

GW - 014

ENFORCEMENT

New Mexico Energy, Minerals and Natural Resources Department

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Division Director

Oil Conservation Division



July 16, 2008

Mr. James Resinger
Vice President, Refining
Navajo Refining Company, LLC
P.O. Box 159
Artesia, NM 88211-0159

Re: Renewal of Discharge Permit GW-014 for the Lovington Refinery
Renewal of Discharge Permit GW-028 for the Artesia Refinery
Letter from Mr. James Resinger to Mr. Wayne Price dated May 20, 2008

Dear Mr. Resinger,

Mr. Wayne Price of the Oil Conservation Division's Environmental Bureau asked me to respond to the questions raised by Navajo Refining Company LLC (Navajo) regarding the extent of the Oil Conservation Division's authority. I understand that these questions arose during Navajo's meetings and correspondence with the Oil Conservation Division (OCD) concerning the renewal of Navajo's discharge permits GW-014 for the Lovington Refinery and GW-028 for the Artesia Refinery.

In particular, Mr. Price has provided me with a copy of your letter of May 20, 2008, which questioned the OCD's authority to require the installation of liners under tanks and throughout bermed areas at Navajo's Lovington and Artesia Refineries, and to complete the retrofit of tanks as part of the renewal of the discharge permits for those refineries. In your letter, you cite *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission*, 2006-NMCA-115, 140 N.M. 464, 470, 143 P.3d 502, 509 for the proposition that any conditions attached to a discharge permit must be reasonable. The OCD believes that its proposed conditions are reasonable due to the proximity of the refineries to population centers, the depth to ground water, and the type and volumes of chemicals of concern. The Water Quality Act gives the OCD broad power to prevent and abate water pollution. See NMSA 1978, Section 74-6-4, 20.6.2 NMAC (Ground and Surface Water Protection) and 21.6.4 NMAC (Standards for Interstate and Intrastate Surface Waters). The fact that there is ground water contamination at both the Lovington and Artesia Refineries illustrates the need to exercise that power to prevent further pollution and abate existing pollution.

I understand that Navajo also contests the OCD's position, as set out in Condition 17iii of the Artesia Refinery Discharge permit, that fires are "Major Releases" that must be reported to the OCD under 19.15.3.116 NMAC. The OCD's statutory powers extend to refineries. See, for example, NMSA 1978, Section 70-2-12(A), (B)(8) and (B)(22). The OCD is specifically charged



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with preventing fires. See NMSA 1978, Section 70-2-12(B)(5). OCD's notice rule requires notification of any unauthorized release occurring during the servicing or processing of crude oil. See 19.15.3.116.A(1) NMAC. "Major Releases" require both immediate verbal notice and timely written notice. 19.15.3.116.B(1) NMAC. And the rule defines "Major Release" to include an unauthorized release of any volume which results in a fire. 19.15.3.116.B(1)(b)(i) NMAC.

The OCD would like to thank Navajo for communicating with the OCD about its authority. We look forward to working together in good faith to protect public health, fresh water and the environment. Please contact me if you have additional questions.

Sincerely,

Gail MacQuesten
OCD Attorney

Cc: Wayne Price, OCD Environmental Bureau
GW-014
GW-028