING COMPANY

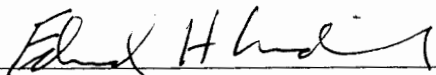
By:   
Title: EXECUTIVE VICE PRESIDENT  
Date: February 24, 2006

APPROVED:

ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

By:   
Cheryl O'Connor  
Assistant General Counsel, OCD

GIANT INDUSTRIES ARIZONA, INC. D/B/A  
GIANT REFINING COMPANY

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