

GW - 23

ENFORCMENT

DATE:

2004-1984

MONTGOMERY & ANDREWS

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

LOUIS W. ROSE
Direct Line (505) 986-2506
E-Mail lrose@montand.com
www.montand.com

August 11, 2004

325 Paseo de Peralta
Santa Fe, New Mexico 87501

BY HAND DELIVERY

Telephone (505) 982-3873
Telecopy (505) 982-4289

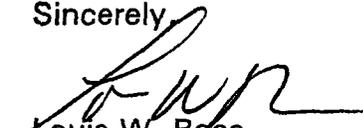
Geraldine Madrid-Chavez, Secretary
Water Quality Control Commission
1190 St. Francis Drive, Room N-2054
Santa Fe, NM 87502

**Re: In the Matter of the Petition for Hearing on Discharge Permit Required
Determination, Duke Energy Field Services, LP, Petitioner**

Dear Ms. Madrid-Chavez:

Enclosed are the original and fourteen (14) copies of the **Duke Energy Field Services, LP's Petition for Hearing Before the Commission** in the above-captioned matter. Please file the original and return a conformed copy to me. If you have any questions, please contact me.

Sincerely,



Louis W. Rose

LWR
#12284-0401
Enclosures
cc: Joshua Epel, Esq.
Karin Char Kimura
Carol S. Leach, Esq. (hand delivered)

RECEIVED

AUG 11 2004

EMNRD-LEGAL

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF THE PETITION FOR
HEARING ON DISCHARGE PERMIT REQUIRED
DETERMINATION

No.

DUKE ENERGY FIELD SERVICES, LP,

Petitioner

DUKE ENERGY FIELD SERVICES LP'S
PETITION FOR HEARING BEFORE THE COMMISSION

RECEIVED

AUG 11 2004

EMNRD-LEGAL

Duke Energy Field Services, LP ("DEFS"), pursuant to 20.1.3.200.A(3) NMAC and 20.6.2.3112.B NMAC, files this petition for hearing before the Water Quality Control Commission on the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department's ("OCD") July 13, 2004 determination that a discharge permit modification was required for DEFS's installation of a below-grade tank at the Artesia Gas Plant ("Artesia"). A true and correct copy of the determination is attached to this Petition.

In support of its petition, the DEFS states:

1. DEFS owns and operates Artesia, located near Artesia, in Eddy County, New Mexico. DEFS has a discharge permit, GW-023, for portions of the facility and OCD-issued approvals for the acid gas injection well and salt water disposal well.
2. On July 6, 2004, pursuant to 19.15.2.50 NMAC (OCC pits and blow-grade tanks rule), DEFS notified the OCD that it intended to install a 490 gallon double-walled fiberglass below-grade tank with leak detection at Artesia.

3. On July 13, 2004, OCD advised DEFS by letter that the proposed installation of a below-grade tank at Artesia required modification of GW-023.

4. DEFS objects to OCD's determination that a modification is required for the installation of the below-grade tank. Specifically, the installation and operation of the tank will not result in a water contaminant discharge that "may move directly or indirectly into ground water" requiring notice to OCD under 20.6.2.3106.B NMAC or a "facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants," requiring notice to OCD under 20.6.2.3107.C NMAC, and therefore, does not require a discharge permit pursuant to 20.6.2.3104 NMAC.

5. DEFS is "adversely affected" by the permitting action taken by OCD and certifies that it has standing under NMSA 1978, § 74-6-5.N (1999) to submit this petition.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By



Louis W. Rose

Post Office Box 2307

Santa Fe, New Mexico 87504-2307

(505) 982-3873

Attorneys for Duke Energy Field Services LP

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Duke Energy Field Services LP's Petition for Hearing Before the Commission** to be hand-delivered on August 11, 2004 to the following:

Carol S. Leach, Esq.
General Counsel
Energy, Minerals & Natural Resources Department
1220 S. St. Francis Dr.
Santa Fe, N.M. 87505


Louis W. Rose



NEW MEXICO ENERGY, MINERALS and
NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

July 13, 2004

Mark E. Fesmire, P.E.

Director

Oil Conservation Division

RECEIVED

Ms. Karin Char Kimura
Senior Environmental Specialist
Duke Energy Field Services
370 17th Street, Suite 900
Denver, Colorado 80202

Duke Energy

E 11/13

**RE: Artesia Gas Plant
Eddy County, New Mexico**

Dear Ms. Kimura:

The OCD is receipt of your letter, dated July 6, 2004, regarding the installation of a below grade tank at the Artesia Gas Plant. The proposed installation will require a modification of the discharge permit GW-023. Please furnish the OCD with a site plat showing the location of the proposed below grade tank and a formal request for a facility discharge permit modification.

Upon receipt of the above information an evaluation can be made for approval of this modification. If you have any questions contact me at (505) 476-3489.

Sincerely,

W. Jack Ford, C.P.G.
Environmental Bureau
Oil Conservation Division

Cc: OCD Artesia District Office

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION FOR
HEARING ON DISCHARGE PERMIT REQUIRED
DETERMINATION**

No. _____

DUKE ENERGY FIELD SERVICES, LP,

Petitioner

**RESPONSE OF THE NEW MEXICO
OIL CONSERVATION DIVISION**

The New Mexico Oil Conservation Division ("the Division") hereby submits its Agency Response, pursuant to 20.1.3.200.A NMAC, to the Petition for Hearing filed by Duke Energy Field Services, LP ("Duke").

1. The Division admits that Duke owns and operates the facility as alleged.
2. The Division admits that Duke notified the Division of its intent to install a below-grade tank, as alleged. The Division denies that 19.15.2.50 NMAC applies, inasmuch as subsection A of 19.15.2.50 NMAC specifically provides that said section does not apply to a facility permitted under water quality control commission regulations, and Duke's facility is such a facility.
3. The Division admits that it advised Duke that the proposed modification of its facility required a modification of its discharge plan.
4. The Division denies Duke's assertion that the installation and operation of the tank will not result in a water contaminant discharge that *may* move directly or indirectly into ground water. Although Duke's request does not specify the intended use of the tank, if the fluids in the tank contain any toxic water pollutant, discharge of such

fluids into the tank constitutes a discharge that may move indirectly into groundwater, in that such movement may occur in the event of a leak, rupture of overflow.

5. The Division contends that the requested modification of Duke's facility requires a discharge plan modification pursuant to 20.6.2.O NMAC because, whether or not there will be a change in the quality or quantity of effluent, the facility modification involves an anticipated change in the "location of the discharge," to the extent that any pollutants will be discharged into the new tank.

6. Alternatively, the Division contends that any facility modification may require a discharge permit modification when reasonably required by the constituent agency. This is true because 20.6.2.O NMAC includes in the definition of "discharge permit modification" the words, "or as required by the secretary." These words are preceded by a semicolon, clearly indicating that it was the intent of the Commission to authorize the supervising agency to require a discharge permit modification in other circumstances not specifically listed as reasons requiring the discharger to request such a modification.

7. The Division admits that Duke has standing to file this appeal.

Respectfully submitted

David K. Brooks
Energy, Minerals and Natural
Resources Department of the
State of New Mexico
1220 South St. Francis Drive
Santa Fe, NM 87505
Phone (505)-476-3450
Facsimile (505)-476-3462
Attorney for the Oil Conservation
Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VI
DALLAS, TEXAS

FILED

APR 25 1984
REGION VI
DALLAS, TEXAS

IN THE MATTER OF:

ARTESIA NATURAL GAS PLANT
ARTESIA, NEW MEXICO

EPA I.D. No. NMD000709667

Respondent.

§
§
§
§
§
§
§
§
§
§

DOCKET NO. RCRA VI-314-H

CONSENT AGREEMENT
AND
FINAL ORDER

PRELIMINARY STATEMENT

1. This proceeding for the assessment of a civil penalty was instituted pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976, as amended (hereinafter called "RCRA"), 42 U.S.C. §6928. The proceeding was instituted by the issuance of a Compliance Order and Notice of Opportunity for Hearing (hereinafter called "Compliance Order"), served upon Phillips Petroleum on behalf of its Artesia Natural Gas Plant (hereinafter collectively called "Respondent"), by Complainant, the Director of the Air and Waste Management Division, Region VI, of the United States Environmental Protection Agency (hereinafter "EPA"), on or about September 28, 1983, by certified mail, return receipt requested, charging that Respondent violated Subtitle C of RCRA, Sections 3002, 3005, and 3010, 42 U.S.C. Sections 6922, 6925, and 6930 and the regulations promulgated thereunder.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegation of the Compliance Order, however, Respondent neither admits nor denies the specific allegations of the Compliance Order or the facts and conclusions set out in the Findings of Fact and Conclusions of Law below. Any findings of fact or conclusions of law contained in this Consent Agreement and Final Order are made for the purposes of this proceeding only

and shall not be made or used for any other purpose or in any other proceeding except for the purpose of computing proposed penalties for alleged violations which are a continuation or repetition of the alleged violations described in the Findings of Fact and Conclusions of law below.

3. This Consent Agreement and Final Order is in full settlement of all violations of RCRA cited in the Compliance Order and Notice of Opportunity for Hearing served onto Respondent during September 1983 and any federal violations noted during EPA RCRA inspections of Respondent's facility during August 1983 and May 1984.

4. Respondent hereby expressly waives its right to request a hearing on any issue of law or fact set forth herein.

5. Respondent consents to the issuance of the Order hereinafter recited and consents to the payment of a civil penalty in the amount set out in the Order below.

FINDINGS OF FACT

1. Respondent is a generator of hazardous waste and an owner or operator of a hazardous waste management facility used for the storage and disposal of hazardous waste.

2. On or about August 18, 1980, Respondent notified EPA that it was a generator and an owner or operator of a hazardous waste management facility used for treatment, storage or disposal of hazardous waste at its facility located 10 miles east and 4 miles south of Artesia, Eddy County, New Mexico.

3. On or about August 18, 1980, Respondent notified EPA that it was managing the following types of hazardous waste:

- a. ignitable hazardous waste, as defined at 40 CFR §261.21;
- b. corrosive hazardous waste, as defined at 40 CFR §261.22;
- c. toxic hazardous waste, as defined at 40 CFR §261.24; and

d. spent halogenated solvents used in degreasing, as defined at 40 CFR §261.30(d), EPA hazardous waste number F001.

4. From on or about November 19, 1980, through on or about June 16, 1982, Respondent was conducting its business of processing raw natural gas for liquid hydrocarbon recovery at Lovington, New Mexico.

5. On or about June 16, 1982, Respondent notified EPA that it had reviewed the wastes generated and/or treated, stored, or disposed and that it incorrectly notified or applied for a RCRA permit. Further, Respondent withdrew its RCRA Hazardous Waste Notification and Part A of its RCRA permit application.

6. On February 18, 1983, EPA issued a Warning Letter to Respondent for failure to submit an Annual Report for hazardous waste management operations during the calendar year 1981.

7. On March 31, 1983, Respondent replied to the Warning Letter. In that reply, Respondent stated that it had come to its attention that a hazardous waste stream, blowdown from a cooling tower which was treated with chromium for corrosion inhibition, existed and that the hazardous waste, EPA Waste Code 007, had been disposed of and possibly treated in a surface impoundment. To its letter, Respondent attached a 1981 Annual Report for this hazardous waste and a modified Part A of its RCRA permit application showing only this hazardous waste.

8. Respondent failed to file Part A of its RCRA permit application with respect to the hazardous waste (D007) chromium cooling tower blowdown by November 19, 1980. Part A of Respondent's permit application was therefore deficient. Further, on June 16, 1982, Respondent had withdrawn its 1980 RCRA notification and Part A permit application with respect to all hazardous wastes that it had filed such permit application for, so its Part A could not be amended.

9. On or about February 22, 1983, when EPA requested the Annual Report for 1981, Respondent had neither tested the cooling tower blowdown to determine if it was a hazardous waste nor declared the blowdown a hazardous waste.

10. Since on or about September 27, 1983, Respondent has corrected the violations cited in the Compliance Order in that it has complied with Interim Status Requirements and has submitted a closure plan and a post-closure plan to EPA and the State of New Mexico.

CONCLUSIONS OF LAW

1. Respondent is a person as defined at Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

2. Respondent is a generator of hazardous waste in accordance with Section 3002 of RCRA, 42 U.S.C. 6922 and 40 CFR Section 260.10 and is a treater, storer, or disposer of hazardous waste as defined in Section 1004 of RCRA, 42 U.S.C. 6903 and 40 CFR Section 260.10.

3. Section 3010 of RCRA, 42 U.S.C. Section 6930 and 40 CFR Section 122.22 (270.10) require a generator and an owner and operator of a hazardous waste management facility used for treatment, storage or disposal of hazardous waste to notify EPA.

4. Section 3005 of RCRA, 42 U.S.C. Section 6925, and 40 CFR Section 122.22 (270.10) require any person who treats, stores, or disposes of hazardous waste to file Part A of its RCRA permit application by no later than November 19, 1980, in order to obtain interim status.

5. Section 3005 of RCRA, 42 U.S.C. Section 6925, and 40 CFR Section 122.21(c)(270.1(b)) prohibit the treatment, storage, or disposal of hazardous waste by any person who has not received a RCRA permit or has interim status.

6. Respondent violated Section 3005 of RCRA, 42 U.S.C. 6925, and 40 CFR Section 122.21(c) (270.1(b)) by treating, storing, or disposing of hazardous waste without a RCRA permit or interim status.

7. Section 3002 of RCRA, 42 U.S.C. Section 6922, and 40 CFR Section 262.11 requires generators of solid wastes to test that solid waste generated on-site by November 19, 1980, to determine if it is a hazardous waste.

8. Respondent violated Section 3002 of RCRA, 42 U.S.C. Section 6922 and 40 CFR § 262.11 by failing to test the cooling tower blowdown to determine if it was a hazardous waste or declare it a hazardous waste by November 19, 1980.

ORDER

Pursuant to the authority of Section 3008 of RCRA, 42 U.S.C. Section 6928, and upon consideration of the above Findings of Fact and Conclusions of Law, the nature, circumstances, extent, and gravity of Respondent's violations, of Respondent's ability to pay, of Respondent's good faith efforts to comply or lack thereof, of Respondent's history of noncompliance, and Respondent's degree of willfulness and/or negligence, and after consideration of the entire record herein, it is this 27th day of August 1984, ORDERED that Respondent, Phillips Petroleum, Artesia Natural Gas Plant, 10-miles east and 4 miles south of Artesia, New Mexico, pay a civil penalty in the amount of ten thousand five hundred and sixty (\$10,560) dollars within sixty (60) days of receipt of this Order, said penalty to be paid by cashier's or certified check payable to the United States of America and forwarded to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 1201 Elm Street, InterFirst Two Building, Dallas, Texas 75270.

Phillips Petroleum,
Artesia Natural Gas Plant,
Respondent

Dated: August 22, 1984 By: Reese B. Copeland
Reese B. Copeland
Attorney for Respondent

Dated: August 24, 1984 Paul Seals
Paul Seals
Regional Counsel
EPA, Region VI

It is so ORDERED. This Order shall become effective immediately.

Myron O. Krumm
for Dick Whittington, P.E.
Regional Administrator
EPA, Region VI

Dated this 27th day of August 1984, at Dallas, Texas..