



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



October 7, 2009

Mr. Matthew Joy, Esq.
Jordan Biscoff & Hiser P.L.C
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251

Attorneys for Yates Petroleum Corporation and Agave Energy Company

Certified Mail No. 7009 0960 0001 0919 5778

**Re: Administrative Compliance Order—Yates Petroleum Corporation and
Agave Energy Company
Discharge Permit Renewal GW 125
Penasco Compressor Station**

Dear Mr. Joy:

The Oil Conservation Commission has issued the enclosed Administrative Compliance Order to Yates Petroleum Corporation (Yates) and Agave Energy Company (Agave) for violations of Discharge Permit Renewal GW 125 dated September 4, 2002.

As explained in the Order, Yates and Agave have the right to request an order hearing on the Order. If Yates or Agave does not file a Request for an Order Hearing within 30 days of the Order's receipt, the Order will become final. Yates and Agave may also confer with the Oil Conservation Division concerning settlement, regardless of whether Yates or Agave files a Request for an Order Hearing. To explore the possibility of settlement, contact Glenn von Gonten, Environmental Bureau, New Mexico Oil Conservation Division, 1220 South St. Francis Dr., Santa Fe NM 87505 or (505) 476-3488 or glenn.vongonten@state.nm.us.

During the Division's inspection of the Penasco Compressor Station on April 23, 2009, the inspector observed a sump being used as a below-grade tank. Sumps are intended to catch releases and must be predominantly dry and clean. Sumps must be cleaned out frequently so that no fluids are being stored in them.

Several areas of ground contamination were also observed. Yates and Agave must ensure that spills and releases do not reach the ground. Yates and Agave must quickly and properly clean up any spills or releases to the ground when they occur.

Matthew Joy, Esq.
Yates Petroleum Corporation
Agave Energy Company
Administrative Compliance Order
GW 125
Penasco Compressor Station
October 7, 2009
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If you have any questions please feel free to contact me at sonny.swazo@state.nm.us
or (505) 476-3463.

Sincerely,



Sonny Swazo
Assistant General Counsel, OCD

Ec: Mark Fesmire, Chairman, Oil Conservation Commission
Daniel Sanchez, OCD Enforcement & Compliance Manager
Gail MacQuesten, OCD Legal Counsel
Glenn von Gonten, Acting OCD Environmental Bureau Chief
Leonard Lowe, OCD Environmental Engineer

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Matthew Joy, Esq.
Jordan Biscoff & Hiser, P.L.C
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251

2. Article Number

(Transfer from service label)

7009 0960 0001 0919 5778

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Jolene Maiden*

Agent

Addressee

B. Received by (Printed Name)

Jolene Maiden

C. Date of Delivery

10-13-09

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Yes

**STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION**

**IN THE MATTER OF
YATES PETROLEUM CORPORATION, and
AGAVE ENERGY COMPANY,**

Respondents.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act (“WQA”), Chapter 74, Article 6 NMSA 1978, the Oil Conservation Division (“OCD”) issues this Administrative Compliance Order (“Order”) to Respondents Yates Petroleum Corporation (“Yates”) and Agave Energy Company (“Agave”) for the Penasco Compressor Station.

I. FINDINGS OF FACT

1. The OCD is a division of the New Mexico Energy, Minerals and Natural Resources Department charged with enforcing the Oil and Gas Act (“OGA”), Chapter 70, Article 2 NMSA 1978. See NMSA 1978, § 70-2-6(A). In addition to its duties under the OGA, the OCD is authorized to make rules, regulations and orders with respect to the WQA. See NMSA 1978, § 70-2-12(B)(22).

2. The Oil Conservation Commission (“OCC”) is an entity created by NMSA 1978, Section 70-2-4 to enforce the OGA, and has concurrent jurisdiction and authority with the OCD. See NMSA 1978, §. 70-2-6(B). In addition to its duties under the OGA, the OCC is a “constituent agency” under the WQA. See NMSA 1978, § 74-6-2(J)(4).

3. Yates is an active domestic corporation doing business in New Mexico under SCC No. 0425736. Yates explores for and produces oil and gas.

4. Agave is an active domestic corporation doing business in New Mexico under SCC No. 1720713. Agave markets and transports petroleum products.

5. Agave is a wholly owned subsidiary of Yates.

6. On September 4, 2002, the OCD issued Discharge Plan Renewal GW 125 ("GW 125") to Yates for the Penasco Compressor Station pursuant to the WQA and the Water Quality Control Commission ("WQCC") rules.

7. Yates owns the Penasco Compressor Station. The Penasco Compressor Station is a natural gas compressor station. The Penasco Compressor Station is located in the SE/4 SE/4 of Section 26, Township 18 South, Range 25 East, Eddy County, New Mexico.

8. Agave operates the Penasco Compressor Station.

9. Condition 5 of GW 125 states:

All process and maintenance areas which show evidence that leaks and spills are reaching the ground surface must be either paved and curbed or have some type of spill collection device incorporated into the design.

10. During an inspection of the Penasco Compressor Station on April 23, 2009, OCD inspector Leonard Lowe observed several areas where releases had reached the ground surface. Some locations had catch pans but releases were reaching the ground surface because the catch pans were not being properly managed.

11. Condition 9 of GW 125 states in relevant part:

All below grade tanks, . . . must incorporate secondary containment and leak-detection into the design.

12. During the April 23, 2009 inspection, OCD inspector Leonard Lowe observed two below-grade tanks being operated as a single wall vessel with no secondary containment and leak detection system.

13. The OCD identified the violations to Respondents in the initial discharge permit renewal that the OCD sent Respondents on May 29, 2009.

II. APPLICABLE STATUTES AND RULES

1. The WQA provides that the WQCC may require persons to obtain discharge permits from a constituent agency. See NMSA 1978, § 74-6-5.

2. For purposes of the WQA, "person" is defined to include corporations. See NMSA 1978, § 74-6-2(I).

3. When a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the WQA or a condition of a permit issued pursuant to that act, the constituent agency may issue a compliance order requiring compliance immediately or within a specific time period or issue a compliance order assessing a civil penalty or both. See NMSA 1978, § 74-6-10(A)(1).

4. If a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate the permit violated by the person. See NMSA 1978, § 74-6-10(F)(1).

III. CONCLUSIONS OF LAW

1. The OCD has jurisdiction over Respondents and the subject matter of this Order pursuant to NMSA 1978, Section 70-2-12(B)(22) and NMSA 1978, Section 74-6-10(A)(1).

2. Respondents are a "person" for purposes of the WQA.

3. Respondents are subject to GW-125.

4. Respondents violated Condition 5 of GW-125 by allowing leaks and spills to reach the ground surface.

5. Respondents violated Condition 9 of GW-125 by using two below-grade tanks as a single wall vessel with no secondary containment and leak detection system.

IV. COMPLIANCE ORDER

Based upon the foregoing findings and conclusions, Respondents are hereby ordered to comply with the following order:

1. Respondents shall immediately pave, curb or utilize some type of spill collection device to prevent leaks and spills from reaching the ground surface. Respondents shall clean up all discharges as specified in its Contingency Plan attached to its Discharge Plan Application dated April 5, 2002 and shall dispose of the contaminated soil in accordance with OCD Rule 19.15.35.8 NMAC or at an OCD permitted surface waste management facility. **Respondents shall complete this by November 16, 2009.**

2. Respondents shall immediately close the below-grade tanks in accordance with OCD Rule 19.15.17.13.E NMAC. In lieu of closure, Respondents may submit a workplan to retrofit the below-grade tanks to meet the standards specified at OCD Rule 19.15.17.11 NMAC. **Respondents shall complete this by November 16, 2009.**

V. CIVIL PENALTY

1. Section 74-6-10(F)(1) NMSA 1978 provides that if a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate the permit violated by the person.

2. If Respondents fail to timely comply with the foregoing Compliance Order requirements, the OCC may seek to assess a civil penalty of not more than twenty-five thousand

dollars (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate the permit violated by the person.

VI. RIGHT TO ANSWER AND REQUEST A HEARING

1. Pursuant to NMSA 1978, Section 74-6-10(G), Respondents have the right to request a hearing to contest the Order.

2. An Order hearing shall be initiated by the filing of a Request for Order Hearing within thirty days after the Compliance Order is served. The Respondent filing a Request for Order Hearing shall file the original Request for Order Hearing with the WQCC, and serve a copy on the OCD. See WQCC Rule 20.1.3.400(A)(1) NMAC.

3. The Request for Order Hearing shall also serve as an Answer to the Compliance Order and shall:

- a. clearly and directly admit or deny each of the factual assertions contained in the Compliance Order; but where the Respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis. Any allegation of the Compliance Order not specifically denied shall be deemed admitted;
- b. indicate any affirmative defenses upon which the Respondent intends to rely. Affirmative defenses not asserted in the Request for Order Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;
- c. be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct; and
- d. attach a copy of the compliance order.

See WQCC Rule 20.1.3.400(A)(2) NMAC.

VII. FINALITY OF ORDER

1. This Order shall become final unless any Respondent files a Request for Order Hearing with the WQCC within thirty days of receipt of this Order. Failure to file a Request for Order Hearing constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under NMSA 1978, Section 74-6-10(G) concerning this Order. Unless any Respondent files a Request for Order Hearing the Order shall become final.

VIII. SETTLEMENT CONFERENCE

1. The Respondents may confer with the OCD concerning settlement, regardless of whether the Respondents file a Request for Order Hearing. The WQCC encourages settlement consistent with the provisions and objectives of the WQA and applicable rules. Settlement discussions do not extend the thirty day deadline for filing the Respondents' Request for Order Hearing, or alter the deadlines for compliance with this order. See WQCC Rule 20.1.3.700(B) NMAC. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondents may appear at the settlement conference itself and/or be represented by legal counsel.

2. Any settlement reached by the parties shall be finalized by a written, stipulated final order, which must resolve all issues raised in the Order, shall be final and binding on all parties to the Order, and shall not be appealable. If reached more than thirty days following the issuance of this Compliance Order, the WQCC must approve a stipulated final order.

3. To explore the possibility of settlement in this matter, contact Glenn von Gonten, Environmental Bureau, New Mexico Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, NM 87505 or (505) 476-3488.

IX. COMPLIANCE WITH OTHER LAWS AND WAIVER

1. Compliance with the requirements of this Order does not relieve the Respondents of the obligation to comply with all other applicable laws and rules.

X. TERMINATION

1. This Order shall terminate when Respondents certify that all requirements of this Order have been met and the OCD has approved such certification, or when the parties have entered into a stipulated final order, which has been, if applicable, approved by the WQCC.



Mark Fesmire, Chairman
Oil Conservation Commission

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,

Complainant,

v.

AGAVE ENERGY COMPANY,

Respondent.

WQCC CASE NO. 09-10 (CO)



SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

The New Mexico Oil Conservation Division (“OCD”) and Agave Energy Company (“Agave”) agree to resolve the Administrative Compliance Order issued to Yates Petroleum Corporation (“Yates”) and Agave on October 7, 2009 for alleged violations of Discharge Permit GW-125 for the Penasco Compressor Station, based on the terms and conditions specified in this Settlement Agreement and Stipulated Final Order (“Final Order”). For purposes of this Final Order, Agave admits the jurisdictional allegations of this Final Order and consents to the relief specified herein.

I. BACKGROUND OF DISPUTE

A. Parties

1. The OCD is a division of the New Mexico Energy, Minerals and Natural Resources Department charged with enforcing the Oil and Gas Act (“OGA”), Chapter 70 Article 2 NMSA 1978. See NMSA 1978, Section 70-2-6(A). In addition to its duties under the OGA, the OCD is authorized to make rules, regulations and orders with respect to the Water Quality Act (“WQA”). NMSA 1978, Section 70-2-12(B)(22).

2. The Oil Conservation Commission (“OCC”) is an entity created by NMSA 1978, Section 70-2-4 to enforce the OGA, and has concurrent jurisdiction and authority with the OCD. See NMSA 1978, Section 70-2-6(B). In addition to its duties under the OGA, the OCC is a “constituent agency” under the WQA. NMSA 1978, Section 74-6-2(K)(4).

3. Yates is an active domestic corporation doing business in New Mexico under SCC No. 0425736. According to New Mexico Public Regulation Commission documents, Yates’s stated purpose is oil and gas exploration and production.

4. Agave is an active domestic corporation doing business in New Mexico under SCC No. 1720713. According to New Mexico Public Regulation Commission documents, Agave’s stated purpose is marketing and transportation of petroleum products.

5. Agave is a wholly owned subsidiary of Yates.

B. Discharge Permit GW-125

6. On September 4, 2002, the OCD issued Discharge Plan Renewal GW-125 (“GW-125”) to Yates for the Penasco Compressor Station pursuant to the WQA and the Water Quality Control Commission (“WQCC”) rules.

7. Yates owns the Penasco Compressor Station. The Penasco Compressor Station is a natural gas compressor station. The Penasco Compressor Station is located in the SE/4 SE/4 of Section 26, Township 18 South, Range 25 East, Eddy County, New Mexico.

8. Agave operates the Penasco Compressor Station.

C. Alleged Violations of Discharge Permit GW-125

9. Condition 5 of GW-125 states:

All process and maintenance areas which show evidence that leaks and spills are reaching the ground surface must be either paved and curbed or have some type of spill-collection device incorporated into the design.

10. During an inspection of the Penasco Compressor Station on April 23, 2009, OCD inspector Leonard Lowe observed several areas where releases had allegedly reached the ground surface. Some locations had catch pans but releases were reaching the ground surface because the catch pans were not being properly managed.

11. Condition 9 of GW-125 states in relevant part:

All below grade tanks, . . . must incorporate secondary containment and leak-detection into the design.

12. During the April 23, 2009 inspection, OCD inspector Leonard Lowe observed two below-grade tanks allegedly being operated as a single wall vessel with no secondary containment and leak detection system.

13. The OCD identified the alleged violations to Yates and Agave in the initial draft discharge permit renewal that the OCD sent Yates and Agave on May 29, 2009.

D. Administrative Compliance Order

14. When a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the WQA or a condition of a permit issued pursuant to that Act, the constituent agency may issue a compliance order requiring compliance immediately or within a specific time period, or issue a compliance order assessing a civil penalty, or both. NMSA 1978, Section 74-6-10(A)(1).

15. For purposes of the WQA, "person" is defined to include corporations. NMSA 1978, Section 74-6-2(I).

16. On October 7, 2009, the OCD issued an Administrative Compliance Order to Yates and Agave for alleged violations of Condition 5 and Condition 9 of Discharge Permit GW-125.

17. The Administrative Compliance Order alleged that Yates and/or Agave violated Condition 5 of GW-125 by allowing leaks and spills to reach the ground surface. The Administrative Compliance Order required Yates and/or Agave to immediately pave, curb or utilize some type of spill collection device to prevent leaks and spills from reaching the ground surface. The Administrative Compliance Order required Yates and/or Agave to clean up all discharges as specified in the Contingency Plan attached to the Discharge Plan Application dated April 5, 2002 and dispose of the contaminated soil in accordance with OCD Rule 19.15.35.8 NMAC or at an OCD permitted surface waste management facility. The Administrative Compliance Order required Yates and/or Agave to complete these requirements by November 16, 2009.

18. The Administrative Compliance Order alleged that Yates and/or Agave violated Condition 9 of GW-125 by using two below-grade tanks as a single wall vessel with no secondary containment and leak detection system. The Administrative Compliance Order required Yates and/or Agave to immediately close the below-grade tanks in accordance with OCD Rule 19.15.17.13.E NMAC. The Administrative Compliance Order provided that in lieu of closure, Yates and/or Agave may submit a workplan to retrofit the below-grade tanks to meet the standards specified at OCD Rule 19.15.17.11 NMAC. The Administrative Compliance Order required Yates and/or Agave to complete this requirement by November 16, 2009.

19. The Administrative Compliance Order provided that if Yates or Agave failed to timely comply with the requirements of the Administrative Compliance Order, the OCC may seek, pursuant to NMSA 1978, Section 74-6-10(F), to assess a civil penalty of not more than twenty-five thousand (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate Discharge Permit GW-125.

20. Agave timely filed a Request for Order Hearing on the Administrative Compliance Order.

21. At the request of the OCD and Agave, the WQCC has stayed the deadline for corrective action under the Administrative Compliance Order to at least May 18, 2011, to allow the OCD and Agave to settle the alleged violations through this Final Order.

22. If a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order and suspend or terminate the permit violated by the person. NMSA 1978, Section 74-6-10(F).

23. Any person who does not comply with the provisions of NMSA 1978, Section 74-6-5, including any regulation adopted pursuant to that section, or any permit issued pursuant to that section, shall be assessed civil penalties up to the amount of fifteen thousand dollars (\$15,000) per day of noncompliance for each violation. NMSA 1978, Section 74-6-10.1(A).

24. Any person who violates any provision of the WQA other than Section 74-6-5 NMSA 1978, or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation. NMSA 1978, Section 74-6-10.1(B).

E. Mitigating Factors

25. Agave timely cleaned up most of the releases, removing as much of the soil as it could remove without compromising the integrity of nearby structures. Agave continued soil remediation as part of the remediation and closure plan, dated February 7, 2011 and the addendum of March 4, 2011. Agave properly disposed of the soil it removed. The OCD has approved Agave's use of a passive ventilation system to remediate the remaining contaminants in

the soil. Agave removed the equipment where releases had reached the ground surface. Agave removed the below-grade tanks.

II. COMPROMISE AND SETTLEMENT

26. The OCD has jurisdiction pursuant to the WQA, WQCC Regulations and NMSA 1978, Section 70-2-12(B)(22) to issue the Administrative Compliance Order and to enter into this Final Order.

27. The parties have engaged in good faith settlement discussions to resolve the alleged violations.

28. The parties agree to this Final Order for the sole purpose of settling the alleged violations.

29. The OCD has approved Agave's use of a passive ventilation system to remediate the soil to acceptable levels. Agave may propose closure of the passive ventilation system once it shows two consecutive quarters with air samples taken at the passive vents less than 100 ppm PID. However, in order for the OCD to approve closure, Agave must verify that the soil has been remediated to acceptable levels by performing the following tests. Agave shall cap all vents and individually connect each vent to a regenerative blower or other appropriate pump. Soil vapors shall be extracted from each well for a minimum period of one hour at a flow rate not less than 10 cfm at an applied vacuum level of not less than 20 inches of water. After this purging period, the undiluted soil vapor concentration shall be measured using a PID equipped with a 10 eV lamp, set with a 1.0 benzene response factor, and calibrated at least daily using a 100 ppm-v isobutylene-in-air standard. A vent must yield a vapor concentration of less than 100 ppm before it may be permanently removed from service. If Agave wants to permanently

~~remove a vent from service, it shall contact the OCD and demonstrate its compliance with the~~

requirements of this paragraph. The OCD shall allow Agave to permanently remove a vent from service once Agave demonstrates its compliance with the requirements of this paragraph to the OCD. The corrective action requirements of this Order will be considered completed once Agave demonstrates to the OCD its compliance with the requirements of this paragraph.

30. Agave's failure to comply with the corrective action requirements set forth in Paragraph 29, above, may result in the assessment of a civil penalty. The WQA, NMSA 1978, Section 74-6-10(F), authorizes the assessment of a civil penalty of not more than twenty-five thousand (\$25,000) for each day of noncompliance with the corrective action specified in this Order.

31. Agave denies the alleged facts and conclusions of law identified in Paragraphs 10, 12 and 13, above, and set forth in the Administrative Compliance Order, and does not admit any liability, fact or conclusion of law by entering into or complying with this Final Order.

32. Contemporaneous with the execution of this Final Order by the OCD Director, as provided for by Paragraph 43 below, Agave shall execute a Notice of Withdrawal of Request for Compliance Order Hearing ("Notice of Withdrawal") in the form attached hereto as Exhibit A and shall file the Notice of Withdrawal with the WQCC. Agave, by executing and filing the Notice of Withdrawal, agrees to waive all rights and claims to further challenge the allegations in the Compliance Order and acknowledges that it may not re-file its Request for Compliance Order Hearing or file another Request for Compliance Order Hearing challenging the allegations in the Compliance Order.

33. Except as set forth in Paragraph 30, above, the OCD will not seek the civil penalties that it may have sought under the Administrative Compliance Order.

III. OTHER TERMS AND CONDITIONS

34. Enforcement. The OCD retains the right to pursue any relief authorized by the WQA or WQCC Regulations for any violation not addressed herein. The OCD retains the right to enforce the Final Order by administrative or judicial action, which decision shall be in its sole discretion. In the event that the OCD elects to file a judicial action to enforce the Final Order, the parties agree that the action shall be heard by the district court for Santa Fe County, which shall have exclusive jurisdiction over the parties and Final Order, and they waive any right to challenge such jurisdiction in any forum. The laws of New Mexico shall govern the construction and interpretation of the Final Order.

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

36. Duration. The Final Order shall remain in effect until the OCD issues a written determination that Agave has complied with all of the corrective action requirements of Paragraph 29 of the Final Order.

37. Integration. The Final Order merges all prior written and oral communications between the parties concerning the subject matter of the Final Order, and contains the entire agreement between the parties. The Final Order shall not be modified without the express written consent of the parties.

38. Reservation of Rights and Defenses. The Final Order shall not be construed to prohibit or limit in any way the OCD from requiring Agave to comply with any applicable state or federal requirement. The Final Order shall not be construed to prohibit or limit in any way the OCD from seeking any relief authorized by the WQA for violation of any state or federal requirement applicable to Agave not resolved herein. The Final Order shall not be construed to

prohibit or limit in any way Agave from raising any defense to an OCD action seeking such relief.

39. Mutual Release. The parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and legal conclusions alleged above.

40. Waiver of State Liability. Agave shall assume all costs and liabilities incurred in performing any obligation under the Final Order. The OCD, on its own behalf or on the behalf of the State of New Mexico or any other state agency, shall not assume any liability for Agave's performance of any obligation under the Final Order.

41. Authority to Bind. The person executing this Final Order on behalf of Agave represents that s/he has the authority to execute this Final Order on behalf of Agave.

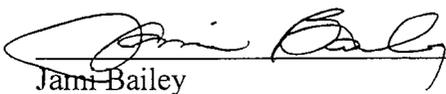
42. Disclosure to Successor-In-Interests. Agave shall disclose the Final Order to any successor-in-interest and shall advise such successor-in-interest that the Final Order is binding on the successor-in-interest until such time as Agave complies with its terms and conditions or it is terminated by written agreement of the parties.

43. Effective Date. The Final Order shall become effective upon the execution by the duly authorized representatives of both parties.

AGAVE ENERGY COMPANY


By: J.B. Smith
President, Agave

May 18, 2011
Date


Jami Bailey
Director
New Mexico Oil Conservation Division

May 18, 2011
Date