

GW - 50-8

**PERMITS,
RENEWALS,
& MODS**



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson

Governor

Jon Goldstein

Cabinet Secretary

Jim Noel

Deputy Cabinet Secretary

Mark Fesmire

Division Director

Oil Conservation Division



APRIL 23, 2010

CERTIFIED MAIL

RETURN RECEIPT NO: 3341 0277

Ms. Jennifer Knowlton
Agave Energy Company
105 South Fourth Street
Artesia, New Mexico 88210

**RE: REVISED DRAFT DISCHARGE PERMITS FOR
BITTER LAKE COMPRESSOR STATION (GW-50-1)
RED BLUFF NO. 1 COMPRESSOR STATION (GW-50-5)
RED BLUFF NO. 2 COMPRESSOR STATION (GW-50-7)
RED BLUFF NO. 3 COMPRESSOR STATION (GW-50-8)
PENASCO COMPRESSOR STATION (GW-125)**

Dear Ms. Knowlton:

Pursuant to Water Quality Control Commission (WQCC) Regulations 20.6.2.3108K NMAC, the Oil Conservation Division (OCD) has considered all comments made by Agave Energy Company (Agave) on the draft discharge permits listed above in its comment letter of October 16, 2009. OCD also considered other recent comments made by other Owner/Operators on similar discharge permits. OCD provided Agave with a written Response to Comments on April 22, 2010. OCD has made all appropriate revisions to the discharge permits (see attachments). OCD will allow Agave 30 calendar days from the date that it receives its revised draft discharge permits to make additional comments or to request a hearing on the revised draft discharge permits.

Oil Conservation Division * 1220 South St. Francis Drive

* Santa Fe, New Mexico 87505

* Phone: (505) 476-3440 * Fax (505) 476-3462 * <http://www.emnrd.state.nm.us>



Jennifer Knowlton

April 23, 2009

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If you have any questions, please contact me at 505-476-3488 or by E-mail (glenn.vongonten@state.nm.us): On behalf of the staff of the OCD, I wish to thank you and your staff for your cooperation and patience during this discharge permit review.

Sincerely,

A handwritten signature in black ink, reading "Glenn von Gonten". The signature is fluid and cursive, with the first name "Glenn" being more prominent and the last name "von Gonten" written in a slightly smaller, more connected script.

Glenn von Gonten

Acting Environmental Bureau Chief

Attachments (5)

Copy: Daniel Sanchez, Compliance and Enforcement Manager
Gail MacQuesten, Assistant General Counsel
Leonard Lowe, Environmental Engineer, Senior

DISCHARGE PERMIT GW-50-8

1. GENERAL PROVISIONS.

A. PERMITTEE AND PERMITTED FACILITY: The Oil Conservation Division (Division) of the Energy, Minerals and Natural Resources Department issues discharge permit GW-50-8 (Discharge Permit) to Agave Energy Company (Owner/Operator) located at 105 South Fourth Street, Artesia, New Mexico 88210 (575-748-4471), to operate its Red Bluff No. 3 Gas Compressor Station (Facility), located in the NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM, Eddy County.

The Facility compresses natural gas for a small localized gathering system. Approximately 700 barrels per day of wash down water, 500 gallons per year of used motor oil and 100 barrels per year of condensate are generated and stored in onsite. Ground water that may be affected by a spill, leak or accidental discharge occurs at a depth of approximately 52 - 238 feet below ground surface, with a total dissolved solids concentration of approximately 600 - 2600 mg/L.

B. SCOPE OF PERMIT: The Division regulates the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment pursuant to authority granted in the Oil and Gas Act (Chapter 70, Article 2 NMSA 1978) at Section 70-2-12(B)(22) NMSA 1978. Transportation and treatment of natural gas occurs at compressor stations. The Division has been granted authority to administer the Water Quality Act (Chapter 74, Article 6 NMSA 1978) as it applies to gas compressor stations by statute, Section 70-2-12(B)(22) NMSA 1978, and by delegation from the Water Quality Control Commission pursuant to Section 74-6-4(E) NMSA 1978.

In 2006, the New Mexico Court of Appeals held that the plain language of Section 74-6-5(D) NMSA 1978 allows an agency to grant a permit "subject to conditions." (see *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission, et al.*, 2006 - NMCA-115, 140 N.M. 464, cert. denied, 2006-NMCERT-9, 140 N.M. 542, cert. denied, 2006 - NMCERT-9). The court's decision clearly confirms that the Division has the authority to impose reasonable permit conditions and to impose permit conditions that specify the means of compliance. In setting those conditions the Division is not required to mirror federal law and may impose stricter requirements. The Division need only show that each condition is reasonable and necessary to ensure compliance with the Water Quality Act, the Oil and Gas Act, and applicable regulations.

The Water Quality Act and the rules issued under that Act protect ground water and surface water of the State of New Mexico by providing that, unless otherwise allowed by rule, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless such discharge is pursuant to an approved discharge plan. See 20.6.2.3104 NMAC and 20.6.2.3106 NMAC. A facility having no intentional liquid discharges is required to operate under a discharge plan because inadvertent discharges of liquids (e.g.,

leaks and spills, or any type of accidental discharge of contaminants) or improper disposal of waste solids have the potential to cause ground water contamination or threaten public health and the environment.

The Owner/Operator did not identify any intentional discharges that will occur at its Facility; therefore, this Discharge Permit does not authorize any intentional discharge. This Discharge Permit addresses the protection of public health and the environment, and the prevention of water pollution, by preventing and mitigating unintentional discharges.

Except as specifically provided by a permit condition, this Discharge Permit does not authorize any other treatment of, or on-site disposal of, any materials, product, by-product, or oil field waste, including, but not limited to the on-site disposal of lube oil, glycol, antifreeze, filters, elemental sulfur, washdown water, contaminated soil, and cooling tower blowdown water.

This Discharge Permit does not convey any property rights of any sort nor any exclusive privilege, and does not authorize any injury to persons or property, any invasion of other private rights, or any infringement of state, federal or local laws, rules or regulations.

C. DISCHARGE PERMIT CONDITIONS: By signing this Discharge Permit, the Owner/Operator agrees to the specific provisions set out in this document, and the commitments made in the approved Discharge Plan Application and the attachments to that application, which are incorporated into the Discharge Permit by reference.

If this Discharge Permit is a permit renewal, it replaces the permit being renewed. Replacement of a prior permit does not relieve the Owner/Operator of its responsibility to comply with the terms of that prior permit while that permit was in effect.

D. DEFINITIONS: Terms not specifically defined in this Discharge Permit shall have the same meanings as those in the Water Quality Act, the Oil and Gas Act, or the rules adopted pursuant to those Acts, as the context requires.

E. GENERAL PERFORMANCE STANDARDS: The Owner/Operator shall operate in accordance with the Discharge Permit conditions to comply with the Water Quality Act, the Oil and Gas Act, and the rules issued pursuant to those Acts, so that neither a hazard to public health nor undue risk to property will result (see 20.6.2.3109C NMAC); so that no discharge will cause or may cause any stream standard to be violated (see 20.6.2.3109H(2) NMAC); so that no discharge of any water contaminant will result in a hazard to public health, (see 20.6.2.3109H(3) NMAC); so that the numerical standards specified of 20.6.2.3103 NMAC are not exceeded; to protect public health and the environment (see Section 70-2-12(B)(22) NMSA 1978); and to prevent the waste of oil and gas, prevent the contamination of fresh waters, and so that oil and gas are not used wastefully, nor allowed to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage conduit or operating equipment. See 19.15.2.8 NMAC.

The Owner/Operator shall not allow or cause water pollution, discharge or release of any water contaminant that exceeds the WQCC standards specified at 20.6.2.3101 NMAC and 20.6.2.3103 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams).

F. FILING FEES AND PERMIT FEES: Pursuant to 20.6.2.3114 NMAC, every facility that submits a discharge permit application for initial approval or renewal shall pay the permit fees specified in Table 1 and the filing fee specified in Table 2 of 20.6.2.3114 NMAC. The Division has already received the required \$100.00 filing fee for this application. The flat fee for a gas compressor station of greater than 1001 horsepower is \$1,700.00. The Owner/Operator shall submit this amount along with the signed Discharge Permit. Checks should be payable to the **"New Mexico Water Quality Management Fund,"** not the Oil Conservation Division.

G. EFFECTIVE DATE, EXPIRATION, RENEWAL CONDITIONS, AND PENALTIES FOR OPERATING WITHOUT A DISCHARGE PERMIT: This Discharge Permit is effective when the Division's Environmental Bureau receives the signed Discharge Permit from the Owner/Operator and the \$1,700.00 fee. This Discharge Permit will expire on **April 7, 2014**. The Owner/Operator shall submit an application for renewal no later than 120 calendar days before that expiration date, pursuant to 20.6.2.3106F NMAC. If an Owner/Operator submits a renewal application at least 120 calendar days before the Discharge Permit expires and is in compliance with the approved Discharge Permit, then the existing Discharge Permit will not expire until the Division's Environmental Bureau has either approved or disapproved the permit renewal application. Operating with an expired Discharge Permit may subject the Owner/Operator to civil and/or criminal penalties. See Section 74-6-10.1 NMSA 1978 and Section 74-6-10.2 NMSA 1978.

H. MODIFICATIONS: The Owner/Operator shall notify the Division's Environmental Bureau of any facility expansion, production increase, or process modification that would result in any significant modification in the discharge of water contaminants. See 20.6.2.3107C NMAC. The Division's Environmental Bureau may require the Owner/Operator to submit a permit modification pursuant to 20.6.2.3109E NMAC and may modify or terminate a permit pursuant to Section 74-6-5(M) through (N) NMSA 1978.

I. TRANSFER OF DISCHARGE PERMIT: Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of the Facility, the transferor shall notify the transferee in writing of the existence of the Discharge Permit, and shall deliver or send by certified mail to the Division's Environmental Bureau a copy of such written notification, together with a certification or other proof that such notification has been received by the transferee pursuant to 20.6.2.3111 NMAC. Upon receipt of such notification, the transferee shall inquire into all of the provisions and requirements contained in the Discharge Permit, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in the Division's file or files concerning the Discharge Permit. Upon assuming either ownership or possession of the Facility the transferee shall have the same rights and responsibilities under the Discharge Permit as were applicable to the transferor. See 20.6.2.3111 NMAC.

Transfer of the ownership, control, or possession of the Facility does not relieve the transferor of responsibility or liability for any act or omission which occurred while the transferor owned, controlled or was in possession of the Facility. See 20.6.2.3111E NMAC.

J. CLOSURE PLAN AND FINANCIAL ASSURANCE: The Owner/Operator shall notify the Division's Environmental Bureau in writing when any operations of its Facility are to be discontinued for a period in excess of six months. Prior to closure, or as a condition of this Discharge Permit, or upon request from the Division, the Owner/Operator shall submit a closure plan, modified closure plan, and/or provide adequate financial assurance. See 20.6.2.3107 NMAC.

K. COMPLIANCE AND ENFORCEMENT: If the Owner/Operator violates or is violating a condition of this Discharge Permit, the Division's Environmental Bureau may issue a compliance order requiring compliance immediately or within a specified time period, suspending or terminating this Discharge Permit, and/or assessing a civil penalty. See Section 74-6-10 NMSA 1978. The Division's Environmental Bureau may also commence a civil action in district court for appropriate relief, including injunctive relief. See Section 74-6-10(A)(2) NMSA 1978 and Section 74-6-11 NMSA 1978. The Owner/Operator may be subject to criminal penalties for discharging a water contaminant without a discharge permit or in violation of a condition of a discharge permit; making any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the Water Quality Act; falsifying, tampering with or rendering inaccurate any monitoring device, method or record required to be maintained under the Water Quality Act; or failing to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation. See Section 74-6-10.2 NMSA 1978.

2. GENERAL FACILITY OPERATIONS

A. LABELING: The Owner/Operator shall clearly label all tanks, drums, and containers to identify the contents and provide other emergency notification information.

B. INSPECTIONS AND MAINTENANCE OF SECONDARY CONTAINMENT SYSTEMS: The Owner/Operator shall inspect all secondary containment systems and sumps designed for spill collection/prevention and leak detection at least weekly to ensure proper operation and to prevent over topping or a system failure. The Owner/Operator shall maintain a written record of the results of its inspection.

The Owner/Operator shall empty all spill collection and/or secondary containment devices of fluids within 72 hours of discovery. The Owner/Operator shall report any leak or failure of a secondary containment system to the Division's Environmental Bureau as a release, in accordance with Permit Condition 2.E. The Owner/Operator shall repair any leak or failure of a secondary containment system as provided in its approved Contingency Plan or as required by the Division.

C. RECORD KEEPING: The Owner/Operator shall maintain records of all inspections required by this Discharge Permit at its offices located at 105 South Fourth Street, Artesia, New Mexico 88210 for a minimum of five years and shall make those records available for inspection by the Division's Environmental Bureau.

D. TESTING: The Owner/Operator shall provide the Division's Environmental Bureau with notice at least one week prior to conducting any test required under this Discharge Permit, so that the Division may witness the test. The Owner/Operator shall maintain the results of all tests conducted pursuant to this Discharge Permit at its offices located at 105 South Fourth Street, Artesia, New Mexico 88210 and make those records available for inspection by the Division's Environmental Bureau. The Owner/Operator shall give verbal notice of a test failure to the Division's Environmental Bureau within 24 hours and file a written report of the failure with the Division's Environmental Bureau within 15 days. The Owner/Operator shall complete repairs to correct the failure as provided in its approved Contingency Plan or as required by the Division's Environmental Bureau.

E. RELEASE REPORTING: The Owner/Operator shall report unauthorized releases of water contaminants, oil, gases, produced water, condensate, or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants, pursuant to 19.15.29 NMAC and in accordance with any additional commitments made in its approved Contingency Plan. For the purposes of this Discharge Permit, "releases" includes fires, breaks, leaks, spills, failures of a primary or secondary containment system, and the movement of storm water from a "contact area" to a "non-contact area." At a minimum, the Owner/Operator shall file a written report of the release with both the Division's Environmental Bureau and the appropriate Division's District Office within 15 days for both "major releases" and "minor releases" as defined in 19.15.29.7 NMAC and give verbal notice to both the Division's Environmental Bureau and the appropriate Division District Office within 24 hours of discovering a "major release."

F. CORRECTIVE ACTION FOR RELEASES: The Owner/Operator shall take appropriate corrective action as specified in its approved Contingency Plan for all releases of contaminants whether or not the release qualifies as a "major" or "minor" release as defined in 19.15.29.7 NMAC.

The Owner/Operator shall address any contamination through the discharge permit process or pursuant to 20.6.2.4000 NMAC through 20.6.2.4116 NMAC (Prevention and Abatement of Water Pollution). The Division's Environmental Bureau may require the Owner/Operator to modify its Discharge Permit to provide for investigation, remediation, abatement, and monitoring for any vadose zone or water pollution.

G. DETERMINATION OF HYDROGEN SULFIDE CONCENTRATION: The Owner/Operator shall determine the hydrogen sulfide concentration at its Facility within 90 days of the issuance of this Discharge Permit pursuant to 19.15.11.8A NMAC and at least annually thereafter. The Owner/Operator shall submit the results of its determination of the hydrogen sulfide concentration at its Facility to the Division's Environmental Bureau within 30 days of its

determination. If the Owner/Operator determines that the hydrogen sulfide concentration at its Facility exceeds the regulatory threshold specified at 19.15.11.8A NMAC, then it shall comply with 19.15.11.8C NMAC and shall submit a hydrogen sulfide contingency plan to the Division's Environmental Bureau, pursuant to 19.15.11.9 NMAC. The Owner/Operator shall include the results of its determinations with its Annual Report.

The Owner/Operator shall chain each stair or ladder leading to the top of a tank or vessel containing 300 ppm or more of hydrogen sulfide in the gaseous mixture or mark it to restrict entry, pursuant to 19.15.11.12E NMAC.

H. ANNUAL REPORT: The Owner/Operator shall submit its annual report to the Division's Environmental Bureau by March 15th of each year. The annual report shall include the following:

1. For each waste stream, the amount of liquid and waste solids generated and stored in the prior calendar year;
2. The amount of and final disposition of each waste stream;
3. A copy of all inspections conducted for secondary containment systems;
4. The nature and amount of any releases, with a description of the disposition of any contaminated soil or liquids;
5. The nature and amount of liquid and waste solids generated and stored in the prior calendar year that were disposed pursuant to the "*simplified procedure for holders of discharge plans*" specified at 19.15.35.8C(2) and (3) NMAC; and,
6. The results of the Owner/Operator's annual determination of the hydrogen sulfide concentration at its Facility in accordance with Permit Condition 9.C.

3. STORAGE.

A. DRUM AND CONTAINER STORAGE: The Owner/Operator shall store all drums and other containers, including empty drums and containers, on a curbed, impermeable pad when not in use. "Containers" include tote tanks, sacks, and buckets. The Owner/Operator shall store empty drums on their sides with the bungs in place and lined up on a horizontal plane. The Owner/Operator may store fresh water in containers that are clearly so labeled and that are located outside the drum and container, process, maintenance, material, and waste storage areas without having a curbed, impermeable pad, liner, pavement, or curbing.

B. PROCESS, MAINTENANCE, MATERIAL, AND WASTE STORAGE AREAS: Within one year from the issuance of this Discharge Permit, the Owner/Operator shall install and maintain appropriate secondary containment systems, including, but not limited to, pavement, liners, curbs, sumps, *etc.* at all process, maintenance, material and waste storage areas at its facility that lack secondary containment systems. (See 20.6.2.1203C(2) NMAC).

Process areas at compressor station include, but are not limited to, the following areas:

pigging chambers; slug catchers; natural gas liquid separators/natural gas liquid fractionation; oil and condensate separators; storage of natural gas liquids, oil, and condensate; station yard pipes and valves; scrubbers; heat exchangers/coolers; cooling tower blowdown; dehydrators; sulfur and carbon dioxide removal/gas sweetening; drip traps; compressors; engines; and, valves on main transmission pipelines inside the fenced compressor station.

Process areas do not include the area beneath the main transmission pipeline, except for areas beneath valves.

4. WASTE MANAGEMENT.

A. WASTE STREAMS: This Discharge Permit authorizes the Owner/Operator to handle the waste streams identified in its approved Discharge Plan Application. **The Owner/Operator shall obtain approval from the Division's Environmental Bureau for disposal of any waste stream not identified in its approved Discharge Plan Application.**

B. WASTE STORAGE: The Owner/Operator shall store waste at its Facility only in clearly marked waste storage areas that have been identified in its approved Discharge Plan Application, except that waste generated during emergency response operations may be stored elsewhere for no more than 72 hours. The Division's Environmental Bureau may approve additional waste storage areas on a case-by-case basis. The Owner/Operator shall not store oil field waste (see 19.15.2 NMAC) on-site for more than 180 calendar days from the date that the container is filled without approval from the Division's Environmental Bureau.

C. WASTE DISPOSAL: This Discharge Permit does not authorize on-site disposal of nondomestic wastes. The Owner/Operator shall dispose of the waste streams identified in its approved Discharge Plan Application at Division-permitted or approved facilities in accordance with the applicable rules for disposal at those facilities. The Owner/Operator is approved for the simplified procedure set out in 19.15.35.8B(4) NMAC for disposal of wastes specified in 19.15.35.8C(2) and (3) NMAC at solid waste facilities without prior written authorization from the Division's Environmental Bureau if that the waste stream has been identified in the approved Discharge Plan Application and existing process knowledge of the waste stream does not change.

D. CLASS V WELLS: Pursuant to 20.6.2.5002B NMAC, leach fields and other wastewater disposal systems at Division-regulated facilities that inject non-hazardous fluid into or above an underground source of drinking water are UIC Class V injection wells. This Discharge Permit does not authorize the use of a Class V injection well for the disposal of industrial waste at the Facility. Pursuant to 20.6.2.5005 NMAC, the Owner/Operator shall close any Class V industrial waste injection wells at its Facility that inject non-hazardous industrial wastes or a mixture of industrial wastes and domestic wastes (e.g., septic systems, leach fields, dry wells, etc.) within 90 calendar days of the issuance of this Discharge Permit. The Owner/Operator shall document the closure of any Class V wells used for the disposal of non-

hazardous industrial wastes or a mixture of industrial wastes and domestic wastes in its Annual Report.

Other Class V wells, including wells used only for the injection of domestic wastes, must be permitted by the New Mexico Environment Department.

5. TANKS, PITS, PONDS, SUMPS, FENCING, SCREENING, AND NETTING.

A. EXISTING BELOW-GRADE TANKS, PITS, AND PONDS: The Owner/Operator shall ensure that all below-grade tanks, pits, and ponds have secondary containment systems with leak detection. The Owner/Operator shall retrofit existing below-grade tanks, pits, and ponds that lack secondary containment and leak detection systems to meet the design and construction specifications of 19.15.17.11 NMAC.

The Owner/Operator shall submit a retrofit plan to the Division's Environmental Bureau no later than the date for submitting an application for renewal of this Discharge Permit. The retrofit plan shall specify how the Owner/Operator shall address any releases discovered during the retrofit operation. The Division's Environmental Bureau shall review and approve, approve with conditions, or deny the Owner/Operator's retrofit plan. The approved plan for retrofitting existing below-grade tanks, pits and ponds shall be incorporated into any permit renewal.

The Owner/Operator shall test existing below-grade tanks, pits, and ponds that lack secondary containment and leak detection at least annually by pressure testing to 3 pounds per square inch greater than normal operating pressure and/or visual inspection or other methods approved by the Division's Environmental Bureau. The Owner/Operator shall maintain the test results for at least 5 years for inspection by the Division.

B. EXISTING SUMPS: A sump is any impermeable vessel or collection device incorporated within a secondary containment system, with a capacity less than 500 gallons, which remains predominantly empty, serves as a drain or receptacle for *de minimis* releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes. See 19.15.17.7H NMAC. The Owner/Operator inspect all sumps at least weekly and shall remove all materials that it discovers and shall document this activity in its inspection log.

C. NEW BELOW-GRADE TANKS, PITS, PONDS AND SUMPS: The Owner/Operator shall obtain approval from the Division's Environmental Bureau before installing a new below-grade tank, pit, pond, or sump. The Owner/Operator shall submit its proposed design plan to the Division's Environmental Bureau to install a new below-grade tank, pit, pond, or sump at least 90 calendar days before it intends to install the new unit. The design plans for below-grade tanks, pits, and ponds shall incorporate secondary containment and leak detection. The design plan shall address the siting and design and construction standards for below-grade tanks, pits, and ponds specified at 19.15.17.10 NMAC and 19.15.17.11 NMAC. The Division's Environmental Bureau will review and approve, approve with conditions, or deny the Owner/Operator's proposed design for a new below-grade tank, pit, pond or sump.

D. ABOVE GROUND TANKS: The Owner/Operator shall place new above ground tanks on impermeable pads and surround the tanks with lined berms or other impermeable secondary containment system having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks. The Owner/Operator is not required to provide secondary containment for tanks that contain fresh water and that are clearly so labeled and that are located outside the drum and container, process, maintenance, material, and waste storage areas.

The Owner/Operator shall retrofit existing above ground tanks that do not meet the requirements described above. The Owner/Operator shall submit a plan for the retrofitting to the Division's Environmental Bureau no later than the date for submitting its application for renewal of this Permit. The Division's Environmental Bureau will review and approve, approve with conditions, or deny the Owner/Operator's plan. The approved plan for retrofitting existing above ground tanks shall be incorporated into any permit renewal.

E. FENCING: The Owner/Operator shall fence all below-grade tanks, pits, and ponds pursuant to 19.15.17.11D NMAC.

F. SCREENING AND NETTING: The Owner/Operator shall screen or net all open top tanks and all pits (including lined pits) and ponds, or otherwise render the tanks and pits non-hazardous to wildlife, including migratory birds, pursuant to 19.15.17.11E NMAC.

6. UNDERGROUND PROCESS AND WASTEWATER PIPELINES.

A. TESTING: The Owner/Operator shall test all underground process/wastewater pipelines at least once every five (5) years to demonstrate mechanical integrity except pipelines containing fresh water. The Owner/Operator shall test all pressure-rated pipelines to 150% of the normal operating pressure, if possible, or for atmospheric drain systems, to 3 pounds per square inch greater than normal operating pressure, held for a minimum of 30 minutes with no more than a 1% loss/gain in pressure. The Owner/Operator may propose other test methods for the Division's review and approval. The Owner/Operator shall maintain the test results for at least 5 years for inspection by the Division.

B. SCHEMATIC DIAGRAMS OR PLANS: The Owner/Operator shall maintain all underground process and wastewater pipeline schematic diagrams or plans showing all drains, vents, risers, valves, underground pipelines, pipe type, rating, size, and approximate location at its offices located at 105 South Fourth Street, Artesia, New Mexico 88210.

C. NEW UNDERGROUND PIPELINES: The Owner/Operator shall notify the Division's Environmental Bureau prior to installing any new underground pipelines. The Owner/Operator shall submit a design plan with the information specified in Permit Condition 6.B to the Division's Environmental Bureau for new underground pipelines at least 90 calendar days before it intends to begin construction. The Division's Environmental Bureau shall

determine whether any modifications to this Discharge Permit are necessary and appropriate based on the new underground pipelines.

7. **STORM WATER:** The Owner/Operator shall implement and maintain storm water run-on and run-off plans and controls to separate chemical process areas and flow lines (contact areas) from storm water areas (non-contact areas) and shall comply with any additional commitments made in its approved Contingency Plan.

The movement of storm water from a contact area to a non-contact area is a release and the Owner/Operator shall report that release in accordance with Permit Condition 2.E and take corrective action as directed by the Division.

8. **ADDITIONAL SITE SPECIFIC CONDITIONS:** N/A

9. **SCHEDULE OF COMPLIANCE:**

A. **PERMIT CERTIFICATION:** The Owner/Operator shall sign and return this Permit to the Division's Environmental Bureau within 30 days of its receipt of this Permit.

B. **SUBMISSION OF THE PERMIT FEES:** As specified in Permit Condition 1.F, the Owner/Operator shall submit the permit fee of \$1,700.00 along with the signed Discharge Permit. Checks should be payable to the "New Mexico Water Quality Management Fund," not the Oil Conservation Division, within 30 days of the receipt of the Discharge Permit.

C. **DETERMINATION OF HYDROGEN SULFIDE CONCENTRATION:** As specified in Permit Condition 2.G, the Owner/Operator shall submit the results of its determination of the hydrogen sulfide concentration at its Facility to the Division's Environmental Bureau within 30 days of its determination.

The Owner/Operator shall include the results of its annual determination of the hydrogen sulfide concentration at its Facility in accordance with Permit Condition 2.G with its Annual Report.

D. **PLAN FOR RETROFITTING BELOW-GRADE TANKS AND SUMPS:** As specified in Permit Condition 5.A, the Owner/Operator shall submit its plan for the retrofitting of below-grade tanks and sumps to the Division's Environmental Bureau no later than the date for submitting an application for renewal of this Discharge Permit.

E. **ANNUAL REPORT:** As specified in Permit Condition 2.H, the Owner/Operator shall submit its annual report to the Division's Environmental Bureau by March 15th of each year.

10. **CERTIFICATION: (OWNER/OPERATOR)** by the officer whose signature appears below, acknowledges receipt of this Discharge Permit, and has reviewed its terms and conditions.

Company Name - print name above


Company Representative - print name

Company Representative - Signature

Title _____

Date: _____

DRAFT



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson

Governor

Jon Goldstein
Cabinet Secretary

Jim Noel
Deputy Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



APRIL 22, 2010

**CERTIFIED MAIL
RETURN RECEIPT NO: 3341 0253**

Ms. Jennifer Knowlton
Agave Energy Company
105 South Fourth Street
Artesia, New Mexico 88210

**RE: OCD RESPONSE TO AGAVE ENERGY COMPANY'S COMMENTS
OF OCTOBER 16, 2009 ON DRAFT DISCHARGE PERMITS FOR
BITTER LAKE COMPRESSOR STATION (GW-50-1)
RED BLUFF NO. 1 COMPRESSOR STATION (GW-50-5)
RED BLUFF NO. 2 COMPRESSOR STATION (GW-50-7)
RED BLUFF NO. 3 COMPRESSOR STATION (GW-50-8)
PENASCO COMPRESSOR STATION (GW-125)**

Dear Ms. Knowlton:

Thank you for submitting Agave Energy Company's comments on the draft discharge permit for the compressor stations identified above. Before responding to Agave's comments on specific permit terms, the Oil Conservation Division (OCD) would like to address a broader issue: the scope of OCD's authority to impose reasonable permit conditions. In some of its comments, Agave argues that OCD cannot impose permit conditions that are not specifically identified in the Water Quality Act. Agave also argues that OCD's permit conditions must match or be no more stringent than certain federal requirements. OCD disagrees.

Agave's argument for limiting the authority of the OCD is similar to the argument raised by the plaintiff in *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission, et al.*, 2006 – NMCA-115, 140 N.M. 464, 143 P.2d 502, *cert. denied*, 2006-NMCERT-9, 140 N.M. 542, 144 P.3d 101, *cert. denied*, 2006 – NMCERT-9, 140 N.M. 542, 144 P.3d 101. The plaintiff argued that the Water Quality Act does not authorize the administering agency (in that case, the New Mexico Environment Department) to impose permit conditions specifying the method to be used to prevent or abate water pollution, and instead only authorizes the agency to impose the permit conditions listed in NMSA 1978, Section 74-6-6(J). That section deals with monitoring,

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sampling, and reporting of water quality. The Court of Appeals rejected that argument.

The Court of Appeals held that the plain language of NMSA 1978, Section 74-6-5(D) allows an agency to grant a permit “*subject to conditions.*” *Id.* ¶ 14. Further, the court found that this statutory authority was not limited to the conditions listed in Section 74-6-5(J):

If the legislature intended that NMED have only the power to impose the conditions in Section 74-6-5(J), it knew how to clearly impose such a limitation. We believe that the failure to express such a limitation indicates the legislature's intent that NMED should retain sufficient discretion to carry out its mission.

Id. ¶ 18.

The Court of Appeals read Section 74-6-5(J) as a grant of authority to regulate in certain areas – not as a limitation on the permitting process. The court drew a distinction between regulations and permit conditions: regulations set general requirements designed to apply to all situations, while permit conditions allow the agency to exercise its discretion to address specific situations. *See id.* ¶ 19. Finally, the court rejected the argument that the intent of the Water Quality Act was to allow industry to select the specific method of compliance:

Allowing industry to select the method of pollution control, and limiting NMED to granting or denying a permit, is one choice the legislature could have made. That choice, however, does not necessarily advance the Act's purpose of protecting ground and surface water from pollution, and, from the language of Section 74-6-5(D), we do not believe that the legislature chose that path.

Id. ¶ 23.

Phelps Dodge Tyrone, Inc. clearly confirms that OCD has the authority to impose reasonable permit conditions and to impose permit conditions that specify the means of compliance. In setting those permit conditions OCD is not required to mirror federal law and may impose stricter requirements. *See, New Mexico Mining Association v. Water Quality Control Commission*, 2007-NMCA-084, 142 N.M. 200, 164 P.3d 81. OCD need only show that each permit condition is reasonable and necessary to ensure compliance with the Water Quality Act and applicable regulations, considering site-specific conditions. *See*, NMSA 1978, § 74-6-5(D).

The scope of the Water Quality Act is broad. The Water Quality Act and the regulations issued pursuant to that Act protect ground water and surface water of the State of New Mexico by providing that, unless otherwise allowed by rule, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless such discharge is pursuant to an approved discharge plan. *See* 20.6.2.3104 NMAC and 20.6.2.3106 NMAC. A facility having no intentional liquid discharges is still required to have a discharge plan. (See the definition of “source” which includes a facility from which there may be a discharge of water contaminants, NMSA 1978, Section 74-6-2(M) (emphasis added); the statutory mandate of the Water Quality Control Commission to “prevent” water pollution as

stated in NMSA 1978, Section 74-6-4(E) and (K); and the authority of the Water Quality Control Commission to adopt standards permitting no discharge of pollutants. NMSA 1978, § 74-6-4(E).)

Inadvertent discharges of liquids or improper disposal of waste solids still “*may move directly or indirectly into ground water*” (see the definition of “discharge permit” at 20.6.2.70 NMAC) and cause ground water or surface water contamination. The Water Quality Act clearly addresses prevention of ground water and surface water contamination as well as the abatement of contamination when it occurs. See NMSA 1978, § 74-6-9(D); NMSA 1978, § 74-6-4(E). The compressor station discharge permits at issue here address the prevention of water contamination by preventing unintentional discharges and mitigating discharges when they occur.

OCD’s responses to Agave’s comments on specific permit terms follows:

AGAVE’S COMMENT ON PERMIT CONDITION 1.F: *The permit states that Agave must include the \$1700.00 permit fee with the signed permit. The revised draft permits are the result of administrative revisions of previously issued permits and not the result of a permit modification. Agave has already submitted payment of the permit fees with the original permits. Because these are administrative revisions and do not meet the threshold of a discharge permit modification” (as defined at 20.6.27(P) NMAC) and the Commission unilaterally revised the permits, no additional permit fee should be required. See 20.6.2.3114 NMAC.*

OCD RESPONSE TO AGAVE’S COMMENT ON PERMIT CONDITION 1.F: All of the permits at issue are renewals of existing permits. According to 20.6.2.3114A NMAC, “[e]very facility submitting a discharge permit application for approval or renewal shall pay the permit fees specified in Table 1 of this section” (Emphasis added.) Table 1 sets a \$1,700 permit fee for gas compressor stations with greater than 1001 horsepower. Permit fees are due at the time the permit is approved. 20.6.2.3114 NMAC.

AGAVE’S COMMENT ON PERMIT CONDITION 1.G: *The permits identify the expiration date as August 12, 2012. Permits GW-50-1 and GW-50-5 expired on June 13, 2009; permits GW-50-7 and GW-50-8 expired on April 7, 2009; permit GW-125 expired on August 17, 2007. Under the regulations, discharge permits are typically approved for five years. See 20.6.2.3109(H) NMAC. Agave respectfully requests that the expiration dates for GW-50-1, GW-50-5, GW-50-7 and GW-50-8 be extended to the full regulatory term.*

OCD RESPONSE TO AGAVE’S COMMENT ON PERMIT CONDITION 1.G: WQCC regulations (20.6.2.3109H NMAC) provides that a discharge permit may be renewed for up to five years. OCD will adjust the permit expiration date in Permit Condition 1.G to reflect a date five years from the expiration date in the prior permit.

AGAVE'S COMMENT ON PERMIT CONDITION 2.B: *The permits require weekly inspections of secondary containment systems and sumps designed for spill collection/prevention and leak detection. Agave believes this requirement is overly burdensome and requests that the inspection frequency be changed to monthly. There is no regulatory requirement that inspections occur on a weekly basis. See 20.6.2.3107 NMAC. In addition, Agave agrees that inspection records should be maintained; however, Agave believes that those records could be kept electronically rather than in a "log book."*

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 2.B: As noted above, Agave mistakenly believes that OCD is limited in what permit conditions it can impose by the letter of the WQCC or OCD regulations. In fact, OCD may impose any reasonable permit condition that it feels to be appropriate. The WQCC rules require discharge plans to include monitoring and reporting (see 20.6.2.3107A NMAC) but leaves the scheduling of the monitoring and reporting to the discretion of the constituent agency. OCD has determined that a weekly walk-through inspection of each facility to check secondary containment systems and sumps designed for spill collection/prevention and leak detection will provide an adequate check for spills and releases.

Agave has not provided any information that substantiates its claim that a weekly inspection is "overly burdensome." OCD understands that even Agave's unmanned compressor stations are inspected by Agave employees nearly every day. Given that Agave routinely and systematically inspects its compressor stations on most days, OCD has determined that it is not overly burdensome to require Agave to inspect and document the condition of its secondary containment systems and sumps once per week; therefore, the requested change was not made to the permits. Also, please note that Permit Condition 5.B requires operators to clean out sumps weekly; without inspecting its facility at least weekly, Agave would not be able to comply with this permit condition.

The draft permits provide that inspection records must be kept in a "log book;" Agave asks that the records be kept electronically. The OCD does not object to Agave also keeping the records in electronic form and does not believe that the current wording of the draft permits would preclude keeping records electronically. OCD has changed the permit condition to specify that the operator must maintain a written record of its inspections, but does not specify that it must be in a bound log book.

However, OCD will continue to require Agave to maintain a hard-copy written record of its inspection so that the records may be reviewed by OCD.

AGAVE'S COMMENT ON PERMIT CONDITION 2.C: *Part 2.C provides that inspection records must be maintained "at the Facility." Agave is concerned that this condition could lead to inadvertent non-compliance as Agave maintains all inspection records at its headquarters in Artesia. In its experience, Agave has learned that storing inspection records at facilities can lead to damage to the records due to exposure to the elements and various vectors (such as insects and*

rodents). In the past, inspection records at facilities have been damaged as there is no safe way to maintain the records on-site. For this reason, Agave requests that the language be revised to state "The Owner/Operator shall maintain records of all inspections required by this Discharge Permit..." This revision is consistent with the regulatory requirements set forth at 20.6.2.3107 NMAC.

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 2.C: OCD

agrees that Agave may maintain its inspection log at its headquarters in Artesia and has revised the permit accordingly. Also, OCD has changed the permit language to remove the requirement that it must maintain inspections in a "log book." However, OCD will continue to require Agave to maintain a hard-copy written record of its inspection so that the records may be reviewed by OCD during an inspection.

AGAVE'S COMMENT ON PERMIT CONDITION 2.D: *The Discharge Permit requires notification "one week prior conducting any test required" under the permit as well as notification of any test failures. The permit is unclear regarding whether the notification is to be provided to the District Office or the Santa Fe office. Agave requests clarification of the notification requirements. In addition, as stated above, Agave does not believe maintaining records of test at each facility is reasonable, given the likelihood that records may be damaged if stored at each facility.*

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 2.D:

Discharge permits are administered by OCD's Environmental Bureau, which is located in Santa Fe. All filings and reports required by a Discharge Permit should be made to the Environmental Bureau in the Santa Fe office, unless otherwise specified. For example, Permit Condition 2.E requires release reports to be filed with both the OCD Santa Fe Office and the OCD District Office. To clarify the filing and reporting requirements, OCD has changed the language in the draft permits to specify that all notices will be given to the Division's Environmental Bureau in Santa Fe. As noted above, OCD agrees that Agave may maintain its hard-copy written inspection records at a location other than at the facility itself and has changed the permits to specify that Agave shall maintain its inspection records in its Artesia office.

AGAVE'S COMMENT ON PERMIT CONDITION 3.A: *The permit currently provides that all drums and other containers be stored on impermeable pads. The term container includes totes. Agave respectfully requests that the language be revised to state that "The Owner/Operator shall store all drums and containers, including empty drums and containers, on an impermeable pad when not in use.*

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 3.A: OCD

agrees to change the language in Permit Condition 3.A to state that "The Owner/Operator shall store all drums and containers, including empty drums and containers, on an impermeable pad when not in use."

AGAVE'S COMMENT ON PERMIT CONDITION 3.B: *The permit requires that Agave pave and curb all process, maintenance, material and waste storage areas at the facility or install another spill collection device for the areas. There is no regulatory requirement that all such areas must be paved and curbed. 20.6.2.1203 NMAC only requires notification and corrective actions of certain discharges. 20.6.2.3106 NMAC only requires information which is necessary to demonstrate that "the discharge permit will not result in concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use. 20.6.2.3107 NMAC only allows a discharge plan to require procedures for detecting failure of the discharge system. No other applicable provisions provide that a facility must pave and curb process areas at the facility, or require that any other specific measures be taken. For thus reason, Agave requests that Section 3B be revised as follows:*

"The Owner/Operator of the facility must take measures to ensure that its operations will not result in concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use. The Owner/Operator will also take measures to meet the purpose stated at 20.6.2.3101(A) NMAC."

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 3.B:

Agave objects to the requirements in the draft permits that all process, maintenance, material and waste storage areas at the facility be paved and curbed or that Agave install another spill collection device for the areas. Agave requests that Permit Condition 3.B be revised to provide that the operator shall "take measures" to ensure that its operations will not result in a violation of the Water Quality Act. Agave points out that there is no regulatory requirement that a facility must pave and curb process areas, or that any other specific measures be taken.

As noted above, the argument that OCD can only specify permit conditions that are explicitly contained in the WQCC regulations has been rejected by the Court of Appeals. The Court of Appeals held that the plain language of NMSA 1978, Section 74-6-5(D) allows an agency to grant a permit "subject to conditions." *Id.* ¶ 14. Further, the court found that this statutory authority was not limited to the conditions listed in Section 74-6-5(J).

Phelps Dodge Tyrone, Inc. clearly confirms that OCD has the authority to impose permit conditions, and to impose permit conditions that specify the means of compliance. OCD has determined that the conditions imposed in the draft permits – "paving and curbing of process, maintenance, material and waste storage areas or installing another spill collection device for those areas" – are reasonable and necessary. The compressor stations at issue include areas for process, maintenance, material, and waste storage that involve hazardous substances. Leaks or spills of those substances have the potential to cause ground water contamination or threaten public health or the environment. Curbing and paving the areas where those substances are kept is a reasonable method of meeting OCD's mandates under the Water Quality Act to prevent

water pollution and its mandate under the Oil and Gas Act to protect public health and the environment from nondomestic wastes resulting from the oil field service industry. See NMSA 1978, § 70-2-12(B)(22). A paved, curbed area allows for prompt detection of leaks and spills and will help contain any leaks or spills that do occur. As specified in the draft permits, the operator can use another spill collection device; however, Agave has not proposed alternative spill collection devices. Therefore, the requested change to the permit was not made.

AGAVE'S COMMENT ON PERMIT CONDITION 3.C: *The permit requires that all above ground tanks be placed in secondary containment, regardless of contents (oil or otherwise) and that the secondary containment must have at least one and one-third times the capacity of the largest tank or of all interconnected tanks. This is inconsistent with the secondary containment requirements under the SPCC program which only requires secondary containment for "oil" such that the secondary containment has enough capacity for the largest single container and "sufficient freeboard" to contain precipitation. 40 C.F.R. § 112.8(c)(2). With respect to interconnected tanks; secondary containment is to be sized to provide for enough capacity for the size of the most likely failure, not the entire capacity of all interconnected tanks. Agave also respectfully requests that the secondary containment requirement be applied, only to tanks containing oil, as is required under the SPCC program. The permit language should be revised to state that:*

"All non-oil containing tanks other than those containing fresh water, must be managed in a manner so to reduce the likelihood of any unpermitted discharge in violation of Section 20.6 2.3103 NMAC or 20.6.2.3101(A) NMAC."

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 3.C: As noted above, Agave mistakenly believes that OCD can only require in a permit what is specified in regulations. This is incorrect. OCD has broad authority under the Water Quality Act and as well as more narrowly defined authority pursuant to the WQCC regulations to regulate any substance that has the potential to cause ground water contamination or threaten public health and the environment. OCD's authority does not come from the federal Spill Prevention Control and Countermeasures (SPCC) program and Agave's argument that OCD is limited by that program is without merit.

Agave objects to Permit Condition 3.C because its secondary containment requirements for above ground tanks are stricter than the requirements of the federal SPCC program. See 40 CFR 112.8(c)(2). As discussed above, OCD can impose reasonable and necessary conditions to fulfill its statutory mandates. In setting those conditions, OCD is not required to mirror federal law and may impose stricter requirements. See *New Mexico Mining Association v. Water Quality Control Commission*, 2007-NMCA-084, 142 N.M. 200, 164 P.3d 81.

Since at least 1992, OCD has required that the secondary containment for above ground tanks have the capacity of at least one and one-third the capacity of the largest tank, or, if the tanks are connected, of all interconnected tanks. This requirement helps ensure that the secondary

containment system will adequately contain any leaks and spills. OCD, unlike the SPCC program, does not limit its secondary containment requirements to only tanks containing oil. OCD's mandate to prevent water pollution and protect human health and the environment from nondomestic oil field wastes extends beyond protection from oil spills. OCD did not make the requested changes to the permit.

Permit Condition 3 has been changed to refer to "Storage" and Permit Condition 3.C (Above Ground Tanks) has been moved to Permit Condition 5.

AGAVE'S COMMENT ON PERMIT CONDITION 4.A: *Agave requests the following additional language be added to Section 4 A.*

"Materials generated from routine housekeeping activities are exempt from this section, provided that the Owner/Operator manages such materials in compliance with applicable requirements and complies with all notification requirements under 20.6.2.1203 NMAC."

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 4.A: OCD did not make the requested change because the permit specifies what the operator is required to do, not what the operator does not need to do.

AGAVE'S COMMENT ON PERMIT CONDITION 6.C: *Agave requests a revision to this language. This notification should only be required where there will be "any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants," as required under 20.6.2.3107(c). Not all additional piping will result in any significant modification in the discharge of water contaminants.*

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 6.C: OCD agrees that not all additional changes to piping will result in a major modification in the discharge of water contaminants. WQCC regulation 20.6.2.7P NMAC defines a "discharge permit modification" as "a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary." OCD must review the proposed change to determine whether it constitutes a "major modification." Requiring Agave to submit a design plan for any new underground piping will allow the OCD to make that determination. If OCD determines that a proposed change is significant enough to be a "major modification," then the owner/operator must meet the public notice requirements specified in 20.6.2.3108 NMAC. OCD did not make the requested change to the permit.

AGAVE'S COMMENT ON PERMIT CONDITION 7: *The draft permit requires the Owner/Operator to implement and maintain stormwater run-off and run-on plans and controls to separate chemical process areas and flow lines (contact, areas) from stormwater areas (non-contact areas). This permit condition is in direct contravention of federal law and inconsistent with state law.*

Under the federal program, which has primacy in New Mexico, oil and gas exploration activities are exempt from stormwater requirements unless a stormwater discharge has resulted in an RQ of a substance for which notification is required or if the facility contributes to a water quality standard violation. Federal 2008 Multi-Sector General Permit, p. 77; 40 C.F.R. § 122.26(c)(1)(iii). A state permit cannot impose additional stormwater requirements on exempt facilities without an authorized program. There is no such program in New Mexico. In addition, there is no regulatory basis under the Water Quality Control Commission's standards for requiring that a facility develop such a plan (see 20.6.2.3106 NMAC; 20.6.2.3107 NMAC; 20.6.2.1203 NMAC). Finally, the only OCD regulations pertaining to stormwater apply to surface waste facilities and no other facilities. This is not a surface waste facility.

OCD RESPONSE TO AGAVE'S COMMENT ON PERMIT CONDITION 7: Agave takes the position that the OCD cannot regulate storm water runoff because the federal National Pollutant Discharge Elimination System (NPDES) program provides that its administrator cannot require, or directly or indirectly require a state to require, such a permit. New Mexico does not have primacy over the NPDES program, which is administered by the Environmental Protection Agency. The storm water runoff provisions in Agave's discharge permits are imposed solely as a matter of state law. NPDES does not prohibit a state from choosing to regulate storm water runoff from oil and gas treatment operations.

As discussed above, OCD may impose reasonable and necessary permit conditions in order to fulfill its statutory mandates and those permit conditions do not need to mirror federal requirements. OCD requires Agave to implement and maintain storm water run-on and run-off plans and controls to separate process areas and flow lines (contact areas) from storm water areas (non-contact areas) and to report the movement of storm water from a contact area to a non-contact area as a release. This is a reasonable and necessary requirement, because storm water in contact areas may mix with materials, process wastes, toxic pollutants, hazardous substances, oil and grease, etc. Unless that storm water is handled correctly, it may pollute water or adversely affect human health and the environment.

Although OCD takes the position that its regulation of storm water runoff is not limited to NPDES requirements, it is interesting to note that the provisions Agave commented on in the draft discharge permits are actually consistent with NPDES requirements. Agave relies on the following passage:

(2) Storm water runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels)

used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

See 33 U.S.C. §1342(l). NPDES does allow permitting to cover storm water runoff from oil and gas operations that is contaminated with or has been in contact with waste products. That is what OCD seeks to accomplish by requiring Agave to keep runoff from contact areas and non-contact areas separate and to report the movement of storm water from a contact area to a non-contact area as a release.

As a result of a comment made by another operator about what constitutes a "process area" and whether all pipelines could be considered a part of a process area which must be paved and curbed OCD has decided that "process areas" refers to areas at which processes unique to, or commonly found, at compressor station operations occur. These process areas include, but are not limited to the following areas:

pigging chambers; slug catchers; natural gas liquid separators/natural gas liquid fractionation; oil and condensate separators; storage of natural gas liquids, oil, and condensate; station yard pipes and valves; scrubbers; heat exchangers/coolers; cooling tower blowdown; dehydrators; sulfur and carbon dioxide removal/gas sweetening; drip traps; compressors; engines; and valves on main transmission pipelines inside the fenced compressor station.

Process areas do not include the main transmission pipeline, except for valves from which liquids could be released. OCD has revised Agave's draft permits accordingly (see Permit Condition 3.B). OCD has not changed the meaning of "*maintenance, material and waste storage areas*." Of course, Agave may not actually conduct all of the above specified processes at each of its compressor stations.

OCD has revised Agave's draft permits as discussed above. As a result of its detailed analysis of Agave's and other permittees' comments on recently issued draft permits, OCD has also made other changes to Agave's permits. OCD made several stylistic changes. The revised draft permits now refer to the "Division's Environmental Bureau" rather than OCD. In addition, the term "facility" is used rather than "compressor station."

OCD made several more substantive technical changes as follows:

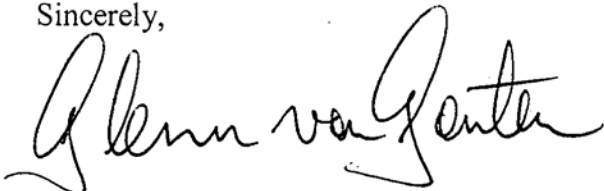
- Permit Condition 1.B: Added new text on *Tyrone* case.
- Permit Condition 1.B: Added new text to make clear that this permit only authorizes certain actions.
- Permit Condition 2.E: Added "oil, gases, produced water, condensate, or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants."
- Permit Condition 2.E: Added "fires" to releases in Permit Condition 2.E.

- Permit Condition 2.G: New Permit Condition 2.G requirement to determine H2S concentration at the compressor station.
- Permit Condition 2.H: Two new requirements for the Annual Report.
- Permit Condition 3.C: Specifies that fresh water containers do not need to be surrounded by berms, *etc.*, as long as they are located outside a drum and container, process, maintenance, material, and waste storage area.
- Permit Condition 4.B: Specifies that "The Owner/Operator shall not store oil field waste (see 19.15.2 NMAC) on-site for more than 180 calendar days from the date that the container is filled without approval from the Division's Environmental Bureau."
- Permit Condition 5: Specifies that existing and new below-grade tanks, pits, ponds, and sumps must meet the siting and design and construction standards specified at 19.15.17.10 NMAC.
- Permit Condition 5.E: Specifies that all tanks must be screened or netted.
- Permit Condition 9: Added a new section that specifies the due dates for certain reports, *etc.*, that the permittee is required to submit elsewhere in the permit.

Please note that the above changes are those that OCD has identified as being substantive. Other less substantive changes were also made.

OCD will mail the revised draft permits to Agave under separate cover and will allow Agave 30 days to review and submit comments. If you have any questions, please contact me at 505-476-3488.

Sincerely,



Glenn von Gonten

Acting Environmental Bureau Chief

copy:

Daniel Sanchez, Compliance and Enforcement Manager
Gail MacQuesten, Assistant General Counsel
Leonard Lowe, Environmental Engineer, Senior

New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



September 11, 2009

CERTIFIED MAIL
RETURN RECEIPT NO: 3929 6122

Ms. Jennifer Knowlton
Agave Energy Company
105 South Fourth Street
Artesia, New Mexico 88210

Re: **DRAFT** Discharge Permit Renewal (GW-50-8), Red Bluff No. 3 Compressor Station
NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM
Eddy County, New Mexico

Dear Ms. Knowlton:

Pursuant to Water Quality Control Commission (WQCC) Regulations 20.6.2.3104 - 20.6.2.3114 NMAC, the Oil Conservation Division (OCD) hereby approves the discharge permit for the Agave Energy Company, (owner/operator) for the above referenced site contingent upon the conditions specified in the enclosed Attachment to the Discharge Permit. Enclosed are two copies of the conditions of approval. Please sign and return one copy to the New Mexico Oil Conservation Division (OCD) Santa Fe Office within 45 days of receipt of this letter including permit fees.

Please be advised that approval of this permit does not relieve the owner/operator of responsibility should operations result in pollution of surface water, ground water or the environment. Nor does approval of the permit relieve the owner/operator of its responsibility to comply with any other applicable governmental authority's rules and regulations.

The final permit should be issued in approximately 45 days. If you have any questions, please contact Leonard Lowe of my staff at (505-476-3492) or E-mail leonard.lowe@state.nm.us. On behalf of the staff of the OCD, I wish to thank you and your staff for your cooperation during this discharge permit review.

Sincerely,

A handwritten signature in cursive script that reads "Glen von Gonten".
Glen von Gonten
Acting Environmental Bureau Chief

Oil Conservation Division * 1220 South St. Francis Drive
* Santa Fe, New Mexico 87505

* Phone: (505) 476-3440 * Fax (505) 476-3462* <http://www.emnrd.state.nm.us>



DISCHARGE PERMIT GW-50-8

I. GENERAL PROVISIONS.

A. PERMITTEE AND PERMITTED FACILITY: The Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department issues discharge permit GW-126 (Discharge Permit) to Agave Energy Company (Owner/Operator), located at 105 South Fourth Street, Artesia, New Mexico, 88210 (575-748-4471), to operate its Red Bluff No. 3 Gas Compressor Station, located in the NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM, Eddy County (Facility).

The gas compressor station compresses natural gas for a small localized gathering system. Approximately 700 bbls/day of wash down water, 500 gallons/year of used motor oil and 100bbls/year of condensate are generated and stored onsite. Ground water that may be affected by a spill, leak or accidental discharge occurs at a depth of approximately 52 - 238 feet, with a total dissolved solids concentration of approximately 600 - 2600 mg/L.

B. SCOPE OF PERMIT: OCD regulates the disposition of nondomestic wastes resulting from the oil field service industry to protect the public health and the environment pursuant to authority granted in the Oil and Gas Act (Chapter 70, Article 2 NMSA 1978) at NMSA 1978, Section 70-2-12(B)(22). OCD has been granted authority to administer the Water Quality Act (Chapter 74, Article 6 NMSA 1978) as it applies to the oil and field service industry by statute, NMSA 1978, Section 70-2-12(B)(22), and by delegation from the Water Quality Control Commission pursuant to NMSA 1978, Section 74-6-4(E).

The Water Quality Act and the rules issued under that Act protect ground water and surface water of the State of New Mexico by providing that, unless otherwise allowed by rule, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless such discharge is pursuant to an approved discharge plan. See 20.6.2.3104 NMAC and 20.6.2.3106 NMAC. A facility having no intentional liquid discharges is still required to have a discharge plan. Inadvertent discharges of liquids (e.g., leaks and spills, or any type of accidental discharge of contaminants) or improper disposal of waste solids still have a potential to cause ground water contamination or threaten public health and the environment.

Because the Owner/Operator did not identify any intentional discharge that will occur at the Facility, this Discharge Permit does not authorize any discharge. This Discharge Permit addresses the protection of public health and the environment, and the prevention of water pollution, by preventing and mitigating unintentional discharges.

This Discharge Permit does not convey any property rights of any sort or any exclusive privilege, and does not authorize any injury to persons or property, any invasion of other private rights, or any infringement of state, federal or local laws, rules or regulations.

C. DISCHARGE PERMIT CONDITIONS: By agreeing to this Discharge Permit, the Owner/Operator agrees to the specific provisions set out in this document, and the commitments made in the approved Discharge Plan Application and the attachments to that application, which are incorporated into the Discharge Permit by reference. Subsequent modifications of this Discharge Permit pursuant to the Water Quality Act, and subsequent approvals granted by OCD under this Discharge Permit are incorporated into the Discharge Permit, and the Owner/Operator agrees to the provisions in those subsequent modifications and approvals.

If this Discharge Permit is a permit renewal, it replaces the permit being renewed. Replacement of a prior permit does not relieve the Owner/Operator of its responsibility to comply with the terms of that prior permit while that permit was in effect.

D. DEFINITIONS: Terms not specifically defined in this Discharge Permit shall have the same meanings as those in the Water Quality Act, the Oil and Gas Act or the rules adopted pursuant to those Acts, as the context requires.

E. GENERAL PERFORMANCE STANDARDS: The Owner/Operator shall operate in accordance with the Discharge Permit conditions to comply with the Water Quality Act and the Oil and Gas Act and the rules issued pursuant to those Acts, so that neither a hazard to public health nor undue risk to property will result (see 20.6.2.3109.C NMAC); so that no discharge will cause or may cause any stream standard to be violated (see 20.6.2.3109.H(2) NMAC); so that no discharge of any water contaminant will result in a hazard to public health, (see 20.6.2.3109.H(3) NMAC); so that the numerical standards specified of 20.6.2.3103 NMAC are not exceeded; to protect public health and the environment (see NMSA 1978, Section 70-2-12(B)(22)); and to prevent waste of oil and gas, prevent the contamination of fresh waters and so that oil and gas are not used wastefully or allowed to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage conduit or operating equipment. See 19.15.2.8 NMAC.

The Owner/Operator shall not allow or cause water pollution, discharge or release of any water contaminant that exceeds the WQCC standards specified at 20.6.2.3101 NMAC and 20.6.2.3103 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams).

F. FILING FEES AND PERMIT FEES: Pursuant to 20.6.2.3114 NMAC, every facility that submits a discharge permit application for initial approval or renewal shall pay the permit fees specified in Table 1 and the filing fee specified in Table 2 of 20.6.2.3114 NMAC. The OCD has already received the required \$100.00 filing fee for this application. The flat fee for an oil and gas service company permit is \$1,700.00. The Owner/Operator shall submit this amount along with the signed Discharge Permit. Checks should be made out to the "New Mexico Water Quality Management Fund," not the Oil Conservation Division.

G. EFFECTIVE DATE, EXPIRATION, RENEWAL CONDITIONS, AND PENALTIES FOR OPERATING WITHOUT A DISCHARGE PERMIT: This Discharge Permit is effective when the OCD receives the signed Discharge Permit from the

Owner/Operator, and the \$1,700.00 fee. This Discharge Permit will expire on **August 19, 2012**. The Owner/Operator shall submit an application for renewal no later than 120 calendar days before that expiration date, pursuant to 20.6.2.3106.F NMAC. If an Owner/Operator submits a renewal application at least 120 calendar days before the Discharge Permit expires and is in compliance with the approved Discharge Permit, then the existing Discharge Permit will not expire until OCD has approved or disapproved the renewal application. Operating with an expired Discharge Permit may subject the Owner/Operator to civil and/or criminal penalties. See NMSA 1978, Section 74-6-10.1 and NMSA 1978, Section 74-6-10.2.

H. MODIFICATIONS: The Owner/Operator shall notify OCD of any facility expansion, production increase, or process modification that would result in any significant modification in the discharge of water contaminants. See 20.6.2.3107.C NMAC. OCD may require the Owner/Operator to submit a permit modification pursuant to 20.6.2.3109.E NMAC, and the OCD may modify or terminate a permit pursuant to NMSA 1978, Section 74-6-5(M) through (N).

I. TRANSFER OF DISCHARGE PERMIT: Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of the Facility, the transferor shall notify the transferee in writing of the existence of the Discharge Permit, and shall deliver or send by certified mail to OCD a copy of such written notification, together with a certification or other proof that such notification has been received by the transferee pursuant to 20.6.2.3111 NMAC. Upon receipt of such notification, the transferee shall inquire into all of the provisions and requirements contained in the Discharge Permit, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in OCD's file or files concerning the Discharge Permit. Upon assuming either ownership or possession of the Facility the transferee shall have the same rights and responsibilities under the Discharge Permit as were applicable to the transferor. See 20.6.2.3111 NMAC.

The transferee (new owner/operator) shall provide the OCD with a signed original of the Discharge Permit.

Transfer of the ownership, control, or possession of the Facility does not relieve the transferor of responsibility or liability for any act or omission which occurred while the transferor owned, controlled or was in possession of the Facility. See 20.6.2.3111.E NMAC.

J. CLOSURE PLAN AND FINANCIAL ASSURANCE: The Owner/Operator shall notify OCD in writing when any operations of the Facility are to be discontinued for a period in excess of six months. Prior to closure, or as a condition of this Discharge Permit, or upon request from OCD, the Owner/Operator shall submit a closure plan, modified closure plan, and/or provide adequate financial assurance. See 20.6.2.3107 NMAC.

K. COMPLIANCE AND ENFORCEMENT: If the Owner/Operator violates or is violating a condition of this Discharge Permit, the OCD may issue a compliance order requiring compliance immediately or within a specified time period, suspending or terminating this Discharge Permit, and/or assessing a civil penalty. See NMSA 1978, Section 74-6-10. OCD may

also commence a civil action in district court for appropriate relief, including injunctive relief. See NMSA 1978, Section 74-6-10(A)(2); NMSA 1978, Section 74-6-11. The Owner/Operator may be subject to criminal penalties for discharging a water contaminant without a discharge permit or in violation of a condition of a discharge permit; making any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the Water Quality Act; falsifying, tampering with or rendering inaccurate any monitoring device, method or record required to be maintained under the Water Quality Act; or failing to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation. See NMSA 1978, Section 74-6-10.2.

2. GENERAL FACILITY OPERATIONS

A. LABELING: The Owner/Operator shall clearly label all tanks, drums, and containers to identify the contents and provide other emergency notification information. The Owner/Operator may use a tank code numbering system, if that tank code numbering system is incorporated into its approved Contingency Plan.

B. INSPECTIONS AND MAINTENANCE OF SECONDARY CONTAINMENT SYSTEMS: The Owner/Operator shall inspect all secondary containment systems and sumps designed for spill collection/prevention and leak detection at least weekly to ensure proper operation and to prevent over topping or system failure. The Owner/Operator shall record the results of its inspection in a log book.

The Owner/Operator shall empty all spill collection and/or secondary containment devices of fluids within 72 hours of discovery. The Owner/Operator shall report any leak or failure of a secondary containment system to OCD as a release, in accordance with Permit Condition 2.E. The Owner/Operator shall repair any leak or failure of a secondary containment system as provided in its approved Contingency Plan or as required by OCD.

C. RECORD KEEPING: The Owner/Operator shall maintain at the Facility records of all inspections required by this Discharge Permit for a minimum of five years and shall make those records available for OCD inspection.

D. TESTING: The Owner/Operator shall provide OCD with notice one week prior to conducting any test required under this Discharge Permit, so that OCD may witness the test. The Owner/Operator shall maintain at the Facility records of all tests conducted pursuant to this Discharge Permit and the results of those tests, and make those records available for OCD inspection. The Owner/Operator shall give verbal notice of a test failure to OCD within 24 hours, and file a written report of the failure with the OCD within 15 days. The Owner/Operator shall complete repairs to correct the failure as provided in its approved Contingency Plan or as required by OCD.

E. RELEASE REPORTING: The Owner/Operator shall report unauthorized releases of water contaminants pursuant to 19.15.29 NMAC and any additional commitments made in the approved Contingency Plan. For purposes of this Discharge Permit, "releases" includes breaks,

leaks, spills and other failures of a primary or secondary containment system, and the movement of storm water from a "contact area" to a "non-contact area." At a minimum, the Owner/Operator shall file a written report of the release with both the OCD District Office and the OCD Santa Fe Office within 15 days for both "major releases" and "minor releases" as defined in 19.15.29.7 NMAC, and give verbal notice to both the OCD District Office and the OCD Santa Fe Office within 24 hours of discovering a "major release."

F. CORRECTIVE ACTION FOR RELEASES: The Owner/Operator shall take appropriate corrective action as specified in its approved Contingency Plan for all releases of contaminants whether or not the release qualifies as a "major" or "minor" release as defined in 19.15.29.7 NMAC.

The Owner/Operator shall address any contamination through the discharge permit process or pursuant to 20.6.2.4000 NMAC through 20.6.2.4116 NMAC (Prevention and Abatement of Water Pollution). OCD may require the Owner/Operator to modify its Discharge Permit to provide for investigation, remediation, abatement, and monitoring for any vadose zone or water pollution.

G. ANNUAL REPORT: The Owner/Operator shall submit an annual report to OCD by March 15 of each year. The annual report shall include the following:

1. For each waste stream, the amount of effluent and waste solids generated and stored in the prior calendar year;
2. The amount of and final disposition of each waste stream;
3. A copy of all inspections conducted of secondary containment systems; and
4. The nature and amount of any releases, with a description of the disposition of any contaminated soil or water.

3. MATERIAL STORAGE.

A. DRUM AND CONTAINER STORAGE: The Owner/Operator shall store all drums and other containers, including empty drums and containers, on a curbed, impermeable pad. "Containers" include tote tanks, sacks and buckets. The Owner/Operator shall store empty drums on their sides with the bungs in place and lined up on a horizontal plane. These requirements do not apply to drums and containers that contain only fresh water and are clearly so labeled.

B. PROCESS, MAINTENANCE, MATERIAL, AND WASTE STORAGE AREAS: The Owner/Operator shall pave and curb all process, maintenance, material and waste storage areas at its facility, or incorporate another appropriate spill collection device for the areas. (See 20.6.2.1203C(2) NMAC).

C. ABOVE GROUND TANKS: The Owner/Operator shall place above ground tanks on impermeable pads and surround the tanks with lined berms or other impermeable secondary containment system having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks. The

Owner/Operator is not required to provide secondary containment for any tanks that contain fresh water, and that are clearly so labeled.

The Owner/Operator shall retrofit existing above ground tanks that do not meet the requirements described above. The Owner/Operator shall submit a plan for the retrofitting to the OCD no later than the date for submitting an application for renewal of this Permit. The OCD will review and approve, approve with conditions, or deny the Owner/Operator's plan. The approved plan for retrofitting existing above ground tanks shall be incorporated into any permit renewal.

4. WASTE MANAGEMENT.

A. WASTE STREAMS: This Discharge Permit authorizes the Owner/Operator to handle the waste streams identified in its approved Discharge Plan Application. **Owner/Operator must obtain OCD approval for disposal of any waste stream not identified in its approved Discharge Plan Application.**

B. WASTE STORAGE: The Owner/Operator shall store waste at its Facility only in clearly marked waste storage areas that have been identified in its approved Discharge Plan Application, except that waste generated during emergency response operations may be stored elsewhere for no more than 72 hours. OCD may approve additional waste storage areas on a case-by-case basis. The Owner/Operator shall not store oil field waste (see 19.15.2 NMAC) on site for more than 180 calendar days without obtaining approval from OCD.

C. WASTE DISPOSAL: This Discharge Permit does not authorize on site disposal of nondomestic wastes.

The Owner/Operator shall dispose of the waste streams identified in its approved Discharge Plan Application at OCD permitted or approved facilities in accordance with the applicable rules for disposal at those facilities. The Owner/Operator is approved for the simplified procedure set out in 19.15.35.8.B(4) NMAC for disposal of wastes specified in 19.15.35.8.C(2) and (3) NMAC at solid waste facilities without OCD's prior written authorization provided that the waste stream has been identified in the approved Discharge Plan Application and existing process knowledge of the waste stream does not change.

D. CLASS V WELLS: Leach fields and other wastewater disposal systems at OCD-regulated facilities that inject non-hazardous fluid into or above an underground source of drinking water are UIC Class V injection wells, pursuant to 20.6.2.5002.B NMAC.

This Discharge Permit does not authorize the use of a Class V injection well for the disposal of industrial waste at the Facility. The Owner/Operator shall close any Class V industrial waste injection wells at the Facility that inject non-hazardous industrial wastes or a mixture of industrial wastes and domestic wastes (*e.g.*, septic systems, leach fields, dry wells, *etc.*) pursuant to 20.6.2.5005 NMAC within 90 calendar days of the issuance of this Discharge Permit. Other Class V wells, including wells used only for the injection of domestic wastes, must be permitted by the New Mexico Environment Department.

5. BELOW-GRADE TANKS, PITS, PONDS, AND SUMPS.

A. EXISTING BELOW-GRADE TANKS, PITS AND PONDS: Below-grade tanks, pits, and ponds must have secondary containment systems with leak detection. The Owner/Operator shall retrofit existing below-grade tanks, pits and ponds that do not have secondary containment and leak detection systems to meet these requirements. The Owner/Operator shall submit a plan for the retrofitting to OCD no later than the date for submitting an application for renewal of this Discharge Permit. OCD shall review and approve, approve with conditions, or deny the Owner/Operator's retrofit plan. The approved plan for retrofitting existing below-grade tanks, pits and ponds shall be incorporated into any permit renewal.

The Owner/Operator must test existing below-grade tanks, pits and ponds without secondary containment and leak detection annually or as specified herein. The Owner/Operator may propose various methods for testing such as pressure testing to 3 pounds per square inch greater than normal operating pressure and/or visual inspection of cleaned tanks and/or sumps, or other OCD-approved methods.

B. EXISTING SUMPS: A sump is any impermeable vessel or collection device incorporated within a secondary containment system, with a capacity less than 500 gallons, which remains predominantly empty, serves as a drain or receptacle for *de minimis* releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes. The Owner/Operator shall empty all sumps of all materials at least once a week.

C. NEW BELOW-GRADE TANKS, PITS, PONDS AND SUMPS: The Owner/Operator shall obtain OCD's approval before installing a new below-grade tank, pit, pond or sump. The Owner/Operator should submit a proposed design plan to OCD to install a new below-grade tank, pit, pond or sump at least 90 calendar days before it intends to install the new unit. Design plans for below-grade tanks, pits, and ponds shall incorporate secondary containment and leak detection. Proposed design plans for pits and ponds shall include hydrologic and geologic reports, siting information, monitoring and closure plans and information on foundation and liners. OCD will review and approve, approve with conditions, or deny the Owner/Operator's proposed design for a new below-grade tank, pit, pond or sump.

D. FENCING: The Owner/Operator shall fence all below-grade tanks, pits and ponds pursuant to 19.15.17.11.D NMAC.

E. SCREENING AND NETTING: The Owner/Operator shall screen or net all open top tanks that are eight feet in diameter or larger and all pits (including lined pits), or otherwise render the tanks and pits non-hazardous to wildlife, including migratory birds, pursuant to 19.15.17.11.E NMAC.

6. UNDERGROUND PROCESS AND WASTEWATER PIPELINES.

A. TESTING: The Owner/Operator shall test all underground process/wastewater pipelines at least once every five (5) years to demonstrate their mechanical integrity, except lines containing fresh water. The Owner/Operator shall test all pressure-rated pipe to 150% of the normal operating pressure, if possible, or for atmospheric drain systems, to 3 pounds per square inch greater than normal operating pressure, and pressure held for a minimum of 30 minutes with no more than a 1% loss/gain in pressure. The Owner/Operator may propose other test methods for OCD's review and approval.

B. SCHEMATIC DIAGRAMS OR PLANS: The Owner/Operator shall maintain at its Facility all underground process and wastewater pipeline schematic diagrams or plans showing all drains, vents, risers, valves, underground piping, pipe type, rating, size, and approximate location.

C. NEW UNDERGROUND PIPING: The Owner/Operator must notify OCD prior to installing any new underground piping. The Owner/Operator should submit a design plan to the OCD for new underground piping at least 90 calendar days before it intends to begin construction. The OCD shall determine whether any modifications to this Discharge Permit are necessary and appropriate based on the new underground piping.

7. STORM WATER: The Owner/Operator shall implement and maintain storm water run-on and run-off plans and controls to separate chemical process areas and flow lines (contact areas) from storm water areas (non-contact areas), and shall comply with any additional commitments made in its approved Contingency Plan. The movement of storm water from a contact area to a non-contact area is a release, and the Owner/Operator shall report that release and take corrective action.

8. ADDITIONAL SITE SPECIFIC CONDITIONS: N/A

9. CERTIFICATION: (OWNER/OPERATOR) by the officer whose signature appears below, acknowledges receipt of this Discharge Permit, and has reviewed its terms and conditions.

Company Name - print name above

Company Representative - print name

Company Representative - Signature

Title _____

Date: _____

Lowe, Leonard, EMNRD

From: Lowe, Leonard, EMNRD
Sent: Thursday, March 05, 2009 11:33 AM
To: 'Jennifer Knowlton'
Cc: Bratcher, Mike, EMNRD
Subject: GW-050-8 Red Bluff # 3 CS
Attachments: GW-050-8, Admin Complete Letter.pdf; GW-050-8, Draft Permit.pdf; GW-050-8, OCD PN.pdf

Jennifer,

The OCD has determined your discharge renewal application for **GW-050-8, Red Bluff # 3 compressor station** to be administratively complete.

Attached are files for your records.

llowe

Leonard Lowe
Environmental Engineer
Oil Conservation Division/EMNRD
1220 S. St. Francis Drive
Santa Fe, N.M. 87505
Office: 505-476-3492
Fax: 505-476-3462
E-mail: leonard.lowe@state.nm.us
Website: <http://www.emnrd.state.nm.us/ocd/>



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor
Joanna Prukop
Cabinet Secretary
Reese Fullerton
Deputy Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



March 5, 2009

Dear Ms. Knowlton,

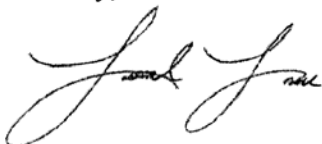
Re: Discharge Plan Renewal Permit GW-050-8
Agave Energy Company
Red Bluff # 3 Compressor Station
Eddy County, New Mexico

The New Mexico Oil Conservation Division (NMOCD) has received Agave Energy Company's request and initial fee, dated December 1, 2008 to renew GW-050-8 for the Red Bluff # 3 Compressor Station located in the NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM, Eddy County, New Mexico. The initial submittal provided the required information in order to deem the application "administratively" complete.

The New Mexico Water Quality Control Commission regulations (WQCC) notice requirements of 20.6.2.3108 NMAC was satisfied and demonstrated to the NMOCD. Once the applicant public notice is published submit the proof of publication affidavit to the OCD. NMOCD will provide public notice pursuant to the WQCC notice requirements of 20.6.2.3108 NMAC to determine if there is any public interest.

If there are any questions regarding this matter, please do not hesitate to contact me at (505) 476-3492 or leonard.lowe@state.nm.us. On behalf of the staff of the NMOCD, I wish to thank you and your staff for your cooperation during this discharge permit review.

Sincerely,



Leonard Lowe
Environmental Engineer

LRL/lrl

xc: OCD District II Office, Artesia





New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson

Governor
Joanna Prukop
Cabinet Secretary
Reese Fullerton
Deputy Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



March 5, 2009

Ms. Jennifer Knowlton
Agave Energy Company
105 South Fourth Street
Artesia, New Mexico 88210

Re: **DRAFT** Discharge Permit Renewal
Red Bluff # 3 Compressor Station, GW-050-8
NE/4 SE/4 Section 10, Township 10 South, Range 25 East, NMPM,
Eddy County, New Mexico

Dear Ms. Knowlton:

Pursuant to Water Quality Control Commission (WQCC) Regulations 20.6.2.3104 - 20.6.2.3114 NMAC, the Oil Conservation Division (OCD) hereby approves the discharge permit for the **Agave Energy Company.,** (owner/operator) for the above referenced site contingent upon the conditions specified in the enclosed **Attachment to the Discharge Permit.** Enclosed are two copies of the conditions of approval. **Please sign and return one copy to the New Mexico Oil Conservation Division (OCD) Santa Fe Office within 45 days of receipt of this letter including permit fees.**

Please be advised that approval of this permit does not relieve the owner/operator of responsibility should operations result in pollution of surface water, ground water or the environment. ~~Not~~ does approval of the permit relieve the owner/operator of its responsibility to comply with any other applicable governmental authority's rules and regulations.

The final permit should be issued in approximately 45 days. If you have any questions, please contact Leonard Lowe of my staff at (505-476-3492) or E-mail leonard.lowe@state.nm.us. On behalf of the staff of the OCD I wish to thank you and your staff for your cooperation during this discharge permit review.

Sincerely,

Wayne Price
Environmental Bureau Chief

Attachments-1



xc: OCD District Office

ATTACHMENT- DISCHARGE PERMIT APPROVAL CONDITIONS

- 1. Payment of Discharge Plan Fees:** All discharge permits are subject to WQCC Regulations. Every billable facility that submits a discharge permit application will be assessed a filing fee of \$100.00, plus a flat fee (*see* WQCC Regulation 20.6.2.3114 NMAC). The Oil Conservation Division ("OCD") has received the required \$100.00 filing fee. The flat fee for a compressor station with horsepower greater than 1001 horse power is \$1700.00. Please submit this amount along with the signed permit conditions. Checks should be made out to the New Mexico Water Quality Management Fund.
- 2. Permit Expiration, Renewal Conditions and Penalties:** Pursuant to WQCC Regulation 20.6.2.3109.H.4 NMAC, this permit is valid for a period of five years. **The permit will expire on April 7, 2014** and an application for renewal should be submitted no later than 120 days before that expiration date. Pursuant to WQCC Regulation 20.6.2.3106.F NMAC, if a discharger submits a discharge permit renewal application at least 120 days before the discharge permit expires and is in compliance with the approved permit, then the existing discharge permit will not expire until the application for renewal has been approved or disapproved. *Expired permits are a violation of the Water Quality Act {Chapter 74, Article 6, NMSA 1978} and civil penalties may be assessed accordingly.*
- 3. Permit Terms and Conditions:** Pursuant to WQCC Regulation 20.6.2.3104 NMAC, when a permit has been issued, the owner/operator must ensure that all discharges shall be consistent with the terms and conditions of the permit. In addition, all facilities shall abide by the applicable rules and regulations administered by the OCD pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38.
- 4. Owner/Operator Commitments:** The owner/operator shall abide by all commitments submitted in its February 2009 discharge plan application, including attachments and subsequent amendments and these conditions for approval. Permit applications that reference previously approved plans on file with the division shall be incorporated in this permit and the owner/operator shall abide by all previous commitments of such plans and these conditions for approval.
- 5. Modifications:** WQCC Regulation 20.6.2.3107.C and 20.6.2.3109 NMAC addresses possible future modifications of a permit. The owner/operator (discharger) shall notify the OCD of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants. The Division Director may require a permit modification if any water quality standard specified at 20.6.2.3103 NMAC is being or will be exceeded, or if a toxic pollutant as defined in WQCC Regulation 20.6.2.7 NMAC is present in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the Water Quality Standards for Interstate and Intrastate streams as specified in 20.6.4 NMAC are being or may be violated in surface water in New Mexico.
- 6. Waste Disposal and Storage:** The owner/operator shall dispose of all wastes at an OCD-approved facility. Only oil field RCRA-exempt wastes may be disposed of by injection in a Class II well. RCRA non-hazardous, non-exempt oil field wastes may be disposed of at an OCD-

approved facility upon proper waste determination pursuant to 40 CFR Part 261. Any waste stream that is not listed in the discharge permit application must be approved by the OCD on a case-by-case basis.

A. OCD Part 35 Waste: Pursuant to OCD Part 35 (19.15.35.8 NMAC) disposal of certain non-domestic waste without notification to the OCD is allowed at NMED permitted solid waste facilities if the waste stream has been identified in the discharge permit and existing process knowledge of the waste stream does not change.

B. Waste Storage: The owner/operator shall store all waste in an impermeable bermed area, except waste generated during emergency response operations for up to 72 hours. All waste storage areas shall be identified in the discharge permit application. Any waste storage area not identified in the permit shall be approved on a case-by-case basis only. The owner/operator shall not store oil field waste on-site for more than 180 days unless approved by the OCD.

7. Drum Storage: The owner/operator must store all drums, including empty drums, containing materials other than fresh water on an impermeable pad with curbing. The owner/operator must store empty drums on their sides with the bungs in place and lined up on a horizontal plane. The owner/operator must store chemicals in other containers, such as tote tanks, sacks, or buckets on an impermeable pad with curbing.

8. Process, Maintenance and Yard Areas: The owner/operator shall either pave and curb or have some type of spill collection device incorporated into the design at all process, maintenance, and yard areas which show evidence that water contaminants from releases, leaks and spills have reached the ground surface.

9. Above Ground Tanks: The owner/operator shall ensure that all aboveground tanks have impermeable secondary containment (e.g., liners and berms), which will contain a volume of at least one third greater than the total volume of the largest tank or all interconnected tanks. The owner/operator shall retrofit all existing tanks before discharge permit renewal. Tanks that contain fresh water or fluids that are gases at atmospheric temperature and pressure are exempt from this condition.

10. Labeling: The owner/operator shall clearly label all tanks, drums, and containers to identify their contents and other emergency notification information. The owner/operator may use a tank code numbering system, which is incorporated into their emergency response plans.

11. Below-Grade Tanks/Sumps and Pits/Ponds.

A. All below-grade tanks and sumps must be approved by the OCD prior to installation and must incorporate secondary containment with leak detection into the design. The owner/operator shall retrofit all existing systems without secondary containment and leak detection before discharge permit renewal. All existing below-grade tanks and sumps without secondary containment and leak detection must be tested annually or as specified herein. Systems that have secondary containment with leak detection shall have a monthly inspection of the leak detection system to determine if the primary containment is leaking. Small sumps or depressions in

secondary containment systems used to facilitate fluid removal are exempt from these requirements if fluids are removed within 72 hours.

B. All pits and ponds, including modifications and retrofits, shall be designed by a certified registered professional engineer and approved by the OCD prior to installation. In general, all pits or ponds shall have approved hydrologic and geologic reports, location, foundation, liners, and secondary containment with leak detection, monitoring and closure plans. All pits or ponds shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health, safety and the environment for the foreseeable future. The owner/operator shall retrofit all existing systems without secondary containment and leak detection before discharge permit renewal.

C. The owner/operator shall ensure that all exposed pits, including lined pits and open top tanks (8 feet in diameter or larger) shall be fenced, screened, netted, or otherwise rendered non-hazardous to wildlife, including migratory birds.

D. The owner/operator shall maintain the results of tests and inspections at the facility covered by this discharge permit and available for OCD inspection. The owner/operator shall report the discovery of any system which is found to be leaking or has lost integrity to the OCD within 15 days. The owner/operator may propose various methods for testing such as pressure testing to 3 pounds per square inch greater than normal operating pressure and/or visual inspection of cleaned tanks and/or sumps, or other OCD-approved methods. The owner/operator shall notify the OCD at least 72 hours prior to all testing.

12. Underground Process/Wastewater Lines:

A. The owner/operator shall test all underground process/wastewater pipelines at least once every five (5) years to demonstrate their mechanical integrity, except lines containing fresh water or fluids that are gases at atmospheric temperature and pressure. Pressure rated pipe shall be tested by pressuring up to one and one-half times the normal operating pressure, if possible, or for atmospheric drain systems, to 3 pounds per square inch greater than normal operating pressure, and pressure held for a minimum of 30 minutes with no more than a 1% loss/gain in pressure. The owner/operator may use other methods for testing if approved by the OCD.

B. The owner/operator shall maintain underground process and wastewater pipeline schematic diagrams or plans showing all drains, vents, risers, valves, underground piping, pipe type, rating, size, and approximate location. All new underground piping must be approved by the OCD prior to installation. The owner/operator shall report any leaks or loss of integrity to the OCD within 15 days of discovery. The owner/operator shall maintain the results of all tests at the facility covered by this discharge permit and they shall be available for OCD inspection. The owner/operator shall notify the OCD at least 72 hours prior to all testing.

13. Class V Wells: The owner/operator shall close all Class V wells (e.g., septic systems, leach fields, dry wells, etc.) that inject non-hazardous industrial wastes or a mixture of industrial wastes and domestic wastes unless it can be demonstrated that ground water will not be impacted in the reasonably foreseeable future. Leach fields and other wastewater disposal systems at OCD-regulated facilities that inject non-hazardous fluid into or above an underground source of drinking water are considered Class V injection wells under the EPA UIC program. Class V wells that

inject domestic waste only, must be permitted by the New Mexico Environment Department (NMED).

14. Housekeeping: The owner/operator shall inspect all systems designed for spill collection/prevention and leak detection at least monthly to ensure proper operation and to prevent over topping or system failure. All spill collection and/or secondary containment devices shall be emptied of fluids within 72 hours of discovery. The owner/operator shall maintain all records at the facility and available for OCD inspection.

15. Spill Reporting: The owner/operator shall report all unauthorized discharges, spills, leaks and releases and conduct corrective action pursuant to WQCC Regulation 20.6.2.1203 NMAC and OCD Part 29 (19.15.29 NMAC). The owner/operator shall notify both the OCD District Office and the Santa Fe Office within 24 hours and file a written report within 15 days.

16. OCD Inspections: The OCD will perform an inspection of this facility.

17. Storm Water: The owner/operator shall implement and maintain run-on and runoff plans and controls. The owner/operator shall not discharge any water contaminant that exceeds the WQCC standards specified in 20.6.2.3101 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams) including any oil sheen in any stormwater run-off. The owner/operator shall notify the OCD within 24 hours of discovery of any releases and shall take immediate corrective action(s) to stop the discharge.

18. Unauthorized Discharges: The owner/operator shall not allow or cause water pollution, discharge or release of any water contaminant that exceeds the WQCC standards listed in 20.6.2.3101 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams) unless specifically listed in the permit application and approved herein. **An unauthorized discharge is a violation of this permit.**

19. Vadose Zone and Water Pollution: The owner/operator shall address any contamination through the discharge permit process or pursuant to WQCC 20.6.2.4000-.4116 NMAC (Prevention and Abatement of Water Pollution). The OCD may require the owner/operator to modify its permit for investigation, remediation, abatement, and monitoring requirements for any vadose zone or water pollution. Failure to perform any required investigation, remediation, abatement and submit subsequent reports will be a violation of the permit.

20. Additional Site Specific Conditions: N/A

21. Transfer of Discharge Permit (WQCC 20.6.2.3111) Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of a facility with a discharge permit, the transferor shall notify the transferee in writing of the existence of the discharge permit, and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or other proof that such notification has in fact been received by the transferee.

Upon receipt of such notification, the transferee shall have the duty to inquire into all of the provisions and requirements contained in such discharge permit, and the transferee shall be

charged with notice of all such provisions and requirements as they appear of record in the department's file or files concerning such discharge permit. The transferee (new owner/operator) shall sign and return an original copy of these permit conditions and provide a written commitment to comply with the terms and conditions of the previously approved discharge permit.

22. Closure Plan and Financial Assurance: Pursuant to 20.6.2.3107 NMAC an owner/operator shall notify the OCD when any operations of the facility are to be discontinued for a period in excess of six months. Prior to closure, or as a condition of this permit, or request from the OCD, the operator will submit an approved closure plan, modified plan, and/or provide adequate financial assurance.

23. Certification: (Owner/Operator), by the officer whose signature appears below, accepts this permit and agrees to comply with all submitted commitments, including these terms and conditions contained here. **Owner/Operator** further acknowledges that the OCD may, for good cause shown, as necessary to protect fresh water, public health, safety, and the environment, change the conditions and requirements of this permit administratively

Conditions accepted by: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

Company Name-print name above

Company Representative- print name

Company Representative- Signature

Title

Date:

NOTICE OF PUBLICATION

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

Notice is hereby given that pursuant to New Mexico Water Quality Control Commission Regulations (20.6.2.3106 NMAC), the following discharge permit application(s) has been submitted to the Director of the New Mexico Oil Conservation Division ("NMOCD"), 1220 S. Saint Francis Drive, Santa Fe, New Mexico 87505, Telephone (505) 476-3440:

(GW-050-8) Jennifer Knowlton, of Agave Energy Company 105, South Fourth Street, Artesia N.M. 88210, has submitted a renewal application for the previously approved discharge plan for their Red Bluff # 2 Compressor Station, located in the NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM, Eddy County. The facility compresses natural gas for a small localized gathering system. Approximately 700 bbls/day of wash down water, 500 gallons/yr of used motor oil and 100bbls/year of condensate are generated and stored in onsite. These fluids are not to be intentionally discharged to the ground. If accidental discharge occurs immediate recovery/reclamation shall be implemented. Fluids, other than clean water, including dry chemicals, shall be stored within secondary containment and properly bermed. Waste shall be properly maintained and manifested. A copy of the discharge permit once renewed shall be on location at all times and made familiar to all facility personnel. Groundwater most likely to be affected by a spill, leak or accidental discharge is at a depth of approximately 52 - 238 feet, with a total dissolved solids concentration of approximately 600 - 2600 mg/L. The discharge plan addresses how oilfield products and waste will be properly handled, stored, and disposed of, including how spills, leaks, and other accidental discharges to the surface will be managed in order to protect fresh water.

The NMOCD has determined that the application is administratively complete and has prepared a draft permit. The NMOCD will accept comments and statements of interest regarding this application and will create a facility-specific mailing list for persons who wish to receive future notices. Persons interested in obtaining further information, submitting comments or requesting to be on a facility-specific mailing list for future notices may contact the Environmental Bureau Chief of the Oil Conservation Division at the address given above. The administrative completeness determination and draft permit may be viewed at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, or may also be viewed at the NMOCD web site <http://www.emnrd.state.nm.us/ocd/>. Persons interested in obtaining a copy of the application and draft permit may contact the NMOCD at the address given above. Prior to ruling on any proposed discharge permit or major modification, the Director shall allow a period of at least thirty (30) days after the date of publication of this notice, during which interested persons may submit comments or request that NMOCD hold a public hearing. Requests for a public hearing shall set forth the reasons why a hearing should be held. A hearing will be held if the Director determines that there is significant public interest.

If no public hearing is held, the Director will approve or disapprove the proposed permit based on information available, including all comments received. If a public hearing is held, the director will approve or disapprove the proposed permit based on information in the permit application and information submitted at the hearing.

Para obtener más información sobre esta solicitud en español, sirvase comunicarse por favor: New Mexico Energy, Minerals and Natural Resources Department (Depto. Del Energia, Minerals y Recursos Naturales de Nuevo México), Oil Conservation Division (Depto. Conservación Del Petróleo), 1220 South St. Francis Drive, Santa Fe, New México (Contacto: Dorothy Phillips, 505-476-3461)

GIVEN under the Seal of New Mexico Oil Conservation Commission at Santa Fe, New Mexico, on this 5th day of March 2009.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

S E A L

Mark Fesmire, Director

Lowe, Leonard, EMNRD

From: Jennifer Knowlton [jknowlton@yatespetroleum.com]
Sent: Thursday, February 26, 2009 1:40 PM
To: Lowe, Leonard, EMNRD
Subject: Red Bluff #3 GW 50-08
Attachments: RB3_PlotPlan.pdf; RB3_PFD.pdf; PUBLIC NOTICE_5008_022409.doc

Leonard,

Attached please find the process flow diagrams and the plot plan with the drainage system indicated. There aren't any storage sumps at RB #3. There are washbasins in the skids. These are concrete depressions approximately 12". The pump system is manual. The pump is located in a concrete sump, but no liquid is ever released in the sump. It is containment for the pump only. If there is a rain event or the unit is washed, the pump is turned on. Fluid is washed (via power washer, or other method) to the wash basin which is where the drain sits. The fluid is moved through the drain pipes to the oily wastewater tank. Rainwater might sit in the skid until personnel can drain it.

At Red Bluff #3, there are 4 compressor engines for a total of 4306 horsepower onsite.

From the State Engineer website, the average depth to water at Red Bluff #3 is 52 feet to 238 feet

From "Saline Ground Water in the Roswell Basin, Chaves and Eddy Counties New Mexico" from USGS, the average TDS ranges from 600 to 2600 mg/L.

I have attached the public notice for this site using the sample that you provided.

If you have any additional questions, please let me know!

Jennifer Knowlton, PE

Agave Energy Company

575-748-4471 (work)

505-358-3588 (cell)

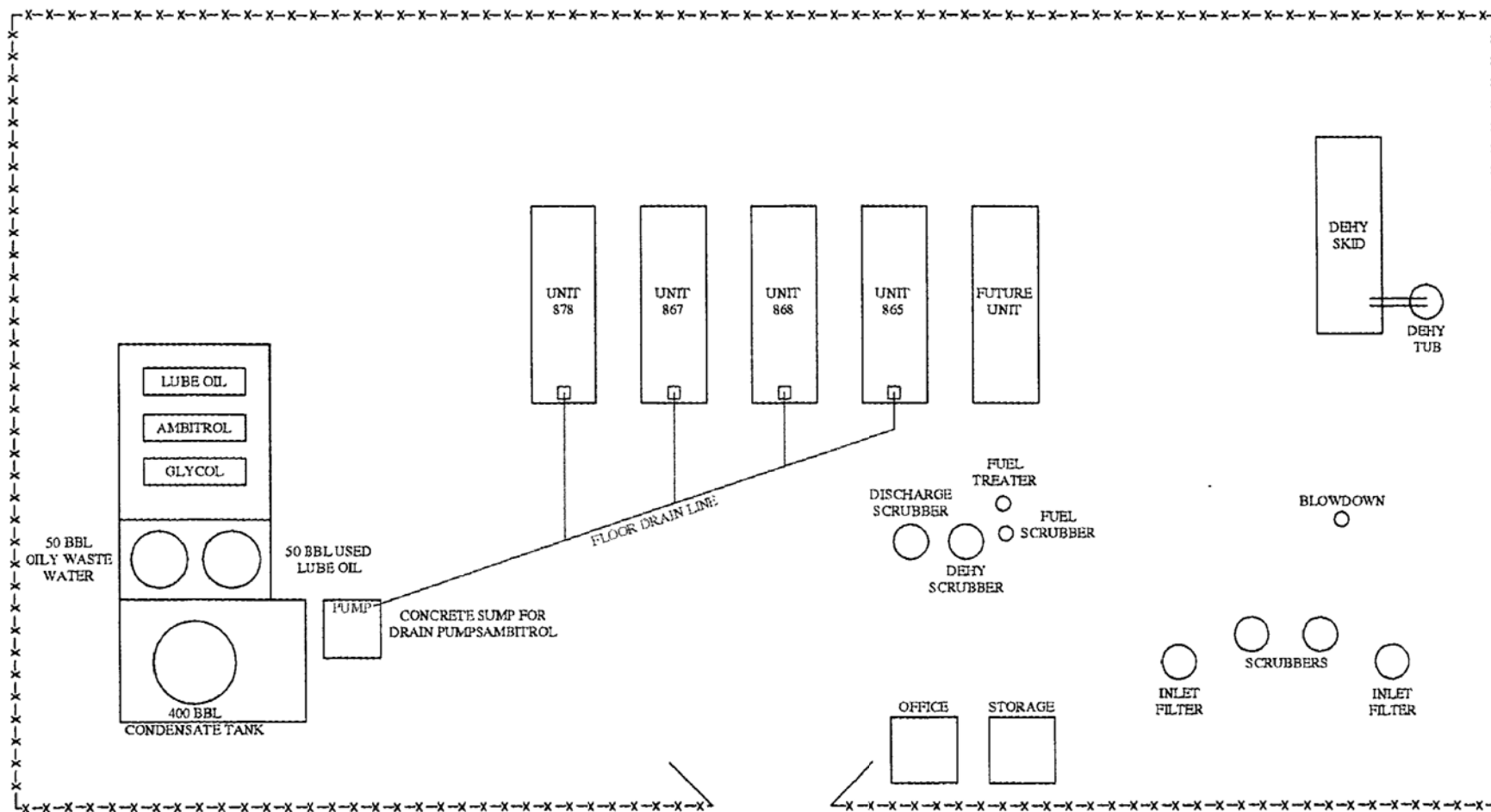
Note NEW EMAIL: jknowlton@yatespetroleum.com

Please change your address book!

<<RB3_PlotPlan.pdf>> <<RB3_PFD.pdf>> <<PUBLIC NOTICE_5008_022409.doc>>

This inbound email has been scanned by the MessageLabs Email Security System.

GW-50-8



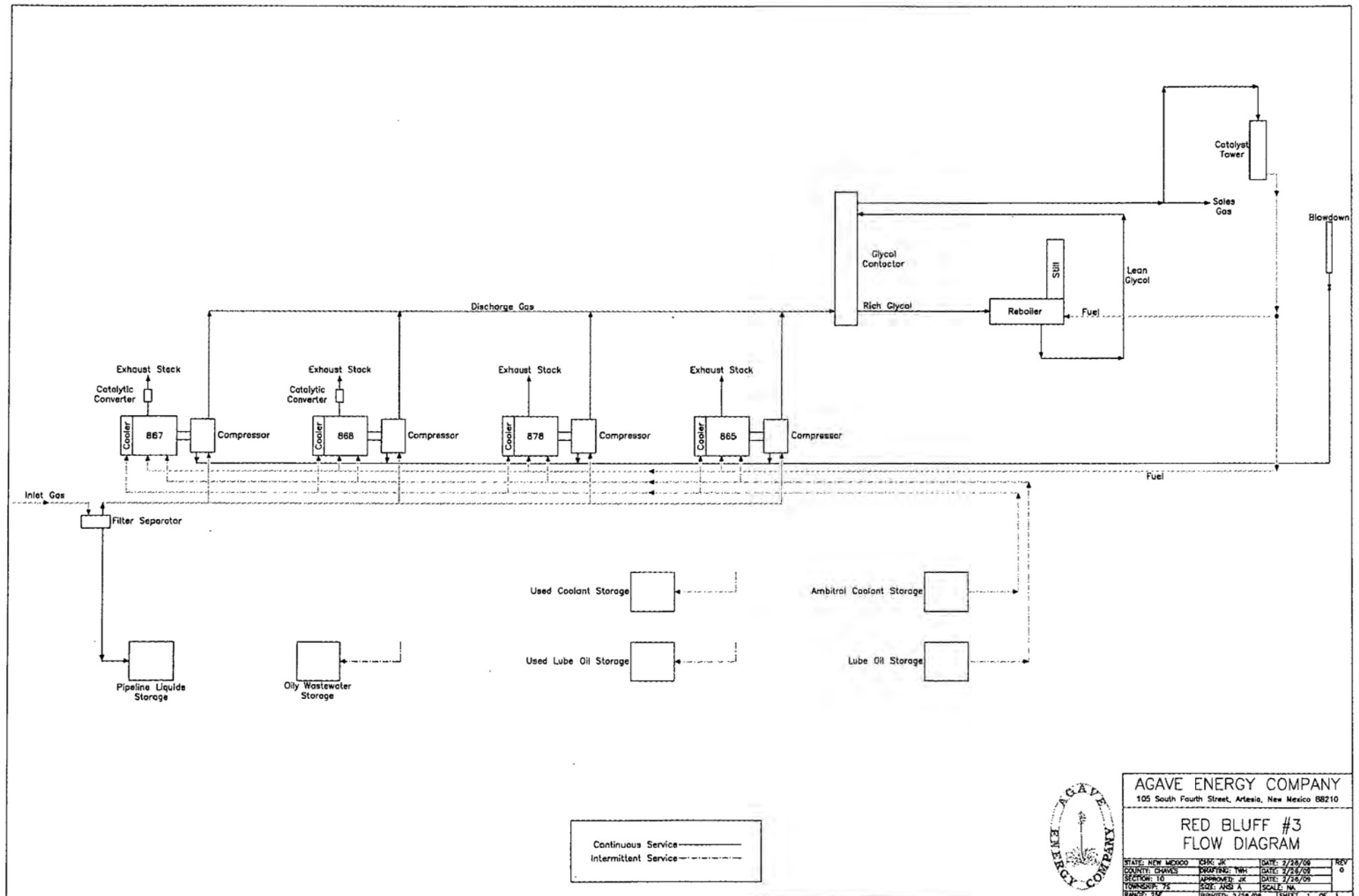
AGAVE ENERGY COMPANY

105 South Fourth Street, Artesia, New Mexico 88210

RED BLUFF #3 PLOT PLAN

STATE: NEW MEXICO	CHK: JK	DATE: 2/24/09	REV
COUNTY: CHAVES	DRAFTING: YWH	DATE: 2/20/08	1
SECTION: 10	APPROVED: JK	DATE: 2/24/09	
TOWNSHIP: 7S	SIZE: ANSI A	SCALE: NA	
RANGE: 25E	PRINTED: 2/24/09	SHEET 1 OF 1	

GW-50-8



AGAVE ENERGY COMPANY 105 South Fourth Street, Artesia, New Mexico 88210			
RED BLUFF #3 FLOW DIAGRAM			
STATE: NEW MEXICO	DATE: 2/26/09	DATE: 2/26/09	REV: 0
COUNTY: CHAVES	DRAWING: TWH	DATE: 2/26/09	
SECTION: 10	APPROVED: JK	DATE: 2/26/09	
TOWNSHIP: 7S	SCALE: 200' = 1"	DATE: 2/26/09	
RANGE: 23E	POSTED: 2/26/09	SHEET: 1 OF 1	

PUBLIC NOTICE

Agave Energy Company, 105 South Fourth Street, Artesia, New Mexico 88210, has submitted an application to the New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division for a modified discharge plan permit (GW-50-08) for their Red Bluff #3 Compressor Station located in the NW ¼, SE ¼ of Section 10, Township 7 South, Range 25 East in Chaves County, New Mexico. The facility is located approximately 28 miles north - northeast of Roswell, New Mexico.

The facility provides compression, storing, and distribution of oil and gas related material. Materials generated or used at the facility include pipeline condensate liquid, new and used compressor lubrication oil, gear oil and oily waste water from engine or scrubber wash down. Approximately 700 bbls/day of wash down water, 500 gallons /year of used motor oil, and 100 bbls/year condensate/produced water is generated at the facility. All liquids utilized at the facility are stored in dedicated above ground storage tanks prior to offsite disposal or recycling at an OCD approved site. All storage tanks are within properly engineered and OCD approved secondary containments.

The aquifer most likely to be affected is 52 to 238 feet in depth, and the total dissolved solids concentration of this aquifer is approximately 600 - 2600 mg/l.

Any interested person or persons may obtain information; submit comments or request to be placed on a facility-specific mailing list for future notices by contacting Leonard Lowe at the New Mexico OCD at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, Telephone (505) 476-3492. The OCD will accept comments and statements of interest regarding the renewal and will create a facility-specific mailing list for persons who wish to receive future notices.

ACKNOWLEDGEMENT OF RECEIPT
OF CHECK/CASH

I hereby acknowledge receipt of check No. _____ dated 2/13/09

or cash received on _____ in the amount of \$ 100⁰⁰

from Agave Energy Co.

for GW-50-8

Submitted by: Lawrence Romero Date: 2/20/09

Submitted to ASD by: Lawrence Romero Date: 2/20/09

Received in ASD by: _____ Date: _____

Filing Fee _____ New Facility _____ Renewal _____

Modification _____ Other Processing Fee

Organization Code 521.07 Applicable FY 2004

To be deposited in the Water Quality Management Fund.

Full Payment _____ or Annual Increment _____

**OIL CONSERVATION DIVISION
DISCHARGE PLAN GW-050-8 RENEWAL
AGAVE ENERGY COMPANY
RED BLUFF #3 COMPRESSOR STATION**

RECEIVED

2008 DEC 4 PM 1 10



December 1, 2008

District I
1625 N. French Dr., Hobbs, NM 88240
District II
1301 W. Grand Avenue, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources
Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505

Revised June 10, 2003

Submit Original
Plus 1 Copy
to Santa Fe
1 Copy to Appropriate
District Office

**DISCHARGE PLAN APPLICATION FOR SERVICE COMPANIES,
GAS PLANTS, REFINERIES, COMPRESSOR, GEOTHERMAL
FACILITIES AND CRUDE OIL PUMP STATIONS**

(Refer to the OCD Guidelines for assistance in completing the application)

☐ New ☒ Renewal ☐ Modification

1. Type: Compressor Station

2. Operator: Agave Energy Company

Address: 105 South Fourth Street Artesia NM 88210

Contact Person: Jennifer Knowlton Phone: 575-748-4471

3. Location: NE/4 SE/4 Section 10 Township 10S Range 25E
Submit large scale topographic map showing exact location.

4. Attach the name, telephone number and address of the landowner of the facility site.

5. Attach the description of the facility with a diagram indicating location of fences, pits, dikes and tanks on the facility.

6. Attach a description of all materials stored or used at the facility.

7. Attach a description of present sources of effluent and waste solids. Average quality and daily volume of waste water must be included.

8. Attach a description of current liquid and solid waste collection/treatment/disposal procedures.

9. Attach a description of proposed modifications to existing collection/treatment/disposal systems.

10. Attach a routine inspection and maintenance plan to ensure permit compliance.

11. Attach a contingency plan for reporting and clean-up of spills or releases.

12. Attach geological/hydrological information for the facility. Depth to and quality of ground water must be included.

13. Attach a facility closure plan, and other information as is necessary to demonstrate compliance with any other OCD rules, regulations and/or orders.

14. CERTIFICATION: I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.

Name: Jennifer Knowlton

Title: Environmental Engineer

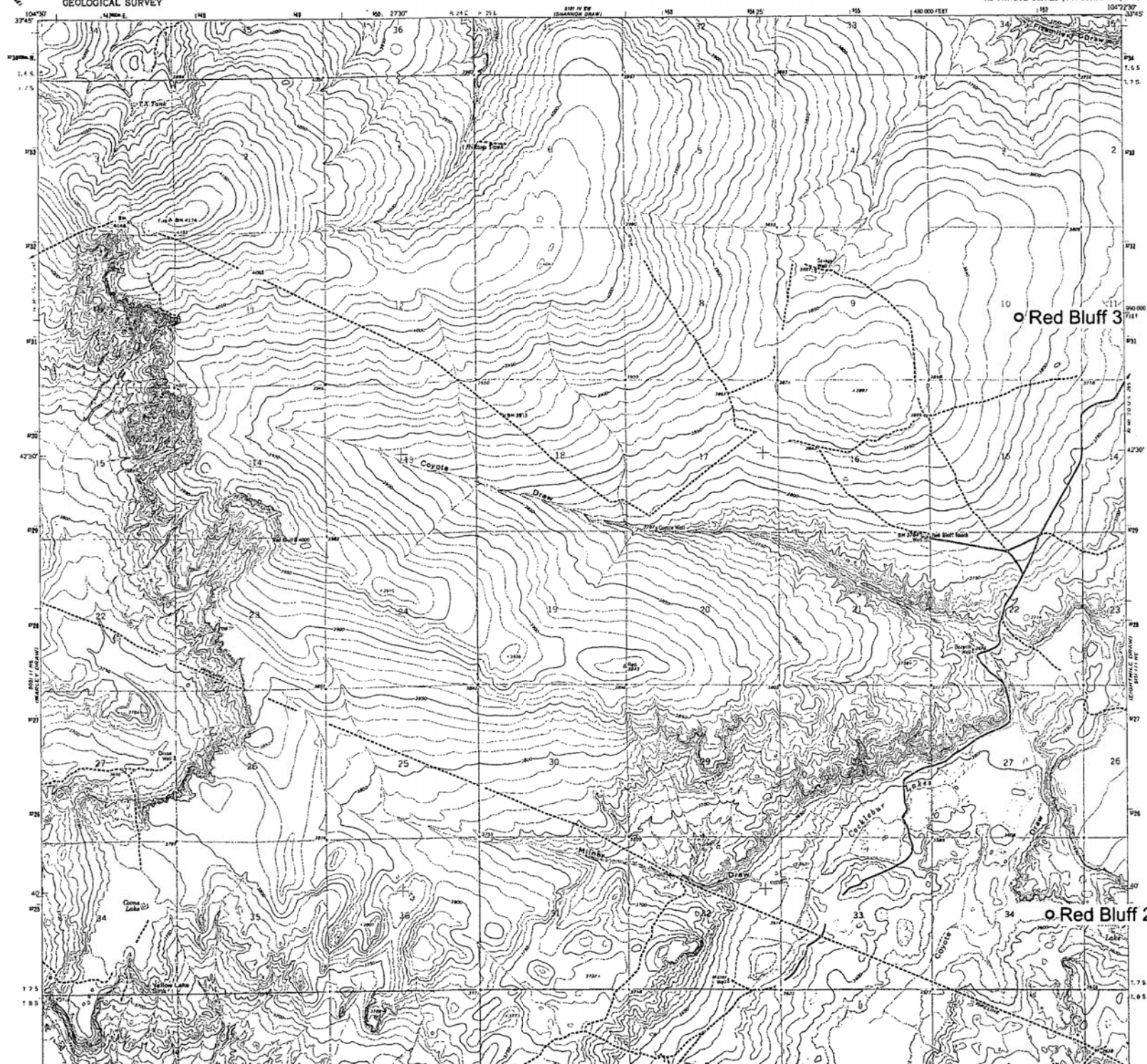
Signature: Jennifer Knowlton

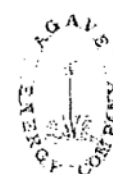
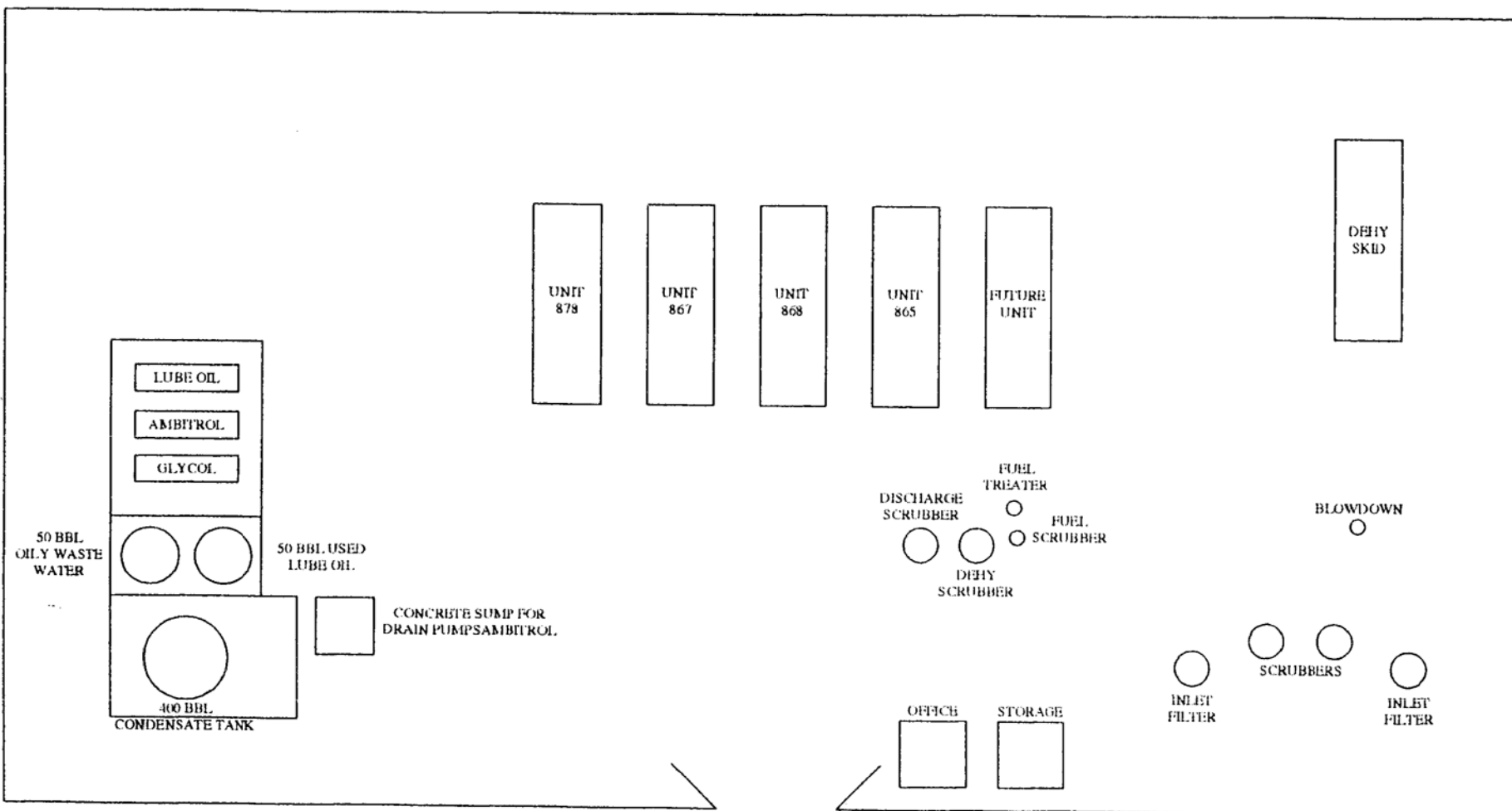
Date: 12/1/2008

E-mail Address: jknowlton@yatespetroleum.com

1991-1992

8/18/74 10:58
FBI FRODOCK
GALV TX





AGAVE ENERGY COMPANY 105 South Fourth Street, Artesia, New Mexico 88210				
				RED BLUFF #3 PLOT PLAN
DATE: _____ DRAWN BY: _____		COUNTY CLAVIS: _____		REV: _____
APPROVED: _____ DATE: _____		SIZE: ANSIA		
AGAVE MANAGEMENT		SCALE: NA		PRINTED: 2/20/06
				SHEET 1 OF 1

1. Type: Compressor Station
2. Operator: Agave Energy Company
Address: 105 South Fourth Street Artesia NM 88210
Contact Person: Jennifer Knowlton
Phone: 575-748-4471
3. Location: NE/4 SE/4
Section 10
Township 10S
Range 25E
4. Landowner: Agave Energy Company
5. The Red Bluff # 3 Compressor Station is part of a small localized gas gathering system that gathers sweet gas from multiple wells in the area and compresses this gas for delivery to a main line. The SIC code for the facility is 4922. The facility consists of two Waukesha L7042 GSI compressor engines, one Superior 8GTLA compressor engine, one Caterpillar G3416 compressor engines, a glycol dehydration unit, several small storage tanks, and various pumps, meters, and ancillary equipment. A plot plan is attached.
6. Materials Stored or Used at Facility:
 1. TK-1: 400 bbl Condensate
 2. 9122: 50 bbl oily waste water
 3. 9121: 50 bbl used lube oil
 4. Tk-3: 1500 gallon ambitrol
 5. Tk-4: 1500 gallon glycol
 6. Tk-5: 1500 gallon lube oil
 7. Tk-7: 55 gallon engine lubricant
 8. 231 pounds of arsenic catalyst
7. Present Sources of Effluent and Waste Solids:
 1. Inlet separator – 5 to 50 BPD of produced water and condensate, RCRA exempt
 2. Engine cooling water – 100 to 200 gallons per year, RCRA exempt
 3. Waste engine oil – 500 gallons per year, RCRA non-Exempt
 4. Oily waste water – 500 gallons per year, RCRA non-Exempt
 5. Engine filters – 50 per year, RCRA non-Exempt
 6. Discharge vessel – 5 to 50 BPD of produced water and condensate, RCRA exempt
 7. Arsenic vessel – 5 to 50 BPD of produced water and condensate, RCRA exempt
 8. Glycol dehydrator – <5 BPD of wastewater containing hydrocarbons, RCRA exempt
 9. Fuel treating vessel – 231 pounds average of arsenic a year, RCRA exempt
8. Current Liquid and Solid Waste Collection, Treatment and Disposal Procedures:

The hydrocarbons from the inlet separators are stored in an above ground 400 barrel storage tank. The contents are transported via truck to Navajo Refinery. Currently, we use Plains Marketing for the

condensate services. The produced water is disposed of via truck to a disposal well by Jim's Water Service:

Pathfinder "AFT" State Well No. 13 SWD
Administrative Order No. SWD-415
Issued May 10, 1991
Unit F of Section 21, Township 10 South Range 27 East
Eddy County, New Mexico

Waste oil and antifreeze are stored in minimal amounts in onsite waste tanks. The waste oil and antifreeze are taken to the Roswell Yard where they are collected by a third party, Thermo Fluids, Inc. for disposal and recycling.

In the event of a spill within the containment, the spill is pumped out of the containment with a sump pump and disposed of according to the type of liquid as described above. If the spill occurs on the ground, the soil is removed from site with the proper excavation equipment. Engine filters are stored in roll-offs until picked up by a third party disposal company such as CRI. The arsenic catalysts are placed into containers onsite and transferred by Controlled Recovery, Inc to CRI's landfill in Halfway, New Mexico.

Contact information for third part contractors is as follows:

Jims Water Service
PO Box 1307
Artesia, NM 88211-1387

Plains Marketing
PO Box 4648
Houston, TX 77210

Controlled Recovery, Inc.
PO Box 388
Hobbs, NM 88241

Thermo Fluids, Inc
2800 North US Hwy 62
Brownfield, Texas
TXD 982 756 868

9. Proposed Modifications to existing Collection, Treatment and Disposal Systems:

At this time, there are no proposed modifications to the existing collection, treatment, or disposal system.

10. Inspection and Maintenance Plan:

- a. Company personnel make daily inspections of the site during normal business hours. Malfunctions or breakdowns are noted and repaired.
- b. Any repair work that is needed is performed as required.
- c. A regular maintenance program is diligently carried out on all on-site equipment.

11. Plan for reporting and Cleanup of Spills or Releases:

- a. Standard company policy is to immediately secure the area to insure the safety of personnel and the public.
- b. Employees and contract personnel are dispatched to the spill area with necessary equipment and materials necessary to control and contain the spill and initiate clean-up program as soon as practicable.
- c. Notification and any necessary follow-up reports will be made to the appropriate agencies (BLM, OCD, etc) pursuant to regulations.

12. Geologic and Hydrological Information:

The facility is located in the hills northeast of Roswell in red gypsum/clay soil. The station is located within four miles of the Pecos River and is subject to drainage to the east. The area is primarily rangeland consisting of prairie grass and mesquite. Non-potable surface waters are present at depths less than 100 feet and potable Artesia water is present at depths of approximately 300 feet or more.

13. Facility Closure Plan:

At this time, there are no plans to close the facility. The facility will operate for the foreseeable future. In the event that this changes, notice will be sent to the Oil Conservation Division and closure plans will be formulated.

ACKNOWLEDGEMENT OF RECEIPT
OF CHECK/CASH

I hereby acknowledge receipt of check No. [REDACTED] dated 5/15/06

or cash received on _____ in the amount of \$ 1800⁰⁰

from AGAVE ENERGY COMPANY

for GW-050-8

Submitted by: LAURENCE ROMERO Date: 5/15/06

Submitted to ASD by: JOSEPH P. [REDACTED] Date: 5/31/06

Received in ASD by: _____ Date: _____

Filing Fee ☒ New Facility _____ Renewal _____

Modification _____ Other _____

Organization Code 521.07 Applicable FY 2004

To be deposited in the Water Quality Management Fund.

Full Payment ☒ or Annual Increment _____

Bank of America

32-2
1110

AGAVE ENERGY COMPANY

105 South Fourth Street
Artesia, New Mexico 88210
505-748-4555

DATE 5/15/2006 VENDOR NO. 941753

*****1.800DOLLARS***00CENTS

PAY TO THE ORDER OF:

WATER QUALITY MANAGEMENT FUND
C/O OIL CONSERVATION DIVISION
1220 S SAINT FRANCIS DRIVE
SANTA FE NM 87505

[REDACTED]

*****1.800.00

Jon K. [REDACTED]

Albuquerque, New Mexico 88210

674

THE ATTACHED CHECK IS IN FULL SETTLEMENT OF INVOICES LISTED ABOVE. PLEASE DETACH THIS VOUCHER BEFORE DEPOSITING CHECK. NO RECEIPT NEEDED.

Intrastate Streams) including any oil sheen in any storm water run-off. The owner/operator shall notify the OCD within 24 hours of discovery of any releases and shall take immediate corrective action(s) to stop the discharge.

18. Unauthorized Discharges: The owner/operator shall not allow or cause water pollution, discharge or release of any water contaminant that exceeds the WQCC standards listed in 20.6.2.3101 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams) unless specifically listed in the permit application and approved herein. **An unauthorized discharge is a violation of this permit.**

19. Vadose Zone and Water Pollution: The owner/operator shall address any contamination through the discharge permit process or pursuant to WQCC 20.6.2.4000-.4116 NMAC (Prevention and Abatement of Water Pollution). The OCD may require the owner/operator to modify its permit for investigation, remediation, abatement, and monitoring requirements for any vadose zone or water pollution. Failure to perform any required investigation, remediation, or abatement and submit subsequent reports will be a violation of the permit.

20. Additional Site Specific Conditions: N/A

21. Transfer of Discharge Permit: The owner/operator shall notify the OCD prior to any transfer of ownership, control or possession of a facility with an approved discharge permit. The purchaser shall submit a written commitment to comply with the terms and conditions of the previously approved discharge permit and shall seek OCD approval prior to transfer.

22. Closure: The owner/operator shall notify the OCD when operations of the facility are to be discontinued for a period in excess of six months. Prior to closure of the facility, the operator shall submit a closure plan for approval. Closure and waste disposal shall be in accordance with the statutes, rules and regulations in effect at the time of closure.

23. Certification: **Certification:** Agave Energy Co., by the officer whose signature appears below, accepts this permit and agrees to comply with all submitted commitments, including these terms and conditions contained herein. Agave Energy Co. further acknowledges that the OCD may, for good cause shown, as necessary to protect fresh water, public health, safety, and the environment, change the conditions and requirements of this permit administratively.
Conditions accepted by:

Agave Energy Co.

GREG JOKELA
Company Representative- print name

[Signature]
Company Representative- signature

VP
Title

3-10-06
Date

2006 MAY 30 PM 2 05



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

Mark E. Fesmire, P.E.

Director

Oil Conservation Division

May 8, 2006

Ms. Jennifer Knowlton
Agave Energy Co.
105 South Fourth Street
Artesia, NM 88210

Re: Discharge Permit GW-050-8
Red Bluff #3 Compressor Station

Dear Ms. Knowlton:

Pursuant to Water Quality Control Commission (WQCC) Regulations 20.6.2.3104 - 20.6.2.3114 NMAC, the Oil Conservation Division (OCD) hereby approves the discharge permit for the Agave Energy Co. (owner/operator) Red Bluff #3 Compressor Station GW-050-8 located in the NE/4 SE/4 of Section 10, Township 10 South, Range 25 East, NMPM, Chaves County, New Mexico, under the conditions specified in the enclosed **Attachment To The Discharge Permit**. Enclosed are two copies of the conditions of approval. **Please sign and return one copy to the New Mexico Oil Conservation Division Santa Fe Office within 30 working days of receipt of this letter including permit fees.**

Please be advised that approval of this permit does not relieve the owner/operator of responsibility should operations result in pollution of surface water, ground water or the environment. Nor does approval of the permit relieve the owner/operator of its responsibility to comply with any other applicable governmental authority's rules and regulations.

If you have any questions, please contact Ed Martin of my staff at (505-476-3492) or ed.martin@state.nm.us. On behalf of the staff of the OCD, I wish to thank you and your staff for your cooperation during this discharge permit review.

Sincerely,

Wayne Price
Environmental Bureau Chief

Copy: OCD District Office

**ATTACHMENT TO THE DISCHARGE PERMIT
AGAVE ENERGY CO., RED BLUFF #3 COMPRESSOR STATION (GW-050-8)
DISCHARGE PERMIT APPROVAL CONDITIONS
May 8, 2006**

Please remit a check for \$1,800.00 made payable to Water Quality Management Fund:

**Water Quality Management Fund
c/o: Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505**

- 1. Payment of Discharge Plan Fees:** All discharge permits are subject to WQCC Regulations. Every billable facility that submits a discharge permit application will be assessed a filing fee of \$100. There is also a renewal flat fee of \$1,700 for gas compressor stations greater than 1,001 horsepower (*see* WQCC Regulation 20.6.2.3114 NMAC).
- 2. Permit Expiration and Renewal:** Pursuant to WQCC Regulation 20.6.2.3109.H.4 NMAC, this permit is valid for a period of five years. **This permit will expire on April 7, 2009** and an application for renewal should be submitted no later than 120 days before that expiration date. Pursuant to WQCC Regulation 20.6.2.3106.F NMAC, if an owner/operator submits a discharge permit renewal application at least 120 days before the discharge permit expires and is in compliance with the approved permit, then the existing discharge permit will not expire until the application for renewal has been approved or disapproved.
- 3. Permit Terms and Conditions:** Pursuant to WQCC Regulation 20.6.2.3104 NMAC, when a permit has been issued, the owner/operator must ensure that all discharges shall be consistent with the terms and conditions of the permit. In addition, all facilities shall abide by the applicable rules and regulations administered by the OCD pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38.
- 4. Owner/Operator Commitments:** The owner/operator shall abide by all commitments submitted in its March 2, 2006 discharge permit renewal application, including attachments and subsequent amendments and these conditions for approval. Permit applications that reference previously approved plans on file with the division shall be incorporated in this permit and the owner/operator shall abide by all previous commitments of such plans and these conditions for approval.
- 5. Modifications:** WQCC Regulation 20.6.2.3109.G NMAC addresses possible future modifications of a permit. Pursuant to WQCC Regulation 20.6.2.3107.C NMAC, the owner/operator shall notify the OCD of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants. Pursuant to WQCC Regulation 20.6.2.3109.E NMAC, the Division Director may require a permit modification if any water quality standard specified at 20.6.2.3103 NMAC is being or will be exceeded, or if a toxic pollutant as defined in WQCC Regulation 20.6.2.7 NMAC is present in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the Water Quality Standards for Interstate and Intrastate streams as specified in 20.6.4 NMAC are being or may be violated in surface water in New Mexico.
- 6. Waste Disposal and Storage:** The owner/operator shall dispose of all wastes at an OCD-approved facility. Only oil field RCRA-exempt wastes may be disposed of by injection in a Class II well. RCRA non-hazardous, non-exempt oil field wastes may be disposed of at an OCD-approved facility upon

proper waste determination pursuant to 40 CFR part 261. Any waste stream that is not listed in the discharge permit application must be approved by the OCD on a case-by-case basis.

A. OCD Rule 712 Waste: Pursuant to OCD Rule 712 (19.15.9.712 NMAC) disposal of certain non-domestic waste without notification to the OCD is allowed at NMED-permitted solid waste facilities if the waste stream has been identified in the discharge permit and existing process knowledge of the waste stream does not change.

B. Waste Storage: The owner/operator shall store all waste in an impermeable bermed area. Waste generated during emergency response operations may be stored for up to 72 hours. All waste storage areas shall be identified in the discharge permit application. Any waste storage area not identified in the permit shall be approved on a case-by-case basis only. The owner/operator shall not store oil field waste on-site for more than 180 days unless approved by the OCD.

7. Drum Storage: The owner/operator must store all drums, including empty drums, containing materials other than fresh water on an impermeable pad with curbing. The owner/operator must store empty drums on their sides with the bungs in place and lined up on a horizontal plane. The owner/operator must store chemicals in other containers, such as tote tanks, sacks, or buckets on an impermeable pad with curbing.

8. Process, Maintenance and Yard Areas: The owner/operator shall either pave and curb or have some type of spill collection device incorporated into the design at all process, maintenance, and yard areas which show evidence that water contaminants from releases, leaks and spills have reached the ground surface.

9. Above Ground Tanks: The owner/operator shall ensure that all above ground tanks have impermeable secondary containment (e.g., liners and berms), which will contain a volume of at least one-third greater than the total volume of the largest tank or all interconnected tanks. The owner/operator shall retrofit all existing tanks before discharge permit renewal. Tanks that contain fresh water or fluids that are gases at atmospheric temperature and pressure are exempt from this condition.

10. Labeling: The owner/operator shall clearly label all tanks, drums, and containers to identify their contents and other emergency notification information. The owner/operator may use a tank code numbering system, which is incorporated into their emergency response plans.

11. Below-Grade Tanks/Sumps and Pits/Ponds.

A. All below-grade tanks and sumps must be approved by the OCD prior to installation and must incorporate secondary containment with leak detection into the design. The owner/operator shall retrofit all existing systems without secondary containment and leak detection before discharge permit renewal. All existing below-grade tanks and sumps without secondary containment and leak detection must be tested annually or as specified herein. Systems that have secondary containment with leak detection shall have a monthly inspection of the leak detection system to determine if the primary containment is leaking. Small sumps or depressions in secondary containment systems used to facilitate fluid removal are exempt from these requirements if fluids are removed within 72 hours.

B. All pits and ponds, including modifications and retrofits, shall be designed by a certified registered professional engineer and approved by the OCD prior to installation. In general, all pits or ponds shall have approved hydrologic and geologic reports, location, foundation, liners, secondary containment with leak detection, monitoring and closure plans. All pits or ponds shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health, safety and the environment for the foreseeable future. The owner/operator shall retrofit all existing systems without secondary containment and leak detection before discharge permit renewal.

C. The owner/operator shall ensure that all exposed pits, including lined pits and open top tanks (8 feet in diameter or larger) shall be fenced, screened, netted, or otherwise rendered non-hazardous to wildlife, including migratory birds.

D. The owner/operator shall maintain the results of tests and inspections at the facility covered by this discharge permit and available for OCD inspection. The owner/operator shall report the discovery of any system which is found to be leaking or has lost integrity to the OCD within 15 days. The owner/operator may propose various methods for testing such as pressure testing to 3 pounds per square inch greater than normal operating pressure and/or visual inspection of cleaned tanks and/or sumps, or other OCD-approved methods. The owner/operator shall notify the OCD at least 72 hours prior to all testing.

12. Underground Process/Wastewater Lines:

A. The owner/operator shall test all underground process/wastewater pipelines at least once every five (5) years to demonstrate their mechanical integrity, except lines containing fresh water or fluids that are gases at atmospheric temperature and pressure. Pressure rated pipe shall be tested by pressuring up to one and one-half times the normal operating pressure, if possible, or for atmospheric drain systems, to 3 pounds per square inch greater than normal operating pressure, and pressure held for a minimum of 30 minutes with no more than a 1% loss/gain in pressure. The owner/operator may use other methods for testing if approved by the OCD.

B. The owner/operator shall maintain underground process and wastewater pipeline schematic diagrams or plans showing all drains, vents, risers, valves, underground piping, pipe type, rating, size, and approximate location. All new underground piping must be approved by the OCD prior to installation. The owner/operator shall report any leaks or loss of integrity to the OCD within 15 days of discovery. The owner/operator shall maintain the results of all tests at the facility covered by this discharge permit and they shall be available for OCD inspection. The owner/operator shall notify the OCD at least 72 hours prior to all testing.

13. Class V Wells: The owner/operator shall close all Class V wells (e.g., septic systems, leach fields, dry wells, etc.) that inject non-hazardous industrial wastes or a mixture of industrial wastes and domestic wastes unless it can be demonstrated that ground water will not be impacted in the reasonably foreseeable future. Leach fields and other wastewater disposal systems at OCD-regulated facilities that inject non-hazardous fluid into or above an underground source of drinking water are considered Class V injection wells under the EPA UIC program. Class V wells that inject domestic waste only, must be permitted by the New Mexico Environment Department (NMED).

14. Housekeeping: The owner/operator shall inspect all systems designed for spill collection/prevention and leak detection at least monthly to ensure proper operation and to prevent over topping or system failure. All spill collection and/or secondary containment devices shall be emptied of fluids within 72 hours of discovery. The owner/operator shall maintain all records at the facility and available for OCD inspection.

15. Spill Reporting: The owner/operator shall report all unauthorized discharges, spills, leaks and releases and conduct corrective action pursuant to WQCC Regulation 20.5.12.1203 NMAC and OCD Rule 116 (19.15.3.116 NMAC). The owner/operator shall notify both the OCD District Office and the Santa Fe Office within 24 hours and file a written report within 15 days.

16. OCD Inspections: The OCD may place additional requirements on the facility and modify the permit conditions based on OCD inspections.

17. Storm Water: The owner/operator shall implement and maintain run-on and runoff plans and controls. The owner/operator shall not discharge any water contaminant that exceeds the WQCC standards specified in 20.6.2.3101 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and

Intrastate Streams) including any oil sheen in any storm water run-off. The owner/operator shall notify the OCD within 24 hours of discovery of any releases and shall take immediate corrective action(s) to stop the discharge.

18. Unauthorized Discharges: The owner/operator shall not allow or cause water pollution, discharge or release of any water contaminant that exceeds the WQCC standards listed in 20.6.2.3101 NMAC or 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Streams) unless specifically listed in the permit application and approved herein. **An unauthorized discharge is a violation of this permit.**

19. Vadose Zone and Water Pollution: The owner/operator shall address any contamination through the discharge permit process or pursuant to WQCC 20.6.2.4000-.4116 NMAC (Prevention and Abatement of Water Pollution). The OCD may require the owner/operator to modify its permit for investigation, remediation, abatement, and monitoring requirements for any vadose zone or water pollution. Failure to perform any required investigation, remediation, or abatement and submit subsequent reports will be a violation of the permit.

20. Additional Site Specific Conditions: N/A

21. Transfer of Discharge Permit: The owner/operator shall notify the OCD prior to any transfer of ownership, control or possession of a facility with an approved discharge permit. The purchaser shall submit a written commitment to comply with the terms and conditions of the previously approved discharge permit and shall seek OCD approval prior to transfer.

22. Closure: The owner/operator shall notify the OCD when operations of the facility are to be discontinued for a period in excess of six months. Prior to closure of the facility, the operator shall submit a closure plan for approval. Closure and waste disposal shall be in accordance with the statutes, rules and regulations in effect at the time of closure.

23. Certification: **Certification:** Agave Energy Co., by the officer whose signature appears below, accepts this permit and agrees to comply with all submitted commitments, including these terms and conditions contained herein. Agave Energy Co. further acknowledges that the OCD may, for good cause shown, as necessary to protect fresh water, public health, safety, and the environment, change the conditions and requirements of this permit administratively.

Conditions accepted by:

Agave Energy Co.

Company Representative- print name

Company Representative- signature

Title

Date

ATTACHMENT TO THE DISCHARGE PLAN GW50-08 APPROVAL
Agave Energy Company Red Bluff#3 Compressor Station (GW50-08)
DISCHARGE PLAN APPROVAL CONDITIONS
April 07, 2000

1. Payment of Discharge Plan Fees: The \$50.00 filing fee has been received by OCD. The \$1380.00 flat fee shall be submitted upon receipt of this approval. The required flat fee may be paid in a single payment due at the time of approval, or in equal annual installments over the duration of the plan, with the first payment due upon receipt of this approval.
2. Commitments: Agave Energy Company will abide by all commitments submitted in the discharge plan application dated September 1, 1999, supplemental information received on March 31, 2000 and these conditions for approval.
3. Drum Storage: All drums containing materials other than fresh water must be stored on an impermeable pad with curbing. All empty drums should be stored on their sides with the bungs in place and lined up on a horizontal plane. Chemicals in other containers such as sacks or buckets must also be stored on an impermeable pad with curbing.
4. Process Areas: 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.
5. Above Ground Tanks: All above ground tanks which contain fluids other than fresh water must be bermed to contain a volume of one-third more than the total volume of the largest tank or of all interconnected tanks. All new facilities or modifications to existing facilities must place the tank on an impermeable type pad within the berm.
6. Above Ground Saddle Tanks: Above ground saddle tanks must have impermeable pad and curb type containment unless they contain fresh water or fluids that are gases at atmospheric temperature and pressure.
7. Labeling: All tanks, drums, and other containers should be clearly labeled to identify their contents and other emergency information necessary if the tank were to rupture, spill, or ignite.

8. Below Grade Tanks/Sumps: All below grade tanks, sumps, and pits must be approved by the OCD prior to installation or upon modification and must incorporate secondary containment and leak-detection into the design. All pre-existing sumps and below-grade tanks must be tested to demonstrate their mechanical integrity no later than **June 01, 2000** and every year from tested date, thereafter. Permittees may propose various methods for testing such as pressure testing to 3 pounds per square inch above normal operating pressure and/or visual inspection of cleaned out tanks and/or sumps, or other OCD approved methods. The OCD will be notified at least 72 hours prior to all testing. The test results will be submitted to OCD by July 01 of each year.
9. Underground Process/Wastewater Lines: All underground process/wastewater pipelines must be tested to demonstrate their mechanical integrity no later than **June 01, 2000** and every 5 years, from tested date, thereafter. Permittees may propose various methods for testing such as pressure testing to 3 pounds per square inch above normal operating pressure or other means acceptable to the OCD. The OCD will be notified at least 72 hours prior to all testing. The test results will be submitted to OCD by July 01, 2000.
10. Class V Wells: No Class V wells that inject non-hazardous industrial wastes or a mixture of industrial wastes and domestic wastes will be approved for construction and/or operation unless it can be demonstrated that groundwater will not be impacted in the reasonably foreseeable future. Leach fields and other wastewater disposal systems at OCD regulated facilities which inject non-hazardous fluid into or above an underground source of drinking water are considered Class V injection wells under the EPA UIC program. Class V wells that inject domestic waste only must be permitted by the New Mexico Environment Department.
11. Housekeeping: All systems designed for spill collection/prevention, and leak detection will be inspected daily to ensure proper operation and to prevent overtopping or system failure.
12. Spill Reporting: All spills/releases shall be reported pursuant to OCD Rule 116. and WQCC 1203. to the OCD Artesia District Office.
13. Waste Disposal: All wastes will be disposed of at an OCD approved facility. Only oilfield exempt wastes shall be disposed of down Class II injection wells. Non-exempt oilfield wastes that are non-hazardous may be disposed of at an OCD approved facility upon proper waste determination per 40 CFR Part 261. Any waste stream that is not listed in the discharge plan shall be approved by the OCD on a case-by-case basis.

14. Transfer of Discharge Plan: The OCD will be notified prior to any transfer of ownership, control, or possession of a facility with an approved discharge plan. A written commitment to comply with the terms and conditions of the previously approved discharge plan must be submitted by the purchaser and approved by the OCD prior to transfer.
15. Closure: The OCD will be notified when operations of the facility are discontinued for a period in excess of six months. Prior to closure of the facility a closure plan will be submitted for approval by the Director. Closure and waste disposal will be in accordance with the statutes, rules and regulations in effect at the time of closure.
16. OCD Inspections: Additional requirements may be placed on the facility based upon results from OCD inspections.
17. Storm Water Plan: The facility will have an approved storm water run-off plan.
18. Certification: **Agave Energy Company** by the officer whose signature appears below, accepts this permit and agrees to comply with all terms and conditions contained herein. **Agave Energy Company** further acknowledges that these conditions and requirements of this permit may be changed administratively by the Division for good cause shown as necessary to protect fresh water, human health and the environment.

Conditions accepted by: **Agave Energy Company**

Paul Ragsdale
Company Representative- print name

Paul Ragsdale Date 4/19/00
Company Representative- Sign

Title Vice President

h Street Artesia, New Mexico 88210

1

THE ATTACHED CHECK IS IN FULL SETTLEMENT OF INVOICES LISTED
PLEASE DETACH THIS VOUCHER BEFORE DEPOSITING CHECK. NO RECEIPT REQUIRED

ACKNOWLEDGEMENT OF RECEIPT
OF CHECK/CASH

I hereby acknowledge receipt of check No. dated 4/20/2000
or cash received on in the amount of \$ 1,380⁰⁰
from AGAVE ENERGY CO.

for RED BLUFF #3 COMP 5% GW50-08

Submitted by: WAYNE PRICE (Facility Name) Date: 4/24/00 (DP No.)

Submitted to ASD by: [Signature] Date: 4/24/00

Received in ASD by: Date:

Filing Fee New Facility ✓ Renewal

Modification Other
(separately)

Organization Code 521.07 Applicable FY 2000

To be deposited in the Water Quality Management Fund.

Full Payment ✓ or Annual Increment

NationsBank

32-1
1110

AGAVE ENERGY COMPANY

105 South Fourth Street
Artesia, New Mexico 88210
505-748-4555

DATE 4/20/2000 VENDOR NO. 666850
*****1,380DOLLARS****00CENTS
PAY TO THE ORDER OF:

OIL CONSERVATION DIVISION
2040 SOUTH PACHECO
SANTA FE NM 87505

GW50-08

AMOUNT

*****1,380.00

[Signature]
Dennis P. Murphy



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

April 07, 2000

CERTIFIED MAIL
RETURN RECEIPT NO. 5051 5918

Mr. Paul Ragsdale
Agave Energy Company
105 South Fourth Street
Artesia, New Mexico 88210

Re: Compressor Discharge Plan for GW50-08 Red Bluff#3 Compressor Station

Dear Mr. Ragsdale:

The groundwater discharge plan application for the Agave Energy Company Red Bluff#3 Compressor Station GW50-08 operated by Agave Energy Company located in NW/4 SE/4 of Section 10, Township 7 South, Range 25 East, NMPM, Chaves County, New Mexico is **hereby approved** under the conditions contained in the enclosed attachment. Enclosed are two copies of the conditions of approval. **Please sign and return one copy to the New Mexico Oil Conservation Division (OCD) Santa Fe Office within ten working days of receipt of this letter.**

The discharge plan includes the application dated September 01, 1999, including attachments, and supplemental information received on March 31, 2000 submitted pursuant to Section 5101.B.3. of the New Mexico Water Quality Control Commission (WQCC) Regulations also includes all earlier applications and all conditions later placed on those approvals. The discharge plan renewal application was submitted pursuant to Section 5101.B.3. of the New Mexico Water Quality Control Commission (WQCC) Regulations. The discharge plan is renewed pursuant to Section 5101.A. and 3109.C. Please note Section 3109.G., which provides for possible future amendment of the plan. Please be advised that approval of this plan does not relieve Agave Energy Company of liability should operations result in pollution of surface or ground waters, or the environment.

Please be advised that all exposed pits, including lined pits and open top tanks (exceeding 16 feet in diameter) shall be screened, netted, or otherwise rendered nonhazardous to wildlife including migratory birds.

Please note that Section 3104. of the regulations requires that "when a plan has been approved, discharges must be consistent with the terms and conditions of the plan." Pursuant to Section 3107.C., Agave Energy Company is required to notify the Director of any facility expansion,

Mr. Paul Ragsdale
April 07, 2000
Page 2

production increase, or process modification that would result in any change in the discharge of water quality or volume.

Pursuant to Section 3109.H.4., this approval is for a period of five years. **This approval will expire April 07, 2005** and an application for renewal should be submitted in ample time before that date. Pursuant to Section 5101.F. of the regulations, if a discharger submits a discharge plan renewal application at least 120 days before the discharge plan expires and is in compliance with the approved plan, then the existing discharge plan will not expire until the application for renewal has been approved or disapproved. It should be noted that all discharge plan facilities will be required to submit plans for, or the results of, an underground drainage testing program as a requirement for discharge plan renewal.

The discharge plan application for the Agave Energy Company Compressor Station is subject to the WQCC Regulation 3114. Every billable facility submitting a discharge plan will be assessed a fee equal to the filing fee of \$50 plus a flat fee of \$13800.00 for compressor stations with 3000 hp or greater. The OCD has not received the \$13800.00 flat fee. The flat fee of \$1380.00 may be paid in a single payment due on the date of the discharge plan approval or in five equal installments over the expected duration of the discharge plan. Installment payments shall be remitted yearly, with the first installment due on the date of the discharge plan approval and subsequent installments due on this date of each calendar year.

\$13800.00
LWP

Please make all checks payable to: **NMED-Water Quality Management** and addressed to the OCD Santa Fe Office.

If you have any questions, please contact Wayne Price of my staff at (505-827-7155). On behalf of the staff of the OCD, I wish to thank you and your staff for your cooperation during this discharge plan review.

Sincerely,



Roger C. Anderson
Environmental Bureau Chief

RCA/lwp
Attachment-1
xc: OCD Artesia Office

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Conditions accepted by: **Agave Energy Company**

Company Representative- print name

Company Representative- Sign

Title _____