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June 6, 2007

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Charles de Saillan  
Assistant General Counsel  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, NM 87502-6110

**Re: Draft Order for Bloomfield Refinery**

Dear Charlie:

Giant Industries Arizona, Inc. ("Giant") received a revised draft Order from the New Mexico Environment Department ("NMED") on May 30, 2007. The transmittal email from NMED to Giant indicated that Giant should inform NMED of any questions or major issues by June 6, 2007. Giant hereby incorporates by reference all prior comments on all versions of the draft Order, including without limitation Giant's written comments of August 21, 2006 and April 4, 2007.

Rather than repeating prior comments, Giant will briefly address three categories of issues. First, Giant will comment on the benzene stripper/tank system to be operated in conjunction with the aeration ponds. Second, Giant will comment on several other issues in the draft Order. Finally, Giant will address future steps to resolve the draft Order.

#### **I. BENZENE STRIPPER/TANK SYSTEM AND AERATION PONDS**

Giant understands that the draft Order now reflects that the method of operation described in 40 CFR §268.1(c)(4) will apply to the refinery as soon as the benzene stripper/tank system begins operation this year. The recent exchange of correspondence between NMED and EPA confirms that the two aeration ponds soon will no longer receive hazardous waste and will be removed from interim status.

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Giant has not received NMED's draft Response to Public Comments that updates the March 2007 version. Giant requests that NMED's draft Response to Public Comments be modified to reflect the §268.1(c)(4) method of operation and that Giant receive a copy of that document.

In paragraphs 51 (at page 12) and 120 (at page 25) of the draft Order, NMED refers to the Consent Agreement and Final Order entered by EPA on May 18, 2006. That EPA Final Order requires Giant to install equipment to render wastewater from the API non-hazardous before it is placed into the aeration ponds. Giant requests that reference to an exact date for operation of the equipment be deleted. Giant is discussing with EPA a date slightly later than the July 18, 2007 date in the Final Order in order to accommodate the schedule of Giant's contractor.

## **II. OTHER ISSUES IN DRAFT ORDER**

### **A. Dispute Resolution**

Giant notes that NMED has not accepted the language suggested in Giant's April 4, 2007 comments. However, NMED did add language stating that whether a disputed decision is final for purposes of dispute resolution shall be determined in accordance with established principles of administrative law. Giant suggests that such a standard is unnecessarily vague and in itself could lead to disputes. Again, Giant urges that finality for purposes of judicial review be defined in the draft Order as the point at which the prescribed dispute resolution procedures are completed.

### **B. Financial Assurance**

Giant notes that NMED has not accepted the approaches to financial assurance suggested in Giant's April 4, 2007 comments. Again, because these are significant issues, Giant would be willing to work with NMED to find a mutually acceptable approach. One approach would be for Giant to demonstrate to NMED that it has adequate net assets to perform the tasks required by the draft Order, making it unnecessary for NMED to require further financial assurance. Such an approach is provided in EPA's 1992 Administrative Order on Consent for the refinery.

### **C. Factual Errors**

Giant notes that NMED has not accepted the currently accurate, revised dates that Giant provided for inclusion in Sections V.A.1, V.A.2, and V.B.1 in Giant's April 4, 2007 comments.

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**D. Description of API Separator**

The description of the API Separator at Paragraph 62 (page 15) is not correct insofar as it states that the API Separator generates K051 listed waste. The second and third sentences of that paragraph should be deleted and the following substitute language inserted:

The API Separator generates an oil bearing sludge that is shipped offsite for oil recovery. It is exempt from hazardous waste listing because it is inserted into a petroleum refinery process.

**E. Refinery History**

Section II.B.5 of the draft Order suggest that the presence of contaminants at the refinery is solely the result of Respondents' actions. As noted in Section II.A.4, Kimball Campbell Corporation, and not the Respondents, constructed the refinery in the late 1950's. Respondents are merely the latest in a series of owners and operators. It is unfair to represent that contaminants have been released at the refinery solely as a result of Respondents' actions. Giant suggests that Section II.B.5 be revised by adding the words, "and prior owners' and operators'," before the word "storage."

**F. Force Majeure**

Because of the numerous deadlines imposed by the draft Order, Giant suggests that it would be reasonable for a force majeure provision to be added. As provided in EPA's 1992 Administrative Order on Consent for the refinery, such a provision would extend the time of performance during any event beyond the control of Giant that Giant could not have prevented or mitigated through the exercise of due diligence.

**G. Cleanup Standards**

Section VI.C.3 states that "[i]f cleanup standards or levels cannot be achieved, approved risk-based levels established by a risk analysis may be used." Sections VI.B.I and VII.E also address the use of risk-based standards, but only if Giant demonstrates that achieving the established cleanup standards or levels in "impracticable." Giant believes that the option should always exist for cleanup standards or levels to be based on a risk analysis, even when the cleanup standards or levels of Section VII can be achieved. Protection of human health and

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the environment, which is the goal of corrective action, would still be accomplished.

**H. Interim Measures**

Giant is concerned that NMED could require interim measures, as described in Section VI.A, as a normal practice. Giant believes that this provision should state clearly that interim measures should be required only in unusual circumstances. Further, if NMED does determine that such measures are necessary to protect human health or the environment, they should be consistent with, and integrated into, long-term corrective measures at the refinery.

**I. Required Risk Assessments**

The first sentence of Section VI.B, Section VIII.E and Section VIII.G appear to require Giant to perform human health and ecological risk assessments without NMED showing that such assessments are needed or otherwise appropriate. Giant believes that such assessments should only be required where clearly necessary and not on a routine basis.

**J. Groundwater Clean Up Levels**

As noted in Section VII of the draft Order, NMED "has selected a target risk level of  $10^{-5}$  for establishing cleanup levels for regulated substances." A similar provision should be added to Section VII.A. If neither a WQCC standard nor a MCL is available for a specific carcinogenic substance detected in groundwater, then the target cleanup level should be no more stringent than ten times the most recent version of the EPA Region VI Human Health Medium-Specific Screening Level for tap water.

**K. Demonstration That a Cleanup Level is Impracticable**

Section VII.E. addresses the requirements of demonstrating that a particular cleanup level is impracticable. Even where NMED finds a cleanup level or corrective action measure to not be impracticable, Giant urges NMED not to impose a cleanup level or corrective action measure that, although technically achievable, may be unduly onerous and expensive. Giant requests that, consistent with the interests of human health and the environment, NMED work with Giant to assure that any cleanup level or corrective action measure be implemented on a reasonable and affordable schedule.

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**L. Sample Point and Structure Location Surveying**

Section VIII.A.7 sets forth unnecessarily detailed and expensive requirements regarding surveying each sampling location. Although it may be customary to conduct such surveys on monitoring wells, it should not be a requirement to have a Professional Surveyor locate and obtain the elevation of each soil boring and test pit.

**M. Groundwater Sampling**

Section VIII.B.2 specifies that "[g]roundwater samples shall be collected from all exploratory borings not intended to be completed as monitoring wells prior to abandonment of the borings, where practicable." While it may make sense and add useful information to collect and analyze groundwater samples from some soil borings that are not intended to be completed as monitoring wells, it should not be a firm requirement to conduct such sampling at every soil boring. Giant is responsible for adequately investigating and characterizing the nature and extent of impacts to environmental media; however, it is counterproductive to place such specific requirements in the draft Order, which do not allow for any site-specific considerations.

**N. Schedule**

Giant understands that the dates in the Table I Schedule will be adjusted to reflect the date of the final Order.

**III. FUTURE STEPS TO RESOLVE THE DRAFT ORDER**

Giant wishes to emphasize once again its request that NMED delete the imminent and substantial endangerment claim under Section 74-4-13 of the Hazardous Waste Act. Giant also requests once again that NMED issue a consent order rather than a unilateral order. Giant suggests that both approaches requested by Giant would give NMED adequate authority to assure the protection of health and the environment. These approaches would also accurately reflect Giant's continuing commitment to corrective action at the refinery and Giant's ongoing cooperation with NMED.

Again, the brief comments in this letter only supplement and do not replace any of Giant's past comments, either written or oral, on the draft Order. Giant reserves the right to expand its current and prior statements as well as take any action it considers necessary in the future.

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Finally, Giant believes that another meeting between NMED and Giant would be productive. As you may know, Giant was acquired by Western Refining, Inc. ("Western Refining") last week, on May 31. Management at Western Refining has many questions and concerns about the draft Order. Such a meeting would inform Western Refining representatives of NMED's perspectives on the draft Order and should reduce the potential for disagreements in the future. Giant remains optimistic that the parties can resolve remaining issues and move forward productively.

Sincerely,



Edmund H. Kendrick

EHK/dho

**Monzeglio, Hope, NMENV**

**From:** De Saillan, Charles, NMENV  
**Sent:** Thursday, June 07, 2007 10:35 AM  
**To:** Bearzi, James, NMENV; Cobrain, Dave, NMENV; Monzeglio, Hope, NMENV  
**Subject:** FW: Draft Order for Bloomfield Refinery  
**Attachments:** Letter to NMED 6-06-07.pdf

**From:** Edmund H. Kendrick [mailto:EKendrick@montand.com]  
**Sent:** Wednesday, June 06, 2007 8:14 PM  
**To:** De Saillan, Charles, NMENV  
**Subject:** Draft Order for Bloomfield Refinery

Charlie,

Attached for your review are Giant's comments on the most recent draft Order.

Ned

<<Letter to NMED 6-06-07.pdf>>

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