

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

IN THE MATTER OF

Navajo Refining Company, L.L.C.

ACOW-6

No. WQA-OCD-CO-2013-001

AGREED COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17, as amended (Act), and the regulations promulgated under the Act, the Chairman of the Oil Conservation Commission and the Director of the Oil Conservation Division of the Energy Minerals and Natural Resources Department of the State of New Mexico (Director) issues this Order to Navajo Refining Company, L.L.C. (Navajo), directing compliance with the Act, the Water Quality Control Commission (WQCC) Regulations and permits issued under the Act.

I. FINDINGS & DETERMINATIONS BY THE DIRECTOR

1. The Oil Conservation Commission is a “constituent agency” under the Act and is charged with administration and enforcement of the Act and regulations promulgated in accordance with the Act. NMSA 1978, Section 74-6-3(K). The Oil Conservation Division of the Energy, Minerals and Natural Resources Department (OCD) has concurrent authority with the Commission. NMSA 1978, Section 70-2-6(B).
2. Navajo is a Limited Liability Company doing business in New Mexico. Navajo is an active entity with a principal address of 501 East Main Street, Artesia, New Mexico 88210.
3. Navajo owns and operates the Artesia Refinery, located at 501 East Main Street, Artesia, New Mexico (“Facility”).

4. The WQCC has adopted regulations, pursuant to the Act, requiring permits for the injection of fluids and the operation of underground injection wells in New Mexico. 20.6.2.5004 NMAC. For wells at oil and gas operations, including refineries, the WQCC has delegated administration and enforcement of those regulations to the OCC and OCD.
5. Pursuant to the WQCC Regulations, the OCD has issued permits OCD Permit Nos. UIC-I-008-1 (WDW-1), UIC-I-008-2 (WDW-2), and UICI-008-3 (WDW-3) (“Permits”) to Navajo for the injection of non-hazardous refinery fluids at Underground Injection Control Class I non-hazardous wells at the Facility (the “wells”). The WQCC Regulations and the Permits allow only the discharge of non-hazardous waste in the wells.
6. On October 15, 2013, Navajo orally notified the OCD that Navajo received sampling results that the injection fluid at the wells on September 27, 2013, exceeded the limit of less than 1.0 mg/L of Selenium, based on the Toxicity Characteristic Leaching Procedure (TCLP), EPA Method 1311 (the “Se Limit”). Those results indicate that fluid injected on September 27, 2013, exceeded the maximum concentration of contaminants for the toxicity characteristic for Selenium, 40 CFR 261.24, in violation of the WQCC Regulations and the Permits. Navajo advised the OCD that Navajo was investigating the reasons for the Selenium concentrations and evaluating possible corrective actions to prevent future injection fluid concentrations in excess of the Se Limit. On October 21, 2013, Navajo submitted a Form C-141 to the OCD.
7. On October 20, 2013, Navajo orally notified the OCD that Navajo received sampling results from sampling done on October 15, 2013, which indicated that injection fluid at the wells again exceeded the Se Limit. Those results indicate that fluids injected on

October 15, 2013, exceeded the maximum concentration of Selenium for the toxicity characteristic in violation of the WQCC Regulations and the Permits. Navajo advised the OCD that Navajo was investigating the reasons for the Selenium concentrations and evaluating possible corrective actions to prevent future injection fluid concentrations in excess of the Se Limit. On October 21, 2013, Navajo submitted a Form C-141 to the OCD.

8. On October 20, 2013, Navajo ceased injecting into the wells.
9. There is no known or anticipated damage or injury to public health resulting from the discharges identified in Paragraphs 6 and 7 above since the discharges were to Class I injection wells in formations at depths at least 7000 feet, below the lowermost formation that contains public drinking water supplies (10,000 milligrams per liter or less total dissolved solids (TDS)).
10. Navajo is actively reviewing short-term and long-term engineering options for reducing Selenium concentrations in the refinery wastewater and has taken several interim measures. The most recent test results for the stored injection fluid, taken on October 20, 2013, were below the Se Limit.

II. CONCLUSIONS OF THE DIRECTOR

1. The Director has jurisdiction over the parties and subject matter in this proceeding.
2. Navajo is a person as defined by NMSA 1978, Section 74-6-2.I.

III. ORDER

1. Compliance Schedule

- a. Beginning on the effective date of this Order, Navajo shall sample injection fluid for Selenium at least weekly until Selenium concentrations remain below the Se Limit, for four consecutive weeks.
- b. Once Selenium concentrations remain below the Se Limit, for four (4) consecutive weeks, Navajo may then reduce testing to once per month.
- c. If Selenium concentrations then remain below the Se Limit, for four (4) consecutive months, Navajo may then reduce testing to once per quarter.
- d. If at any time, a sample exceeds the Se Limit, Navajo will notify the OCD Santa Fe Office within twenty-four (24) hours, take prompt action to address the exceedance and reinstitute weekly testing.
- e. If a sample is split and sent to two laboratories, Navajo shall average the results for Selenium concentration. Navajo may use any U.S. EPA certified laboratory.
- f. On or before November 21, 2013, Navajo shall complete the following:
 - (1) Engineering evaluation of potential short-term refinery process changes to reduce Selenium concentrations in process water; and
 - (2) Engineering evaluation of potential short-term enhanced wastewater treatment options.
- g. On or before December 7, 2013, Navajo shall provide the OCD Santa Fe Office with a summary of Navajo's engineering evaluation under subparagraph f. above and include selection of short term remedies with a proposed implementation schedule.

- h. Beginning November 30, 2013, on or before the last day of the month, Navajo shall provide the OCD Santa Fe Office with monthly interim progress reports detailing the status and timeline for actions taken by Navajo during the preceding calendar month under this Order.
- i. On or before May 30, 2014, Navajo shall advise the OCD Santa Fe Office of its selection of long-term options for addressing Selenium concentrations in wastewater.
- j. Navajo's obligation to comply with this Order shall be deferred only to the extent and only for the duration that the failure in compliance is caused by "force majeure." For purposes of this Agreement, "force majeure" is defined as an event or set of circumstances which are beyond Navajo's control and could not have been prevented by Navajo's reasonable action or due diligence. "Force majeure" shall not apply to any failure in compliance due to increased costs or Navajo's financial inability to carry out this Agreement. Navajo shall promptly notify OCD of any force majeure event that has resulted or will result in the inability of Navajo to comply with any obligation under this Order and shall provide OCD with a schedule for completing the obligations.

2. Civil Penalties

- a. By November 23, 2013, Navajo shall pay \$14,000 (fourteen thousand dollars) in civil penalties, pursuant to NMSA 1978, § 74-6-10.C for the violations of the Regulations and the Permits for discharges of injection fluid, as shown in the test results from the September 27, 2013 and October 15, 2013 samples.
- b. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

Director, Oil Conservation Division
 New Mexico Energy, Minerals & Natural Resources Department
 1220 South St. Francis Drive
 Santa Fe, NM 87505
 Re: CO 2013-001

c. Stipulated Penalties:

(1) Failure to Meet Se Limit: The penalty shall be assessed beginning on the day a sample that does not meet the Se Limit is taken. The penalty assessment will continue until the earlier of:

- (a) the next required weekly sample that is under the Se Limit; or
- (b) for sampling more frequently than the required weekly sampling, two consecutive samples are under the Se Limit and no sample since such two samples is over the Se Limit.

Upon satisfying (a) or (b), the amount of the penalty for any future sample that fails to meet the Se Limit shall be reset to the “Week 1” level as shown in the next paragraph.

The penalty shall be assessed as follows:

Week	Penalty per Day of Injection	Maximum Penalty for 7-day Period
Week 1	\$2,000	\$14,000
Week 2	\$4,000	\$28,000
Week 3	\$6,000	\$42,000
Week 4	\$8,000	\$56,000
Week 5	\$10,000	\$70,000
Maximum penalty for 35-day period		\$210,000

For avoidance of doubt, penalties shall not be assessed for (a) days that injection to the wells does not occur, or (b) days on and after the sample date for test results that are under the Se Limit (unless a future sample fails to meet the Se Limit in which case the penalty shall resume as of the sample date that corresponds to the sample that failed to meet the Se Limit).

- (2) Reports and Samples: \$2,000 per day for the failure to timely submit reports or to timely conduct required sampling.
- d. Stipulated penalties shall be due thirty (30) days after the OCD makes a written demand for payment of stipulated penalties.

IV. OTHER TERMS AND CONDITIONS

- 1. By signing this Order, Navajo expressly:
 - a. acknowledges the authority of the Director to render the above Findings & Determinations, Conclusions and Order;
 - b. agrees to comply with the Order;
 - c. waives any right, pursuant to the Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order; and
 - d. agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order entered after notice and hearing in accordance with all terms and provisions of the Water Quality Act.
- 2. Nothing in this Order relieves Navajo of its liability should its operations fail to adequately investigate and remediate contamination that poses a threat to ground water,

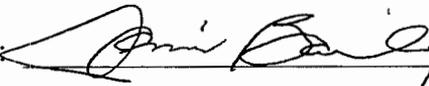
surface water, human health or the environment. In addition, nothing in this Order relieves Navajo of its responsibility for compliance with any other federal, state or local laws and/or regulations, including all other obligations under the Permits.

3. Navajo and OCD have the right to modify or terminate this Order by written instrument signed by both parties. Once quarterly testing commences under paragraph III.1.c, this Order will terminate when the Selenium concentrations remain below the Se Limit for four (4) consecutive quarters.

Done at Santa Fe, New Mexico this th 24 day of October, 2013.

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

By:



Name: Jami Bailey

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

ACCEPTANCE

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

Navajo Refining Company, L.L.C.

By: Michael G. McKee

Name: Michael G. McKee

Title: Vice President and Refinery Manager

Date: 24 October 2013