

GRCC 95

Benito's Reading file



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-2850

MARK E. WEIDLER
SECRETARY

EDGAR T. THORNTON, III
DEPUTY SECRETARY

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

October 26, 1995

John Stokes, Manager
Giant Refining Company
Route 3, Box 7
Gallup, New Mexico 87301

Dear Mr. Stokes:

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department (NMED) issues the enclosed Compliance Order to Giant Refining Company (GRC), pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The Compliance Order states that GRC has failed to comply with New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1). The violations are specifically set out in this Compliance Order.

The Compliance Order sets forth a schedule of compliance required of GRC as well as an assessment of penalties. GRC may be subject to additional civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10.

Any inquiries concerning this Compliance Order should be directed to Mr. Coby Muckelroy, RCRA Inspection/Enforcement Program Manager, Hazardous and Radioactive Materials Bureau, New Mexico Environment Department, at (505) 827-4308.

Sincerely,

Handwritten signature of Ed Kelley in cursive.

Ed Kelley, Director
Water and Waste Management Division

cc: Benito Garcia, Bureau Chief, H&RMB
Coby Muckelroy, RCRA Program Manager, H&RMB
Susan McMichael, Office of General Counsel
Garth Graves, NMED District I Office

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
GIANT REFINING COMPANY
GALLUP, NM,

COMPLIANCE ORDER
95-05

RESPONDENT.

**ADMINISTRATIVE COMPLIANCE ORDER
AND CIVIL PENALTY**

This Administrative Order ("Order") is issued to Giant Refining Company ("Respondent") pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The authority to issue this Order has been delegated by the Secretary of the New Mexico Environment Department ("NMED") to the Director of the Water and Waste Management Division ("Complainant").

FINDINGS

1. Complainant is the agency within the executive branch of the New Mexico state government charged with administration and enforcement of the HWA, NMSA 1978 §§74-4-1 through 74-4-14 et seq. (Repl. Pamp. 1993), and the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1).

2. Respondent is Giant Refining Company, which owns and operates a petroleum refinery located 17 miles east of Gallup, New Mexico.

3. Respondent notified the U.S. Environmental Protection Agency (EPA) of its hazardous waste generation on August 6, 1980 and was granted a permit by NMED to store hazardous waste on November 4, 1988.

4. NMED conducted an inspection of Respondent's facility in December of 1992. As a result of the inspection the following violations of 20 NMAC 4.1 were noted: Respondent failed to perform hazardous waste determinations; Respondent failed to keep hazardous waste containers closed; Respondent failed to mark containers of hazardous waste with the words "Hazardous Waste;". Respondent failed to label containers of hazardous waste with accumulation start dates; and, Respondent failed to maintain training records at the site.

5. On June 14, 1995, NMED employees James Seubert and John Tymkowych conducted a compliance evaluation inspection ("inspection") at Respondent's facility.

6. At the time of the inspection, a hazardous waste determination had not been performed on a pile of calcium fluoride debris and a pile of iron oxide soil/sludge located at the less than 90 day heat exchanger bundle cleaning area.

7. At the time of inspection, a hazardous waste determination had not been performed on filters from a parts cleaning unit located in the carpenters shop and on one (1) 55 gallon container of liquid and debris located behind the carpenters shop.

8. At the time of inspection, a hazardous waste determination had not been performed on three (3) 55 gallon containers of liquid and debris, one drain pan with liquid and an apparent oil filter, two (2) 55 gallon containers of sludge and one (1) 5 gallon container of paint related wastes, all located in the empty drum storage area.

9. At the time of inspection, a hazardous waste determination had not been performed on approximately seventy-one (71) 5 gallon containers and twenty (20) 1 gallon containers of paint related wastes located on pallets in the bone yard.

10. At the time of the inspection, the sump containing K050 waste located in the less than 90 day heat exchanger bundle cleaning area was not labeled with the words "Hazardous Waste".

11. At the time of the inspection, no communication device such as a telephone or hand-held two-way radio, spill control equipment or decontamination equipment was available for use in the less than 90 day heat exchanger bundle cleaning area.

12. At the time of the inspection, six manifests were found without attached Land Disposal Restriction (LDR) notices. The document numbers of these manifests are: LA A 3164408, LA A 3164409, AR-666877, AR-614342, AR-583777, AR-583778.

13. At the time of the inspection, a required inspection for the Permitted Land Treatment Area had not been performed during the week of December 22, 1992.

CONCLUSIONS

14. Respondent is a "person" as defined at §74-4-3.K. of HWA, and §101 of the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1), effective September 23, 1994, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

15. Respondent is a "generator" as defined at §74-4-3.F. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

16. Respondent operates a "facility" as defined at 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

17. Respondent generates "hazardous waste" as defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

18. Respondent engages in the "storage" of hazardous waste as defined at §74-4-4.3.N. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

19. Respondent stores hazardous waste in "containers" as defined at 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

20. 20 NMAC 4.1.301, which incorporates federal regulations 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) is applicable to Respondent, and Respondent has violated regulations in Part 262 as specified below. 20 NMAC 4.1.501, which incorporates federal regulations 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) is also applicable to Respondent, and Respondent has violated regulations in Part 264 as specified below. 20 NMAC 4.1.801, which incorporates federal regulations 40 CFR 268 (Land Disposal Restrictions) is also applicable to Respondent, and Respondent has violated regulations in Part 268 as specified below.

21. Respondent failed to perform a hazardous waste determination on calcium fluoride debris and iron oxide soils/sludge located at the less than 90 day heat exchanger bundle cleaning area. This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR §262.11.

22. Respondent failed to perform a hazardous waste determination on filters from a parts cleaning unit located in the carpenters shop and on one (1) 55 gallon container of liquid and debris located behind the carpenters shop. This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR §262.11.

23. Respondent failed to perform a hazardous waste determination on three (3) 55 gallon containers of liquid and debris, one drain pan with liquid and an apparent oil filter, two (2) 55 gallon containers of sludge and one (1) 5 gallon container of paint related wastes, all located in the empty drum storage area. This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR §262.11.

24. Respondent failed to perform a hazardous waste determination on approximately seventy-one (71) 5 gallon containers and twenty (20) 1 gallon containers of paint related wastes located on pallets in the bone yard. This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR §262.11.

25. Respondent failed to label the sump containing K050 waste located in the less than 90 day heat exchanger bundle cleaning area with the words "Hazardous Waste". This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation §262.34(a)(3).

26. Respondent failed to make available a communication device such as a telephone or hand-held two-way radio, spill control equipment and decontamination equipment in the less than 90 day heat exchanger bundle cleaning area. This is a violation of 20 NMAC 4.1.301, which incorporates federal regulation §262.34(a)(4).

27. Respondent failed to retain copies of Land Disposal Restriction (LDR) notices that correspond to six hazardous waste manifests as specified in ¶12. This is a violation of 20 NMAC 4.1.801, which incorporates federal regulation §268.7(a)(7).

28. Respondent failed to perform a required inspection of the Permitted Land Treatment Area during the week of December 22, 1992. This is a violation of Respondent's hazardous waste permit, Module II, E, incorporated by reference herein.

29. Paragraphs 21-25 entail violations which were cited as a result of the inspections referred to in ¶4 and/or pose a substantial likelihood of exposure to hazardous waste. Therefore, Respondent is a high priority violator of 20 NMAC 4.1. Paragraphs 26-28 were not cited as a result of recent inspections and do not pose a substantial likelihood of exposure to hazardous wastes.

CIVIL PENALTY

30. Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of HWA or the regulations promulgated thereunder. Complainant hereby assesses a civil penalty in the amount of Twenty Eight Thousand Seven Hundred Fifty Dollars (\$28,750) against Respondent. The penalty is based on the seriousness of the violations and any good faith efforts on the part of Respondent to comply with the applicable requirements, and any economic benefit resulting from noncompliance accruing to Respondent, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The penalty for each violation is:

	<u>VIOLATION</u>	<u>AMOUNT</u>
Paragraph 21	Failure to conduct a hazardous waste determination.	\$4,250
Paragraph 22	Failure to conduct a hazardous waste determination.	\$4,250

Paragraph 23	Failure to conduct a hazardous waste determination.	\$8,000
Paragraph 24	Failure to conduct a hazardous waste determination.	\$8,000
Paragraph 25	Failure to label sump with the words " Hazardous Waste."	\$4,250

Payment shall be made to the State of New Mexico Hazardous Waste Emergency Fund by certified check, bank draft, or other guaranteed negotiable instrument, and mailed or hand-delivered to Linda Romero, Office of General Counsel, New Mexico Environment Department, P.O. Box 26110, Santa Fe, New Mexico 87502.

SCHEDULE OF COMPLIANCE

31. Based on the foregoing Findings and Conclusions, Respondent is hereby ordered to comply with the following schedule of compliance:

- . Within fifteen (15) working days after receipt of this Compliance Order, sample the contents of the containers noted in ¶¶21-24, and perform hazardous waste determinations on these samples as required under 20 NMAC 4.1.301. Within five (5) working days from the receipt of the analyses, submit copies of these analyses to Complainant.
- . Within one (1) working day after receipt of this Compliance Order, label the sump noted in ¶25 with the words "Hazardous Waste," as required under 20 NMAC 4.1.301.
- . Within fifteen (15) working days after receipt of this Compliance Order, provide for the equipment noted in ¶ 26, as required under 20 NMAC 4.1 301..
- . Within fifteen (15) working days after receipt of this Compliance Order, inform NMED as to the steps taken to insure that the problems cited in ¶¶27-28 do not occur in the future.

If Respondent fails to timely comply with the Schedule of Compliance or if Respondent elects not to comply with the Schedule of Compliance and to challenge it as set forth below, the Secretary may assess additional civil penalties of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance pursuant to §74-4-10.C. of HWA.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

32. Respondent has a right to answer this Order and request a hearing pursuant to §74-4-10.H. of the HWA and §204 of the Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act. Where Respondent (a) contests any material fact or legal matter upon which the Order is based; (b) contends the amount of the penalty is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondent shall file a written Request for Hearing, a copy of the Order, and an Answer to the Order with the Hearing Clerk within thirty (30) calendar days after service of the Order. The Answer must clearly and directly identify, with specificity, what Respondent is appealing.

33. The Answer shall clearly and directly admit or deny, with explanation, each factual allegation contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation may be denied on that basis. Any allegation, finding or conclusion not specifically denied shall be deemed admitted. The Answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) any affirmative defenses upon which Respondent intends to rely; (3) the facts which Respondent intends to place at issue; and (4) whether a hearing is requested. A hearing upon the issues raised by the Order and Answer shall be held upon the request of the Respondent. The Rules Governing Appeals from Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act shall govern all hearing and pre-hearing procedures. Respondent may contact the Hearing Clerk for a copy of these regulations.

The Hearing Clerk's address is:

Gloria Miller, Hearing Clerk
P.O. Box 26110
1190 St Francis Drive
Harold Runnels Building, S-4100
Santa Fe, New Mexico 87502
(505) 827-2850

FINALITY OF ORDER

34. The Order shall become final unless Respondent files a written Request for Hearing with an Answer within thirty (30) calendar days of the receipt of the Order. Failure by the Respondent to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a

hearing under §74-4-10 of the HWA. Unless Respondent requests a hearing, the penalty proposed in this Order shall become due and payable without further proceedings within sixty (60) days after receipt of this Order.

SETTLEMENT CONFERENCE

35. Whether or not Respondent files an Answer and Request for Hearing, Respondent may confer with Complainant concerning settlement. A request for a settlement conference does not extend the thirty (30) day period during which the Answer and Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to, or simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference by itself or be represented by counsel.

36. Any settlement reached by the parties shall be finalized by written order of the Secretary of NMED. The issuance of such an order shall serve to resolve all issues raised in the Order, shall be final and binding on all parties to the Order, and shall not be appealable. To explore the possibility of settlement in this matter, contact Mr. Coby Muckelroy of the Hazardous and Radioactive Materials Bureau, Environment Department, P.O. Box 26110, Santa Fe, NM 87501, telephone number (505)827-4308.

TERMINATION

37. Compliance with the requirements of the Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations. This Order shall terminate when Respondent certifies that all requirements of the Order have been completed, and NMED has approved such certification, or when the Secretary approves a settlement agreement.

MARK E. WEIDLER, SECRETARY

10/26/95
DATE

By: 
ED KELLEY, Director
Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid as follows on this 26th day of October, 1995 to the following:

Via Certified Mail, Return Receipt Requested:

Mr. John Stokes
Facility Manager
Giant Refining Company
Route 3, Box 7
Gallup, NM 88301


SUSAN MCMICHAEL