

**STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
OIL CONSERVATION DIVISION**

**IN THE MATTER OF
Navajo Refining Company, L.L.C.**

No. WQA-OCD-CO-2015-002

AGREED COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-1 through 74-6-17, as amended (“Act”), and the regulations promulgated under the Act, the Oil Conservation Commission and the Oil Conservation Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico (together “OCD”) issue this Agreed Compliance Order, including Exhibit A attached hereto (together, the “Order”) to Navajo Refining Company L.L.C. (“Navajo”), directing compliance with the Act, the Water Quality Control Commission (“WQCC”) Regulations and permits issued under the Act.

I. FINDINGS AND DETERMINATIONS

1. The Oil Conservation Commission is a “constituent agency” under the Act and is charged with administration and enforcement of the Act and regulations promulgated in accordance with the Act. NMSA 1978, Section 74-6-3(K). The Oil Conservation Division of the Energy, Minerals, and Natural Resources Department has concurrent authority with the Oil Conservation Commission. NMSA 1978, Section 70-2-6(B).

2. Navajo is a limited liability company doing business in New Mexico. Navajo is an active entity with a principal address of 501 East Main Street, Artesia, New Mexico 88210.

3. Navajo owns and operates a petroleum refinery located at 501 East Main Street, Artesia, New Mexico (“Facility”).

4. The WQCC has adopted regulations, pursuant to the Act, requiring permits for the discharge of fluids directly or indirectly into groundwater. Section 20.6.2.3106 NMAC. For

groundwater discharges at oil and gas operations, including refineries, the WQCC has delegated administration and enforcement of those regulations to OCD.

5. Pursuant to the Act and the WQCC Regulations, on August 22, 2012, OCD issued Discharge Permit GW-028 to Navajo for the discharge of reverse osmosis (“RO”) reject fluid to the surface at two farms located at the Facility. The permit included a 10,000 barrel per day discharge limit based on historic discharges from existing RO units.

6. In 2011, Navajo installed a temporary RO unit to serve as a back-up for and to supplement the capacity of the two existing permanent RO units operating at the Facility (the “third temporary RO unit”). Navajo did not obtain a groundwater discharge permit modification at the time the third temporary RO unit was installed.

7. On March 13, 2015, Navajo orally notified OCD that, as a result of the installation of the third temporary RO unit in 2011, Navajo had, on an average annual basis, been discharging RO reject fluid in excess of the 10,000 barrel per day discharge limit in Discharge Permit GW-028.

8. On March 27, 2015, Navajo representatives met with OCD to provide further information regarding discharges of RO reject fluid from the third temporary RO unit and the steps Navajo is taking to address these discharges.

9. Based on the disclosures made by Navajo, OCD has determined that Navajo has committed the following violations:

- a. submission of inaccurate Annual Discharge Permit Reports pursuant to Condition 2.F. of Discharge Permit GW-028;
- b. exceeding the RO discharge volume limit in Condition 4.A. of Discharge Permit GW-028;

- c. failing to collect semi-annual samples of discharges from the third temporary RO unit pursuant to Condition 4.B. of Discharge Permit GW-028.

10. On April 10, 2015, Navajo submitted revised annual reports for 2012, 2013 and 2014 which added the daily discharge data for the third temporary RO unit.

11. Operation of all three RO units is critical to the continued operation of the Facility. As a result, operational changes cannot be relied upon to reduce discharge volumes. Navajo is taking prompt action to address the violation and is preparing an application to modify Discharge Permit GW-028 to authorize Navajo to discharge a quantity of RO reject fluid that is consistent with Navajo's current and intended future use of the Facility. Navajo is also evaluating options—such as underground injection—that may eliminate or significantly reduce surface discharges as a primary means of disposing of RO reject fluid.

12. There is no known or anticipated damage or injury to public health or the environment resulting from the discharges identified above, since the discharges take place solely on land owned by Navajo and, moreover, Navajo's groundwater monitoring system has not confirmed any human health or environmental risks that may be attributed to the discharge of RO reject fluid in excess of permitted amounts.

II. CONCLUSIONS

1. OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Navajo is a person as defined by NMSA 1978, Section 74-6-2.I.
3. Based on the facts presented above, the lack of known or anticipated damage or injury to public health or the environment, the commitments made herein by Navajo, the company's history of compliance with OCD permits prior to the events described above, the lack of future anticipated damage or injury resulting from compliance with this Order, the importance

of the RO units to the ongoing operation of the Facility, and other relevant considerations, OCD has determined that Navajo need not be ordered to cease discharging RO reject fluid during the period of this Order. However, this Paragraph shall not apply in the event: (A) new information not known by OCD at the time of this Order causes OCD to believe that Navajo will not be able to return to compliance pursuant to this Order; or (B) OCD determines that continued discharge of RO reject fluid in excess of 10,000 barrels per day presents an imminent and substantial endangerment of human health and the environment; or (C) Navajo fails to diligently pursue the development and implementation of a remedy to reduce RO reject fluid discharges as provided in Exhibit A to this Order.

III. ORDER

1. Compliance Schedule

a. Navajo shall take the actions and meet the schedule set forth in Exhibit A to this Order.

b. Except where otherwise modified or extended pursuant to Section IV, Paragraph 1, Navajo's obligation to comply with this Order shall be deferred only to the extent and only for the duration that the failure in compliance is caused by "force majeure." For purposes of this Order, "force majeure" is defined as an event or set of circumstances which are beyond Navajo's control and could not have been prevented by Navajo's reasonable action or due diligence, including any delay in required approvals, issuance of any necessary permits or similar items. "Force majeure" shall not apply to any failure in compliance due to increased costs or Navajo's financial inability to carry out this Order. Navajo shall promptly notify OCD of any force majeure event that has resulted in or will result in the inability of Navajo to comply with any obligation under this Order and shall provide OCD with a schedule for completing the obligations.

c. All reports, notifications and other submittals required under this Order shall be sent to OCD at the following address:

Oil Conservation Division
New Mexico Energy, Minerals & Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505
Re: WQA-OCD-CO-2015-002
email: jim.griswold@state.nm.us
carlj.chavez@state.nm.us

All such submittals shall be made electronically. Written amendment to this Order is not required for a change in the e-mail addresses specified above, and any such change in addresses may be made by e-mail.

2. Civil Penalties

a. Subject to the terms of this paragraph, Navajo will pay a penalty of \$456,000 (four hundred and fifty-six thousand dollars) to resolve all of the alleged violations set forth in this Order, including all exceedances of the 10,000 barrel per day discharge limit from August 22, 2012, until the effective date of this Order. Payment of \$381,000 shall be remitted to OCD no later than 30 days after the effective date of this Order. Payment of \$75,000 shall be remitted to OCD no later than 60 days after the effective date of this Order unless Navajo has timely complied with discharge permit modification application requirement in Paragraph 1 of Exhibit A. If Navajo timely submits the \$381,000 payment and complies with the requirement in Paragraph 1 of Exhibit A, the total penalty under this paragraph shall be reduced by \$75,000.

Payment must be made to "State of New Mexico – General Fund" and shall be sent to the following address:

Director, Oil Conservation Division
New Mexico Energy, Minerals & Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505
Re: WQA-OCD-CO-2015-002

b. Navajo shall pay stipulated penalties in the amounts set forth below if the following violations of this Order occur.

i. For each exceedance of the 10,000 barrel per day RO reject fluid discharge volume limit specified in Discharge Permit GW-028:

1. \$1,000 per daily violation for each daily violation prior to Navajo submitting a discharge permit modification application,
2. \$100 per daily violation if the daily volume is between 10,000 and 15,000 barrels, and \$500 if the daily volume exceeds 15,000 barrels, for each daily violation after Navajo submits a discharge permit modification application and prior to OCD approving or denying the application.

ii. For the failure to timely conduct sampling as required in Exhibit A: \$2,000 per day.

iii. For the failure to timely submit any report or notification as required in Exhibit A: \$1,000 per day.

iv. For failure to record the daily discharge flow from the permanent and the temporary RO units: \$1,000 per violation.

A calculation of stipulated penalties shall be made by Navajo and included in each monthly report submitted to OCD under this Order, and payment shall be due within 30 days after each monthly report submittal. Should OCD object to a given penalty calculation, OCD shall notify Navajo within five (5) business days after receipt of the monthly report, and Navajo shall make payment within ten (10) days after resolution of any such dispute. Any overpayment by Navajo shall be credited to further amounts due to OCD. Payments shall be by corporate check, certified

check, or other guaranteed negotiable instrument made payable to the “State of New Mexico – General Fund”, and shall be sent to the following address:

Director, Oil Conservation Division
New Mexico Energy, Minerals & Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505
Re: WQA-OCD-CO-2015-002

IV. OTHER TERMS AND CONDITIONS

1. Termination, Modification and Extension

a. Navajo and OCD have the right to modify or terminate this Order by written instrument signed by both parties.

b. This Order will terminate on the effective date of the discharge permit modification Navajo obtains pursuant to Exhibit A. If Navajo fails to obtain a discharge permit modification increasing the discharge volume limit, this Order shall continue until Navajo removes the third temporary RO unit or completes other water management projects to reduce the total volume of RO reject water that is discharged to the land below 10,000 barrels per day.

c. OCD may grant an extension of any deadline to perform any activity required pursuant to this Order. Navajo shall submit all requests for an extension of a deadline in writing to OCD. The request shall propose a new deadline for the activity and shall include the basis for the request. OCD shall respond in writing by approving, approving in part or denying the request as soon as possible, but no later than fifteen (15) days after receipt. If OCD approves in part or denies the request, the response shall specify the reasons for OCD’s actions.

2. By signing this Order, Navajo expressly:

a. acknowledges the authority of OCD to render the above Findings And Determinations, Conclusions, and Order;

b. agrees to comply with the Order;

c. 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; and

d. agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order entered after notice and hearing in accordance with all terms of the Act.

3. Nothing in this Order relieves Navajo of its 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 Navajo of its responsibility for compliance with any federal, state, or local laws and/or regulations, including all other obligations under the Permit.

4. This Order may be executed in any number of counterparts (whether by facsimile, PDF, or original), each of which will be deemed to be an original and all of which together will constitute the same instrument.

5. This Order shall become effective on the date it is approved and signed by the Chair of the Oil Conservation Commission and the Director of the Oil Conservation Division.

Done at Santa Fe, New Mexico this 27th day of April, 2015.

ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
OIL CONSERVATION DIVISION

By: David Catanach
Name: David Catanach

Title: Chair, Oil Conservation Commission
Director, Oil Conservation Division

ACCEPTANCE

Navajo Refining Company, L.L.C. hereby accepts the foregoing Amendment, and agrees to all of the terms and provisions as set forth in the Amendment,

Navajo Refining Company, L.L.C.

By: ROBERT K. O'BRIEN

Name: Robert K O'Brien

Title: *Vice President and Refinery Manager*

Date: 4/24/2015

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Exhibit A to Agreed Compliance Order

Remedy Selection

1. No later than 30 days from the date of this Order, Navajo shall submit to OCD an application for a discharge permit modification to increase the discharge volume to account for the discharge of RO reject fluid from Navajo's operation of the third temporary RO unit. Navajo recognizes that the discharge permit modification is subject to the public notice and participation requirements of the WQCC Regulations. OCD shall review and act on the permit modification application expeditiously and shall not unreasonably delay or extend final agency action on the application.

2. Navajo has been working on a project to enhance its water management system and reduce the total volume of RO reject fluid that is discharged pursuant to the groundwater discharge permit. Options currently under consideration by Navajo include installation of a third permanent RO unit to replace the temporary RO unit as well as the installation of a secondary RO unit to reduce the total volume of RO reject fluid produced at the Facility. Navajo is also evaluating options for the underground injection of RO reject fluid. In addition, Navajo is conducting a study of background groundwater concentrations of key chemical constituents of the RO reject fluid discharged under Navajo's groundwater discharge permit in order to determine whether concentrations of those chemical constituents in the RO reject fluid exceed background levels. During the term of the Order, Navajo shall provide OCD with updates on

any new developments related to the treatment and disposal of RO reject fluid at the Facility in the monthly reports required under Paragraph 5 below.

Sampling and Analysis Requirements

3. Within five days of the date of this Order, Navajo shall sample the discharge from the third temporary RO unit and submit the sample for analysis. Navajo shall provide OCD by e-mail the final results of this sample within three business days after Navajo's receipt of the data for that sample. During the term of this Order, Navajo shall sample the discharges from a) the two permanent RO units and b) the third temporary RO unit each month on or around the first business day of each month beginning with June 1, 2015. If the effluent streams from the two permanent RO units are combined prior to actual discharge to the land, they may be sampled as a combined stream. The results of the monthly samples shall be submitted with the next monthly report. The sampling and analysis shall be conducted in accordance with the schedule and conditions set forth in Section 4.B. of Discharge Permit GW-028.

4. The Permittee shall monitor and record discharge flows on a daily basis for each RO unit individually and for all RO units together.

Reporting During the Term of the Order

5. Beginning May 15, 2015, for the month of April 2015, Navajo shall provide OCD with monthly reports detailing the actions taken by Navajo during that calendar month under Order. The monthly reports shall be due the fifteenth day of the following month and shall include the following:

- a. The daily discharge flow measurements required pursuant to Paragraph 4, above;
- b. The results of the monthly discharge sample results; and

c. The calculation of stipulated penalties, if any, required under Section III, Paragraph 2 of the Order.