

GW – 50-05

**Administrative
Compliance Order**

**Order Hearing
WQCC #09-09**

2009-2010



New Mexico Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

John H. Bemis
Cabinet Secretary-Designate

Brett F. Woods, Ph.D.
Deputy Cabinet Secretary

Jami Bailey
Division Director
Oil Conservation Division



July 20, 2011

Agave Energy Company
c/o Matt Joy
Jordan Bischoff & Hiser, P.L.C.
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251

Email: MJoy@jordenbischoff.com

Re: Administrative Compliance Order for Discharge Permit GW-050-5
Operator: Agave Energy Company, OGRID 147831
Facility: Red Bluff #1 Compressor Station, SE/4 SE/4 of Section 34, Township 7 South, Range 25 East, Chaves County, New Mexico

Dear Operator:

Provision X of the above Administrative Compliance Order provides that the Order shall terminate when Respondent, Agave Energy Company, certifies that all requirements of the Order have been met and the Oil Conservation Division has approved such certification, or when the parties have entered into a stipulated final order, which has been, if applicable, approved by the Water Quality Control Commission.

The parties have entered into a stipulated final order settling all violations alleged in the Administrative Compliance Order. As a result, the Administrative Compliance Order has terminated.

Please feel free to contact me if you have any questions.

Sincerely,

Sonny Swazo
OCD Assistant General Counsel
(505) 476-3463
sonny.swazo@state.nm.us



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



May 14, 2010

Joyce Medina
WQCC — Administrator
New Mexico Environment Dept.
1190 S. St. Francis Dr., N2150
Santa Fe, NM 87505

**Re: WQCC Case No. 09-08
Bitter Lakes Compressor Station
GW-050-1**

**WQCC Case No. 09-09
Red Bluff No. 1 Compressor Station
GW-050-5**

Dear Ms. Medina:

Enclosed is a Settlement Agreement and Stipulated Final Order for each of the Water Quality Control Commission (WQCC) cases identified above. The New Mexico Oil Conservation Division and Agave Energy Company are submitting these signed Orders to the WQCC for its approval pursuant to the settlement provision of WQCC Rule 20.1.3.700.B.1 NMAC. You may send my copy of each final approved Order to sonny.swazo@state.nm.us or the address at the bottom of the page. I am not sure if Mathew Joy, the attorney for Agave Energy Company, wants his copy of each final Order mailed or emailed to him. Mr. Joy's address is 7272 E. Indian School Road, Suite 360, Scottsdale, Arizona 85251. His email address is mjoy@jordenbischoff.com. His telephone number is 480-5-5-3928.

If you have any questions, please feel free to email or call me at (505) 476-3463.

Sincerely,

A handwritten signature in black ink, appearing to read "Sonny Swazo".

Sonny Swazo
OCD Assistant General Counsel

Cc: Mathew Joy, Attorney for Agave Energy Company



COPY



STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,

Complainant,

v.

WQCC CASE NO. 09-09 (CO)

AGAVE ENERGY COMPANY,

Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

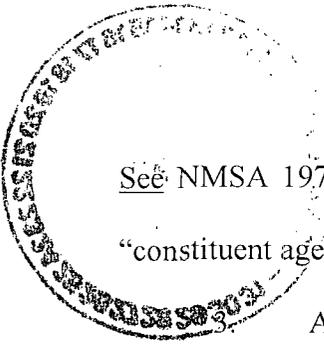
The New Mexico Oil Conservation Division (“OCD”) and Agave Energy Company (“Agave”) agree to resolve the Administrative Compliance Order issued to Agave on October 7, 2009 based on the terms and conditions specified in this Settlement Agreement and Stipulated Final Order (“Final Order”). For purposes of this Final Order, Agave admits the jurisdictional allegations of this Final Order and consents to the relief specified herein.

I. BACKGROUND OF DISPUTE

A. Parties

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

2. The Oil Conservation Commission (“OCC”) is an entity created by NMSA 1978, Section 70-2-4 to enforce the OGA, and has concurrent jurisdiction and authority with the OCD.



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See NMSA 1978, Section 70-2-6(B). In addition to its duties under the OGA, the OCC is a "constituent agency" under the WQA. NMSA 1978, Section 74-6-2(K)(4).

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

4. Agave operates the Red Bluff #1 Compressor Station. The Red Bluff #1 Compressor Station is a natural gas compressor station. The Red Bluff #1 Compressor Station is located in the SE/4 SE/4 of Section 34, Township 7 South, Range 25 East, Eddy County, New Mexico.

5. On May 8, 2006, the OCD issued Discharge Permit Renewal GW-050-5 ("GW-050-5") to Agave for the Red Bluff #1 Compressor Station pursuant to the WQA and the Water Quality Control Commission ("WQCC") rules.

6. Condition 9 of GW-05-5 states:

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.

B. Alleged Violations

7. On April 24, 2009, the OCD inspected the Red Bluff #1 Compressor Station. During the inspection the OCD inspector observed an unbermed above ground storage tank filled with liquid methanol.

8. The OCD identified the alleged violation to Agave in the initial discharge permit renewal that the OCD sent Agave on May 20, 2009.

9. On October 7, 2009, the OCD issued an Administrative Compliance Order to Agave for the Red Bluff #1 Compressor Station. The Administrative Compliance Order alleged that Agave violated Condition 9 of GW-05-5 by not properly containing an above ground tank filled with liquid methanol. The Administrative Compliance Order required Agave to properly contain the above ground tank filled with liquid methanol within an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. The Administrative Compliance Order required Agave to complete this requirement by November 16, 2009.

10. The Administrative Compliance Order provided that if Agave failed to timely comply with the requirements of the Compliance Order, the OCC may seek to assess a civil penalty of not more than twenty-five thousand (\$25,000) for each day of continued non-compliance with the compliance order, and suspend or terminate the permit violated by the person.

11. On or about November 2, 2009, Agave timely filed a Request for Order Hearing and Request for Stay of Deadlines set forth in Administrative Compliance Order Pertaining to Permit Renewal GW-05-5.

12. On or about November 13, 2009, the OCD and Agave agreed to extend the November 16, 2009 deadline in the Administrative Compliance Order to January 13, 2010 for purposes of settlement negotiations. The OCD and Agave waived the ninety-day hearing deadline requirements of NMSA 1978, Section 74-6-10(G) and 20.1.3.400(B)(1) NMAC.

13. On or about January 13, 2010, the OCD and Agave agreed to extend the January 16, 2010 deadline to April 16, 2010 in order to facilitate the on-going settlement negotiations of the parties.

14. On or about April 15, 2010, the OCD and Agave agreed to extend the April 16, 2010 deadline to May 14, 2010 in order to finalize a settlement agreement.

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

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

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

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

C. Mitigating Factors

19. Agave has complied with the Administrative Compliance Order regarding containment of the liquid methanol tank.

II. COMPROMISE AND SETTLEMENT

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

21. The parties have engaged in settlement discussions to resolve the Administrative Compliance Order without further proceedings.

22. The parties agree to this Final Order for the sole purpose of settling all violations alleged in the Administrative Compliance Order.

23. Agave denies the alleged facts and conclusions of law identified in Paragraphs 7, 8 and 9, above, and set forth in the Administrative Compliance Order, and does not admit any liability, fact or conclusion of law by entering into or complying with this Final Order.

24. Agave has placed the liquid methanol tank in secondary containment as required by the Administrative Compliance Order.

25. Agave agrees that it shall maintain the methanol tank in secondary containment whenever it is stationary and in use.

26. Because Agave complied with the requirements of the Administrative Compliance Order within the time frame provided for by the Administrative Compliance Order and extensions, the OCD will not seek the civil penalties that it may have sought under the Administrative Compliance Order had Agave not timely complied with the requirements of the Administrative Compliance Order.

III. OTHER TERMS AND CONDITIONS

27. Enforcement. The OCD retains the right to pursue any relief authorized by the WQA or WQCC Regulations for any violation not addressed in this Final Order. The OCD retains the right to enforce the Final Order by administrative or judicial action, which decision

shall be in its sole discretion. In the event that the OCD elects to file a judicial action to enforce the Final Order, the parties agree that the action shall be heard by the district court for Santa Fe County, which shall have exclusive jurisdiction over the parties and Final Order, and they waive any right to challenge such jurisdiction in any forum. The laws of New Mexico shall govern the construction and interpretation of the Final Order. In any such action, Agave reserves the right to assert any defenses it may have.

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

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

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

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

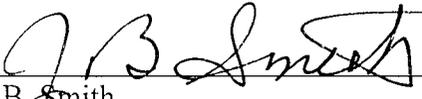
32. Waiver of State Liability. Agave shall assume all costs and liabilities incurred in performing any obligation under the Final Order. The OCD, on its own behalf or on the behalf of the State of New Mexico or any other state agency, shall not assume any liability for Agave's performance of any obligation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

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

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

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

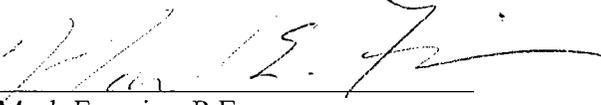
AGAVE ENERGY COMPANY



J.B. Smith
President
Agave Energy Company

5/11/10

Date

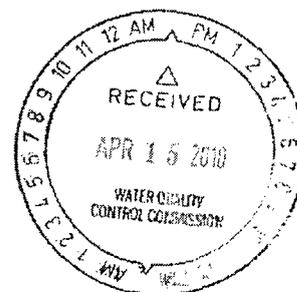


Mark Fesmire, P.E.
Director
New Mexico Oil Conservation Division

5/13/10

Date

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



NEW MEXICO OIL CONSERVATION DIVISION,)
Complainant)
)
v.)
)
AGAVE ENERGY COMPANY,)
Respondent)
)

Case No. 09-09 (CO)

**JOINT STATUS REPORT AND THIRD
UNOPPOSED MOTION TO STAY DEADLINES
SET FORTH IN ADMINISTRATIVE COMPLIANCE
ORDER PERTAINING TO PERMIT RENEWAL GW-050-5**

Come now the Respondent, Agave Energy Company (Agave) and the Oil Conservation Division (OCD) (collectively, the Parties), pursuant to the Order Granting Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order and Granting Request to Waive the 90-Day Hearing Deadline, dated November 13, 2009 and Water Quality Control Commission (WQCC) regulation 20.1.3.113(B) NMAC, and hereby file this Joint Status Report and Third Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 (the Administrative Compliance Order). Agave states to the WQCC the following:

1. The Respondent timely filed a Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 on or about November 2, 2009.
2. By letter dated November 2, 2009, Respondent asked the Oil Conservation Division to meet with it to discuss and possibly resolve the issues raised by the Administrative Compliance Order.
3. Respondent and the Oil Conservation Division are engaged in ongoing settlement negotiations and an extension of the compliance deadline would facilitate those negotiations. The Parties believe settlement is imminent.
4. Attorneys for Respondent and the Oil Conservation Division have conferred and agree that an extension of the November 16, 2009, the January 16, 2010 and the April 16, 2010 extension of the deadline set forth in the Administrative Compliance Order is warranted and both concur that the deadline should be extended to May 14, 2010.

Joint Status Report and Third Unopposed Motion to Stay Deadlines Set Forth in
Administrative Compliance Order

April 15, 2010

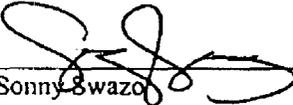
Page 2 of 2

5. Respondent and the Oil Conservation Division shall file a joint Status Report on or before May 14, 2010.
6. Respondent and the OCD are the only parties to this hearing.

WHEREFORE, Respondent and the Oil Conservation Division respectfully request that the WQCC grant the following:

1. Grant Respondent an extension to the November 16, 2009 deadline set forth in the Administrative Compliance Order and the January 16, 2010 extension of the deadline to May 14, 2010.

Respectfully submitted this 15th day of April, 2010.



Sonny Swazo
Attorney for Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505
Tel: (505) 476- 3463
Fax: (505) 476-3462



Eric L. Hiser (N.M. Bar No. 21786)
Matthew Joy
Jorden Bischoff & Hiser, P.L.C.
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251
Tel: (480) 505-3900
Fax: (480) 505-3901
Attorneys for Agave Energy Company

CERTIFICATE OF SERVICE

I certify that on this 15th day of April, 2010, service of the foregoing Third Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 was made as follows:

Via electronic mail to the following parties (with original and sixteen true and complete copies mailed on the ___ of April, 2010 to):

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

With a copy of the same via overnight delivery, signature required, to:

New Mexico Energy, Minerals and Natural Resources Department
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505

New Mexico Attorney General's Office
408 Galisteo Street
Villagra Building
Santa Fe, New Mexico 87501

Sharon E. Baker

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



NEW MEXICO OIL CONSERVATION DIVISION,)
Complainant)
)
v.)
)
AGAVE ENERGY COMPANY,)
Respondent)
)

Case No. 09-09 (00)

**Order Granting Third Unopposed Motion to Stay Deadlines
Set Forth in Administrative Compliance Order**

Respondent, Agave Energy Company (Agave), after conferring with the Oil Conservation Division (OCD), the only Parties to this Request for Order Hearing, filed a Third Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 on or about April 15, 2010, requesting that the Water Quality Control Commission (WQCC) stay the deadline set forth in the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 until May 14, 2010 in order to facilitate settlement discussions. Having considered the Unopposed Motion and, in reliance thereon, finding good cause for the requested stay and waiver,

IT IS HEREBY ORDERED that the Third Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 is granted, and not later than May 14, 2010, the Parties shall file a Status Report with the WQCC.

DATED this 19th day of April, 2010.



Swazo, Sonny, EMNRD

From: Matt Joy [MJoy@jordenbischoff.com]
Sent: Friday, February 12, 2010 1:24 PM
To: Swazo, Sonny, EMNRD
Subject: Close Out Report - Bitter lakes & Red Bluff #1
Attachments: Ltr Swazo 2-12-10.pdf; Methanol Containment Photos.pdf; OCD Status Update 011510.pdf

Sonny:

Attached is a letter concerning the actions taken by Agave Energy Company with regard to secondary containment of totes at the Bitter Lakes and Red Bluff #1 Compressor Stations. In addition, I have included photographic documentation of the work done at both sites.

I believe this resolves the issues in the matters before the WQCC with respect to these two sites (as well as all issues raised in the inspection reports). Agave would like confirmation that the issues have been addressed and that no further action is required with respect to the inspections at the Bitter Lakes and Red Bluff #1 Compressor Stations.

In addition, Agave would like confirmation that the issues raised during the inspection of the Red Bluff #2 Compressor Station (not at issue in these appeals) have been addressed and no further action is necessary.

Please give me a call if you have any questions.

Thanks.

I hope all is well.

Matt

Matthew Joy
Jordan Bischoff & Hiser, P.L.C.
7272 E. Indian School, Suite 360
Scottsdale, Arizona 85251
Phone: (480) 505-3900
Fax: (480) 505-3901

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LAW OFFICES
JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

MATTHEW JOY

DIRECT LINE: 480-505-3928
e-mail: mjoy@jordanbischoff.com

February 12, 2010

Via E-Mail & U.S. Mail

Mr. Sonny Swazo
Attorney for Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505

Re: Appeal of Administrative Compliance Orders – Close Out Report
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station

Dear Sonny:

The purpose of this letter is to provide you with a “Close Out Report” delineating the actions taken by Agave Energy Company (Agave) to address “Compliance Order” requirements raised in the above-captioned Administrative Compliance Orders. Based on the actions taken, Agave believes the “Compliance Orders” in the Administrative Compliance Orders (ACOs) have been fulfilled.

Agave respectfully requests written confirmation that the Oil Conservation Division (OCD) agrees that the ACOs have been satisfactorily resolved and that no further action is required.

Administrative Compliance Order - Permit Renewal GW-050-1 (Bitter Lakes Compressor Station)

The Administrative Compliance Order for permit renewal GW-050-1 provides that:

Agave shall properly contain the above ground tank filled with liquid methanol with an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. Agave shall complete this requirement by November 16, 2009.

As stated in our letter, dated January 7, 2010, Agave identified one 3000 gallon tote at the Bitter Lakes facility. Agave has placed the 3000 gallon tote in secondary containment. The containment is plastic-lined 5500 gallon corrugated steel. Three inches of sand were installed

Mr. Sonny Swazo, Esq.

Appeal of Administrative Compliance Orders – Close Out Report
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station

February 12, 2010

Page 2 of 3

below and above the plastic to ensure its integrity. This action resolves the Compliance Order set forth in Section IV, Paragraph 1 of the Administrative Compliance Order. Photographs documenting the action are attached.

As no other compliance issues were noted in the Administrative Compliance Order and all other issues raised in the inspection reports have been addressed, Agave respectfully requests written confirmation that the matter is resolved and that no further action is necessary regarding the April 23, 2009 inspection. Upon receipt of confirmation, I propose that we file the necessary motion to dismiss with the Hearing Examiner.

Administrative Compliance Order - Permit Renewal GW-050-5 (Red Bluff #1 Compressor Station)

The Administrative Compliance Order for permit renewal GW-050-5 provides that:

Agave shall properly contain the above ground tank filled with liquid methanol with an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. Agave shall complete this requirement by November 16, 2009.

Agave identified one 1200 gallon metal methanol tote at the Red Bluff #1 facility. The metal tank was emptied and removed from service and replaced with a 3000 gallon poly tote. Agave placed the tote in a plastic-lined 5500 gallon corrugated steel containment. Three inches of sand were installed below and above the plastic to ensure its integrity. This action resolves the Compliance Order set forth In Section IV, Paragraph 1 of the Administrative Compliance Order. Photographs documenting the action are attached.

In addition, though not specifically listed as a requirement in the Administrative Compliance Order, the cover letter received with the ACO referred to liquids in “sumps” and secondary containment units at the facility and stated that sumps and secondary containment units must be “cleaned out frequently so that no fluids are being stored in them.” By letter dated January 15, 2010, Agave provided Mr. Lowe with photographic documentation that the “sumps” had been cleaned and maintained properly. This letter is also attached.

As no other compliance issues were noted in the Administrative Compliance Order and all other issues raised in the inspection reports have been addressed, Agave respectfully requests written confirmation that the matter is resolved and that no further action is necessary regarding the April 24, 2009 inspection. Upon receipt of confirmation, I propose that we file the necessary motion to dismiss with the Water Quality Control Commission.

Mr. Sonny Swazo, Esq.
Appeal of Administrative Compliance Orders – Close Out Report
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station

February 12, 2010
Page 3 of 3

Administrative Compliance Order - Permit Renewal GW-050-7 (Red Bluff #2 Compressor Station)

Finally, the Administrative Compliance Order for permit renewal GW-050-7 required Agave to place bungs in all drums and properly store them as well as cleaning up alleged discharges at the facility. As you can see from the attached January 15, 2010 letter, this work has been completed and documented. As of yet, Agave has not received confirmation that the issues raised in the Administrative Compliance Order have been addressed.

While we understand that the Administrative Compliance Order for Red Bluff #2 was not appealed to the Water Quality Control Commission, Agave requests that the Division confirm in writing that the issues raised during the April 23, 2009 inspection have been resolved.

Please give me a call at your earliest convenience to discuss proceeding forward with dismissing the matters before the Water Quality Control Commission or if you have any questions. I can be reached at 480-505-3928.

Sincerely,



Matthew Joy
Attorney for Agave Energy Company

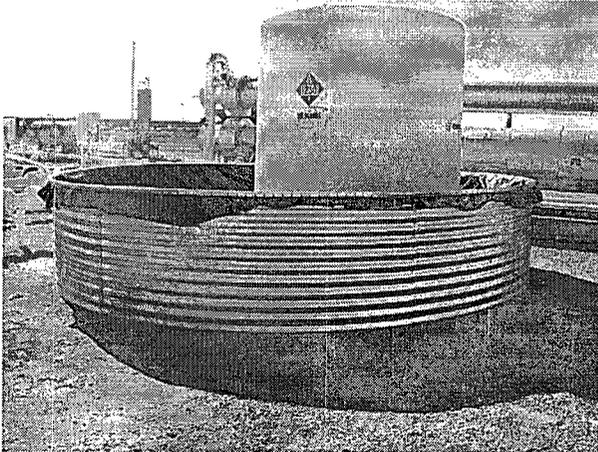
Roswell Area Methanol Containments

The following actions were taken by Agave to address secondary containment allegations in Administrative Consent Orders for methanol totes.

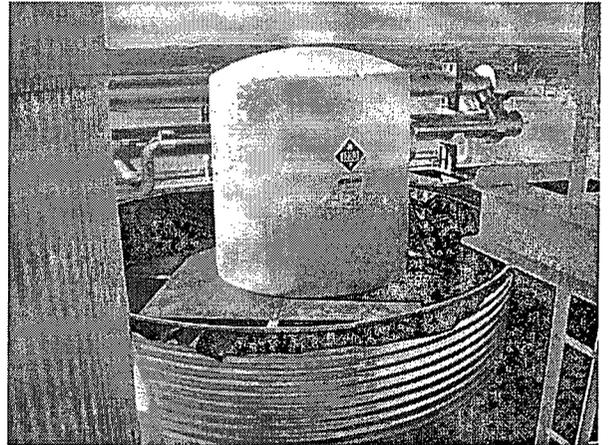
Bitter Lakes:

On February 4, 2010 the 3000 gallon methanol storage tote was placed into a plastic-lined 5500 gallon corrugated metal containment. Three inches of sand was placed under the liner to prevent the liner from being punctured by rocks. After the liner was installed, three inches of sand was placed on the floor of the containment. This was done to protect the floor of the liner. A spider was placed on top of the sand and the tote was placed on the spider.

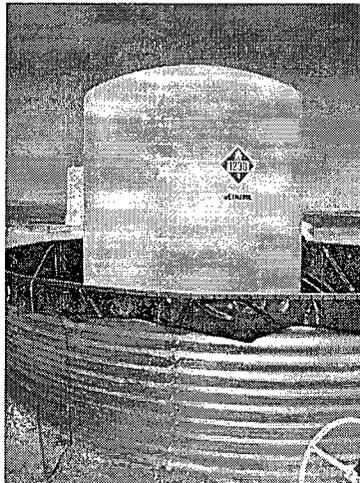
The 5500 gallon containment unit provides sufficient freeboard, as required by the regulations.



New tote at Bitter Lakes



New tote at Bitter Lakes

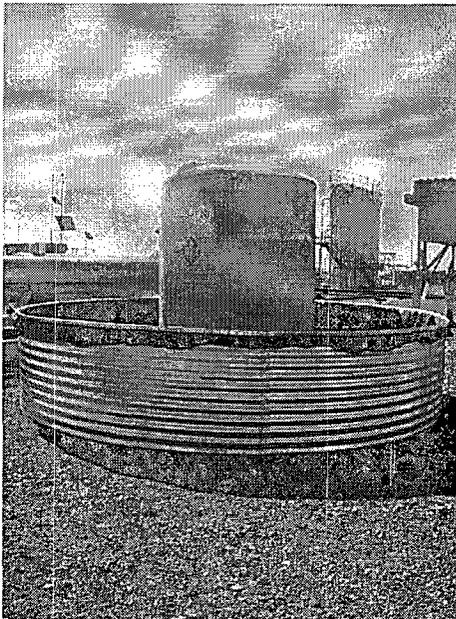


New tote at Bitter Lakes

Red Bluff # 1:

On February 10, 2010, the 3000 gallon methanol storage tote was placed into a plastic-lined 5500 gallon corrugated metal containment. Three inches of sand was placed under the liner to prevent the liner from being punctured by rocks. After the liner was installed, three inches of sand was placed on the floor of the containment. The 1200 gallon metal tote that was being used was removed and replaced with a 3000 gallon poly tote. The new tote was placed directly on the sand.

The 5500 gallon containment unit provides sufficient freeboard, as required by the regulations.



New tote in containment



JT with tote removed

AGAVE ENERGY COMPANY

105 South Fourth Street

Artesia, New Mexico 88210

(575) 748-4555

Fax (575) 748-4275

January 15, 2010

Leonard Lowe
Environmental Bureau
Oil Conservation Division
1120 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Agave Energy Company
Administrative Compliance Orders – GW-050-1, GW-050-5, GW-050-7
Corrective Action Status Report – January 15, 2010

Dear Leonard:

Below is an updated status report of activities undertaken to address alleged violations resulting from inspections on April 23 – 24, 2009 and of Agave's Red Bluff #1, Red Bluff #2, Bitter Lake and Penasco Compressor Stations. This update summarizes the corrective actions we have undertaken (and notified OCD of) since we received notification of the alleged violations and includes activities Agave has agreed to undertake in order to resolve the outstanding issues in the Administrative Compliance Orders.

Red Bluff #2 Compressor Station GW-050-7

1. Agave has cleaned up all sumps and inspected the sumps for integrity.
2. All barrels have been removed or stored horizontally. Agave has instructed field personnel that this is BMP for all facilities.
3. Minimal amounts of waste were removed and properly disposed including contaminated soils.
4. All secondary containment and sumps were cleaned and inspected. This AST is the dehydrator tub. The exhaust stream from the dehy still vent is primarily water with some entrained hydrocarbons. Rather than having the exhaust spray over the facility, the exhaust stream is vented to the dehy tub which is periodically drained via a sump pump to the oily wastewater tank. Agave has commenced a revised BMP whereas the dehy tub should be emptied when the liquid level is approximately 5/8 of the tub volume. This should ensure that the tub does not overflow and still allow space for emergencies.

All alleged violations have been addressed at the Red Bluff #2 Compressor station and this matter should be closed.

**Red Bluff #1 Compressor Station
GW-050-5**

1. Agave respectfully denies that the sumps were being used as "below grade tanks". However, Agave has cleaned up all sumps and inspected the sumps to ensure their integrity.
2. Agave respectfully disagrees with OCD's position that this container is an above-ground storage tank. Rather, it is a portable container and, as such, is not subject to secondary containment requirements while in use. However, after ongoing discussions with OCD, Agave has agreed to remove the large yellow tote from service. This will be accomplished within the compliance deadline set forth in the Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5, dated January 13, 2010.

With the exception of the removal of the large yellow tote, the alleged violations have been timely addressed at the Red Bluff #1 Compressor Station.

**Bitter Lake Compressor Station
GW-050-1**

1. Agave has cleaned up all sumps and inspected the sumps for integrity.
2. Agave respectfully disagrees with OCD's assertion that the container at issue is an above-ground storage tank. Rather, it is a portable container and, as such, is not subject to secondary containment requirements while in use. However, after ongoing discussions with OCD, Agave has agreed to design and construct a secondary containment unit for the 2500-3000 gallon tote. This will be accomplished within the compliance deadline set forth in the Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-1, dated January 13, 2010.
3. All barrels have been removed or stored horizontally. Agave has instructed field personnel that this is BMP for all facilities.
4. Agave has cleaned up secondary containments and all fluids were managed properly.

With the exception of the secondary containment design and construction, the alleged violations have been timely addressed at the Bitter Lake Compressor Station.

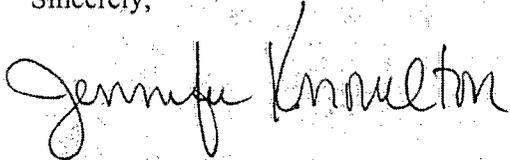
Photographs demonstrating corrective actions taken since notification of the alleged violations to present are attached to this letter.

In addition, impacted soil removed from these facilities was collected in a central rolloff and disposed of at Controlled Recovery Inc. (CRI); a permitted and authorized OCD facility. The waste manifest for The material is attached. The sludge that was collected off the bottoms of various skids and sumps was disposed of via HRW Industrial Services. We are still waiting on the final manifest but copies of the paperwork are attached.

Leonard Lowe
Status Report
ACO GW-050-1, GW-050-5, GW-050-7
January 15, 2010
Page 3 of 3

Agave looks forward to working with OCD in resolving the remaining issues as expeditiously as possible. Please give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Knowlton". The signature is written in a cursive style with a large initial "J" and "K".

Jennifer Knowlton
Agave Energy Company

NON-HAZARDOUS WASTE MANIFEST

№ 41337

PART I: Generator AGAVE ENERGY
 Address 165 South 444 St
 City/State ROSELAND NM 88216 Telephone No. _____

ORIGINATION OF WASTE:

Operations Center RESIDUAL YARD Permit No. _____
 Property Name RESIDUAL COMPOST SITE
(Well, Tank, Battery, Plant, Facility)
ROBERT CASTES

WASTE IDENTIFICATION AND AMOUNT (BARRELS, YARDS, TONS, CU.FT., LBS., UNITS, ETC.)		
Drilling Fluids _____	Tank Bottoms _____	Exempt Fluids _____
Completion Fluids _____	Gas Plant Waste _____	CI17 No. _____
<u>Contaminated Soil</u> _____	Other Materials <u>12 YARDS</u>	Pit No. _____
DESCRIPTION / NOTES		
<u>CONTAMINATED DIRT</u>		

CERTIFICATION: The waste described above is not hazardous pursuant to 40 CFR Part 261 and was consigned to the transporter named below. I certify that the foregoing is true and correct to the best of my knowledge.

X [Signature] THANKS! 11/23/09 3:00 PM
 Signature of Generator's Authorized Agent Date and Time of Shipment

PART II: TRANSPORTER: (To be completed in full by Transporter)

Name CRI Telephone No. 575 393-1079
 Address P.O. Box 388
 City/State HOBBS, N.M. 88241 Truck No. _____

CERTIFICATION: I certify that the waste in quantity above was received by me for shipment to the destination below.

[Signature] 11/23/09
 Signature of Transporter's Agent Date and Time Received

PART III: DISPOSAL OR RECLAMATION SITE:

Name Controlled Recovery, Inc. Telephone No. (575) 393-1079
 Address P.O. Box 388
 City/State Hobbs, N.M. 88241-0388 E-mail www.crihobbs.com

CERTIFICATION: I certify that the waste described in Part I was received by me via the transporter described in Part II.

 Signature of Facility Agent 11/23/09
 Date and Time Received

CERTIFICATE OF WASTE STATUS
EXEMPT WASTE MATERIAL
"AS REQUIRED BY NEW MEXICO OIL CONSERVATION DIVISION"

COMPANY / GENERATOR Agave Energy Company

ADDRESS 105 South Fourth Street Artesia, NM

GENERATING SITE North Area Compressor Stations

COUNTY Chavez STATE NM

TYPE OF WASTE Hydrocarbon bearing soil

ESTIMATED VOLUME less than 30 yards

GENERATING PROCESS House keeping of small spills,
stains, etc

REMARKS "OCW Common Land Fill Site"

NMOCDF FACILITY CRI

TRUCKING COMPANY CAR Roll-off

I hereby certify, represent and warrant that the wastes are generated from oil and gas exploration and production operations exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C Regulations; and not mixed with non-exempt wastes.

AGENT [Signature]
SIGNATURE

NAME RUBY NASTA
PRINTED

ADDRESS 105 South Fourth Street
Artesia, NM 88210

DATE 11-20-09

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved, OMB No. 2050-0099

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID Number CESQG	2. Page 1 of 1	3. Emergency Response Phone	4. Manifest Tracking Number 004323675 JJK		
6. Generator's Name and Mailing Address Agave Energy Company 109 S. 4th St Artesia, NM 88210 USA Generator's Phone:		Generator's Site Address (if different than mailing address) AGAVE 6263 N Main St Roswell, NM 89201					
8. Transporter 1 Company Name HRW Industrial Services, LLC		U.S. EPA ID Number TXD000075507					
7. Transporter 2 Company Name Phillips Reclamation Services		U.S. EPA ID Number TXD074198338					
8. Designated Facility Name and Site Address PSC Environmental 405 Powell Avalon, TX 76623 USA Facility's Phone:		U.S. EPA ID Number TXD048844700					
GENERATOR	9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers		11. Total Quantity	12. Unit Wt/Vol.	13. Waste Codes
	X	HAZARDOUS WASTE SOLID, NOS, 9, ERG 171, UN3077, PG III (D004, D007, D008, D010, D009)	31	DM	11,600	P	UJTS 803 H
	X	WASTE POTASSIUM PERMANGANATE, 5.1, 8, ERG 140, UN1450, PG II (D001)	2	DM	400	P	UJTS 313 H
14. Special Handling Instructions and Additional Information 1)433551 2)433540							
16. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(e) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.							
Generator's/Officer's Printed/Typed Name X MEVIN KIER		Signature <i>M Kevin Kier</i>		Month Day Year 12 7 09			
18. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S. Port of entry/exit: _____ Date leaving U.S.: _____							
17. Transporter Acknowledgment of Receipt of Materials Transporter 1 Printed/Typed Name Cory Dosey Signature <i>Cory Dosey</i> Month Day Year 12 7 09							
18. Discrepancy 18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection Manifest Reference Number: _____							
18b. Alternate Facility (or Generator) U.S. EPA ID Number _____							
18c. Signature of Alternate Facility (or Generator) Month Day Year _____							
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems) 1. _____ 2. _____ 3. _____ 4. _____							
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a Printed/Typed Name _____ Signature _____ Month Day Year _____							

**Red Bluff #2 Compressor Station
OCD Inspection**

OCD Photos from April 23 Inspections

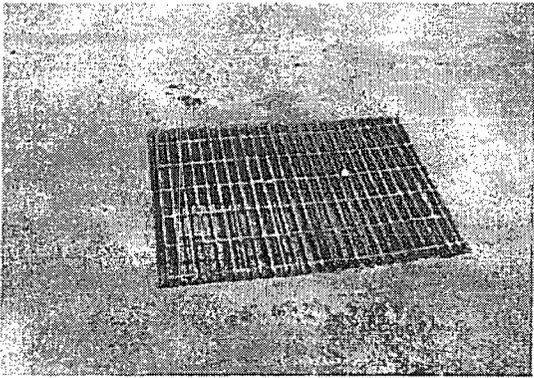


Photo 1: Sump full of fluids.

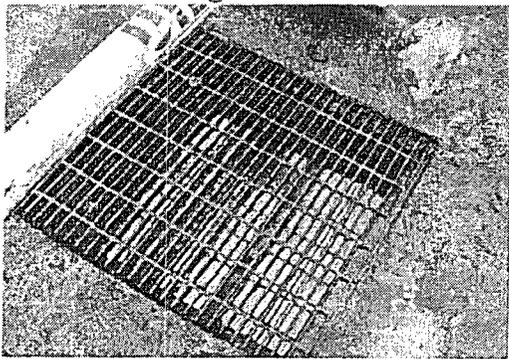


Photo 3: Sump full of fluids.

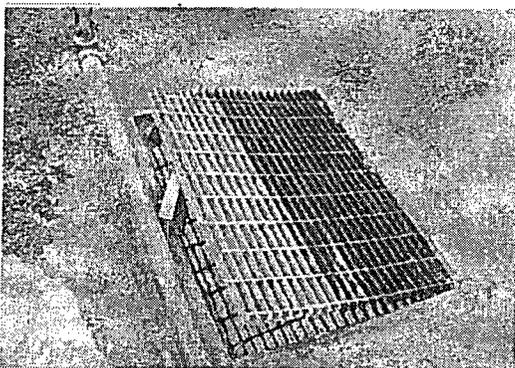
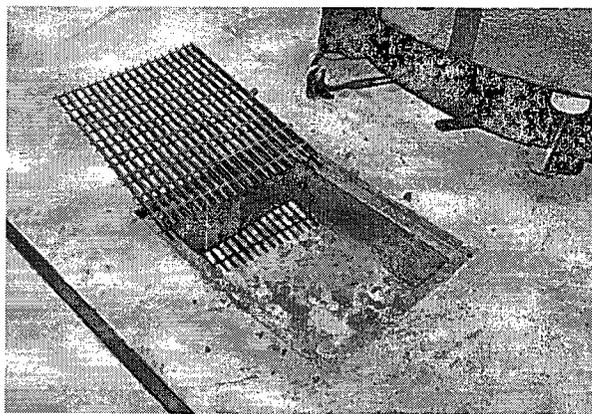
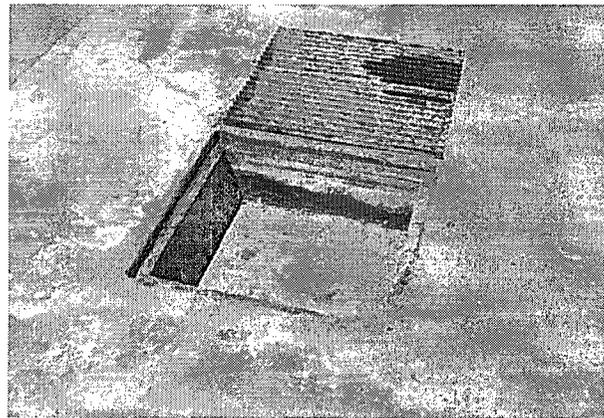
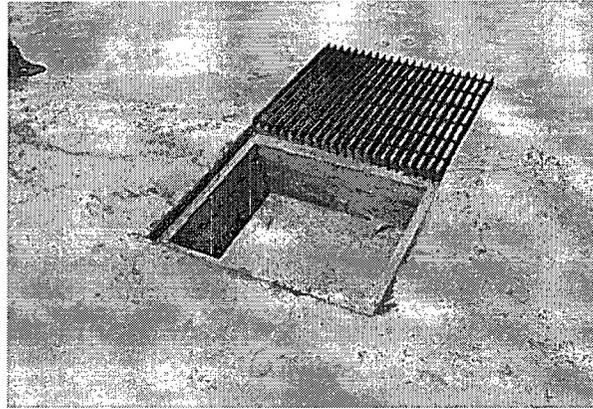


Photo 2: Sump in secondary containment used as a below grade tank.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections



Photo 5: Waste in secondary containment.

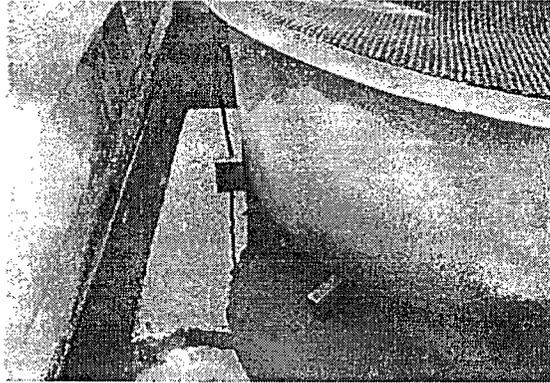
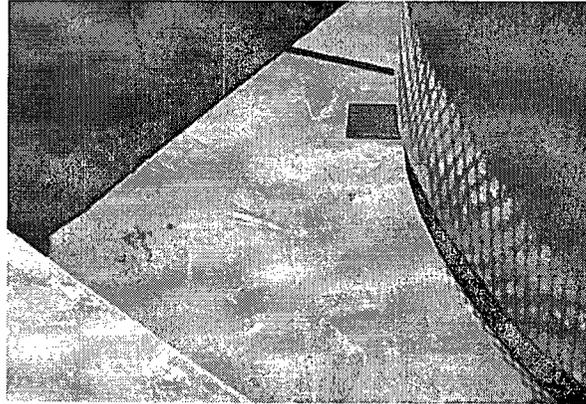
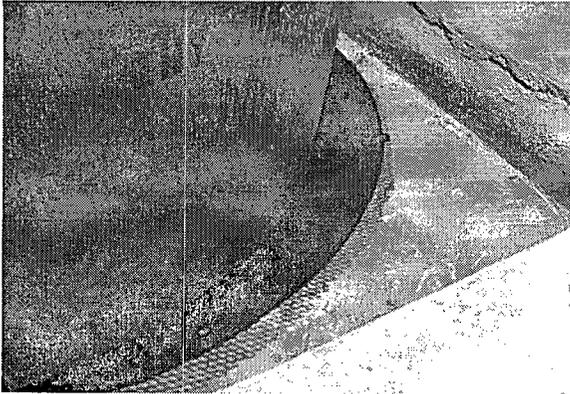


Photo 6: Standing fluids in a secondary containment.

Agave Photos from June 25 and September 18 Site Visits

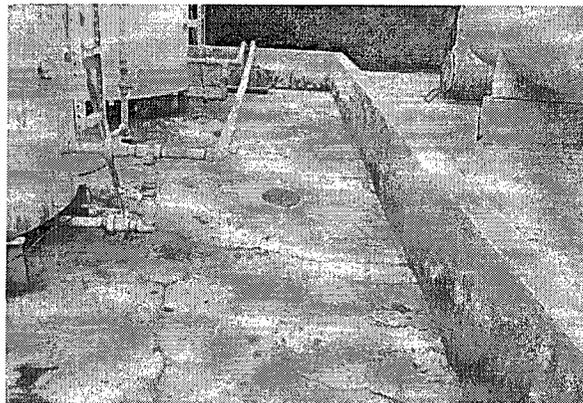


OCD Photos from April 23 Inspections



Photo 4: Empty and partially empty barrels with missing bungs.

Agave Photos from June 25 and September 18 Site Visits



**Red Bluff #1 Compressor Station
OCD Inspection**

OCD Photos from April 23 Inspections

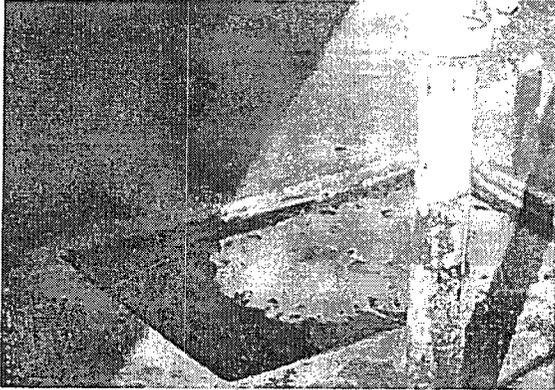


Photo 1: Sump being used as a below grade tank.

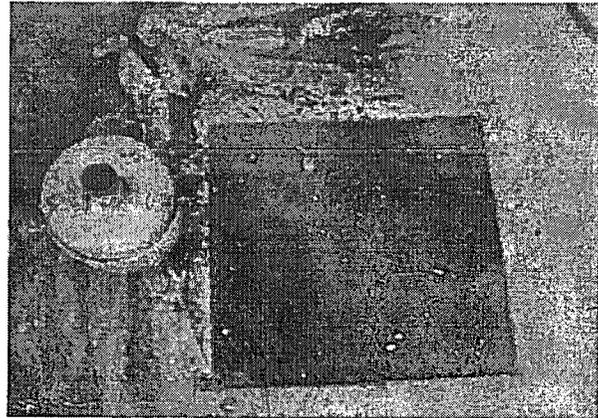


Photo 4: Sump being used as a below grade tank.

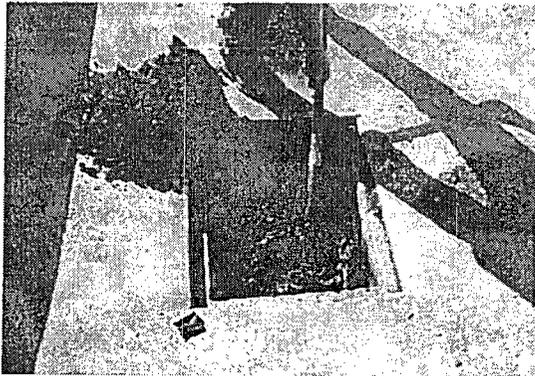
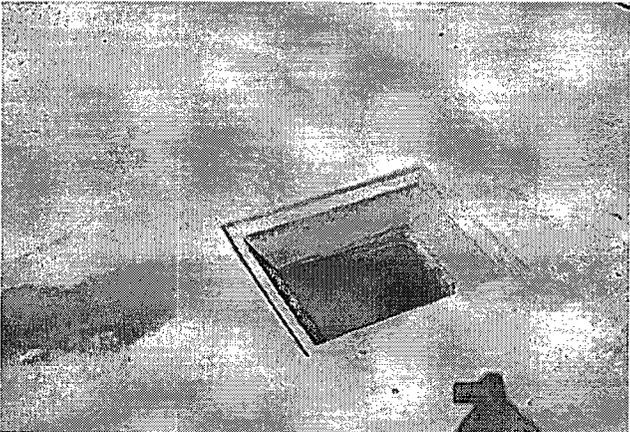
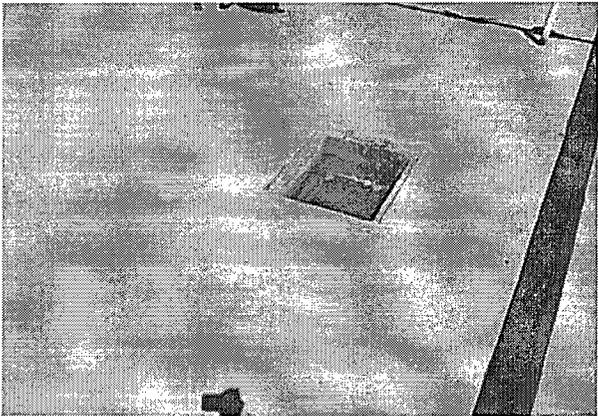
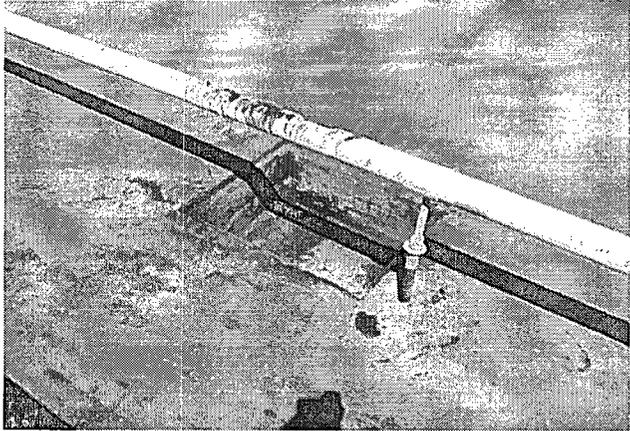


Photo 2: Dirty sump.



Photo 3: No drainage within sump.

Agave Photos from June 25 and September 18 Site Visits



**Bitter Lake Compressor Station
OCD Inspection**

OCD Photos from April 23 Inspections

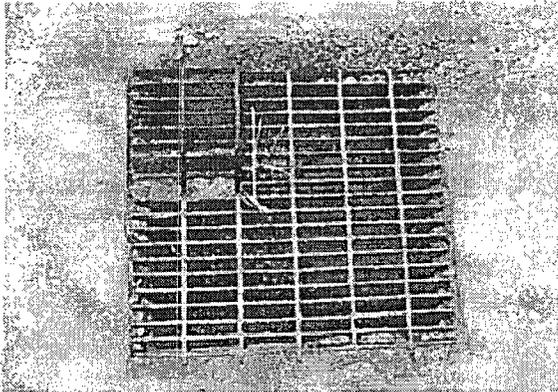


Photo 1: Sump holding fluids.

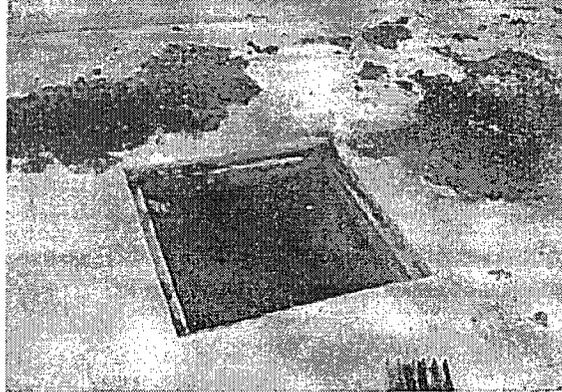


Photo 4: Sediment in sump.

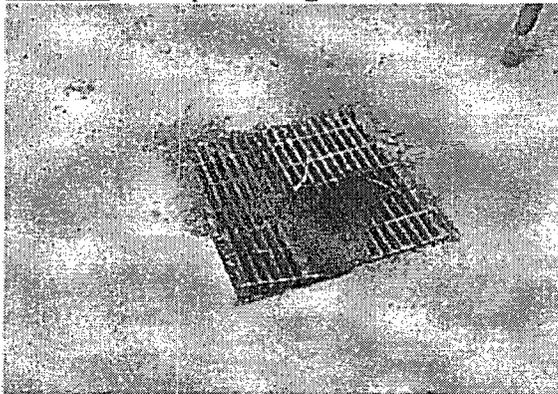
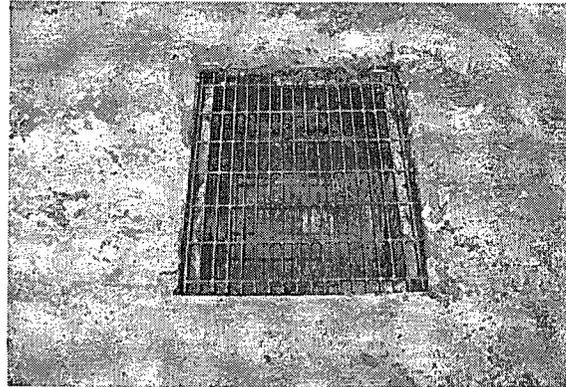
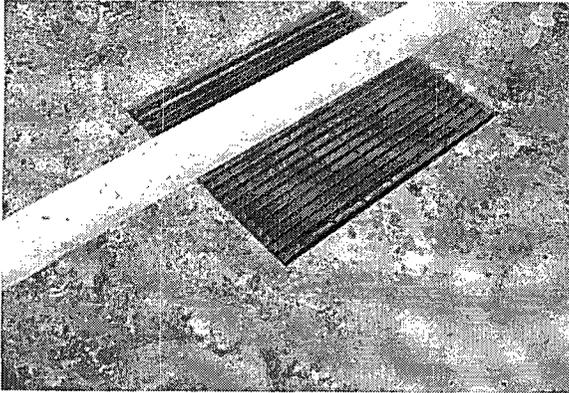
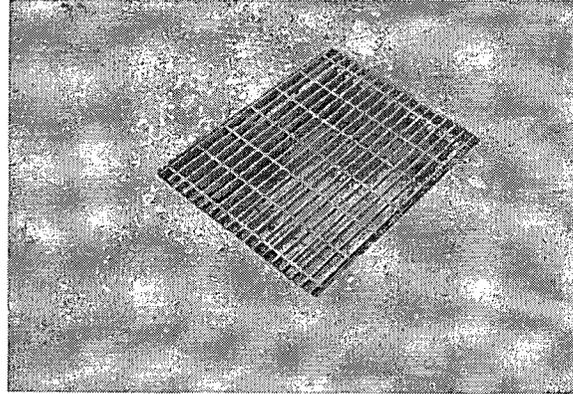
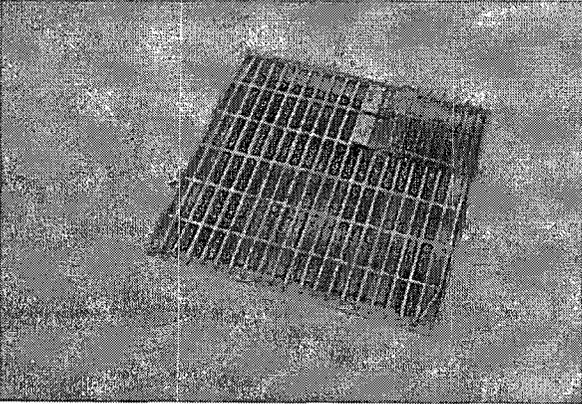
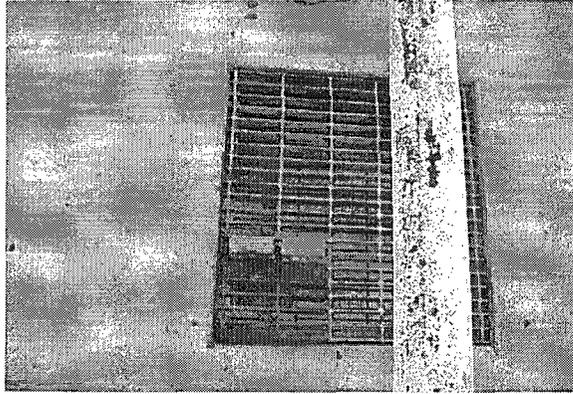
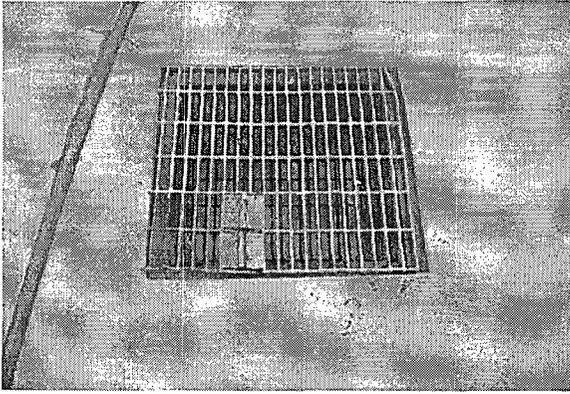


Photo 2: Dirty sump.



Photo 5: Fluids in sump.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

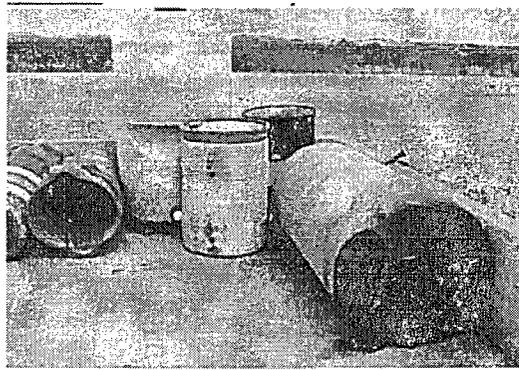
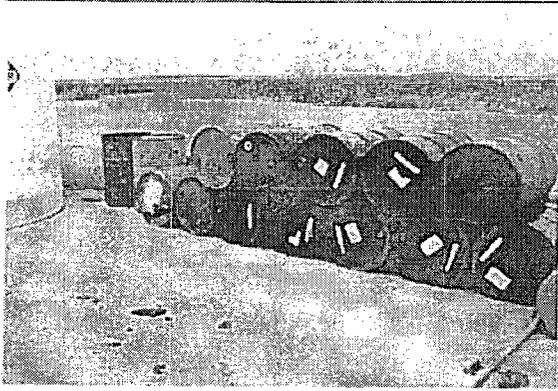
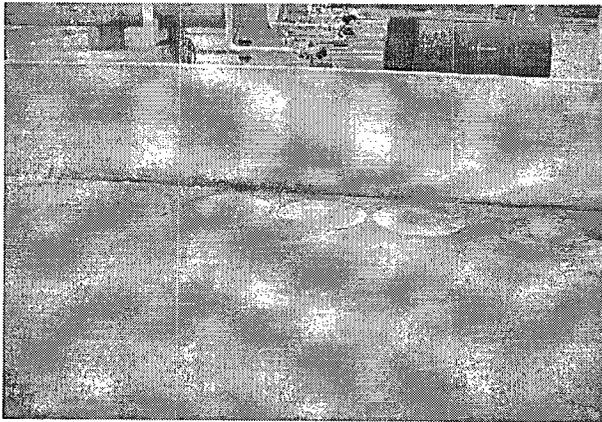


Photo 6: Containers within secondary containment.

Agave Photos from June 25 and September 18 Site Visits

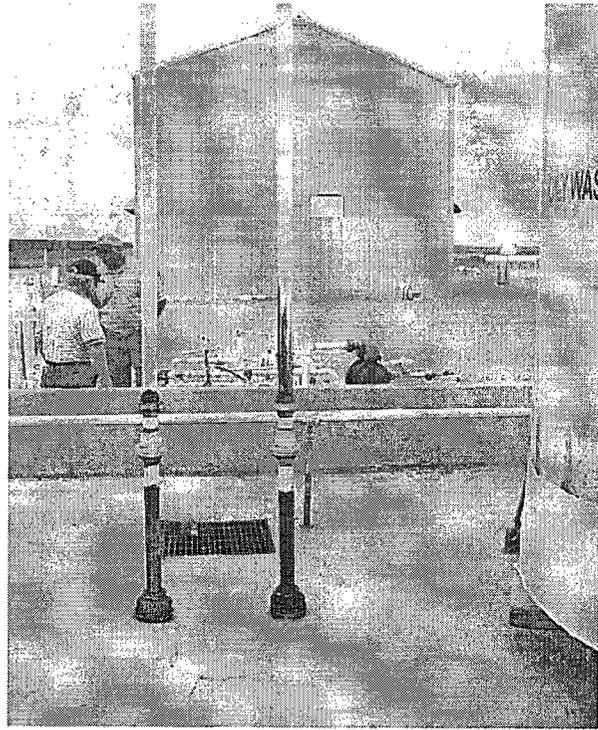


OCD Photos from April 23 Inspections



Photo 10: Elvado in roadway.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

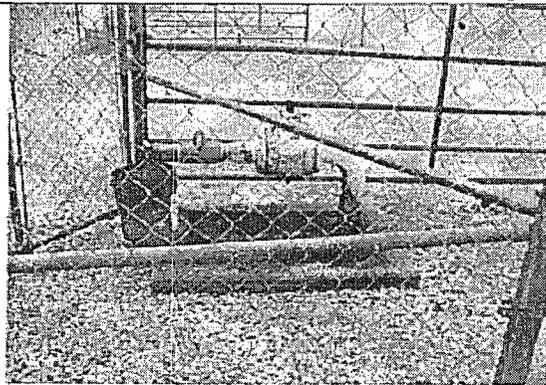
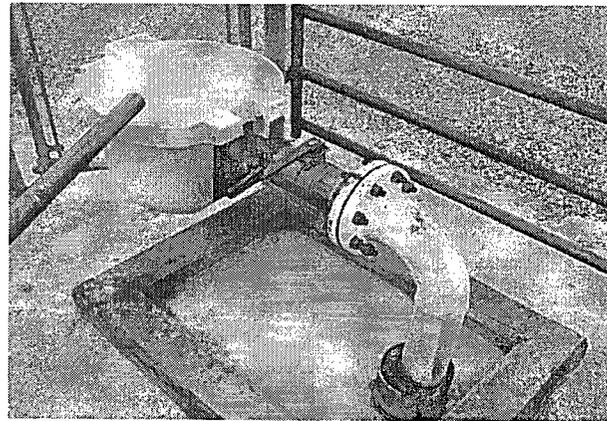


Photo 16: Dirty catch pan.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

Date: 04.23.09

Time:

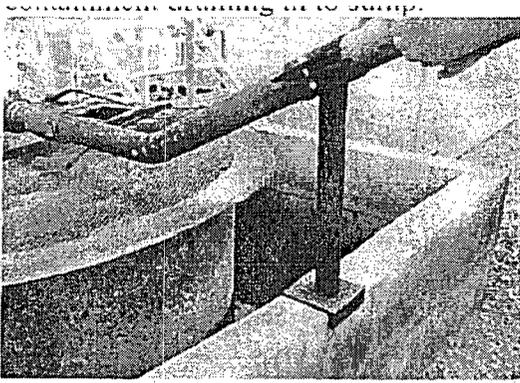


Photo 11: Fluids in secondary containment.

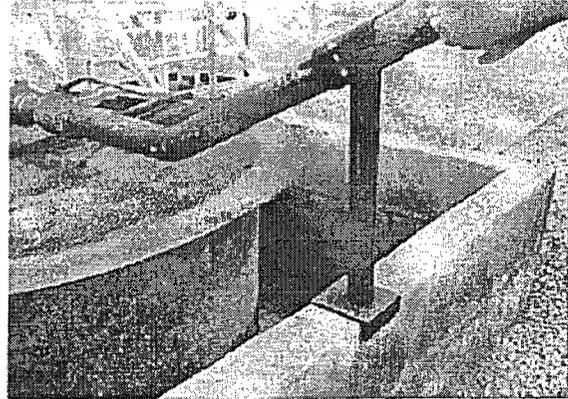
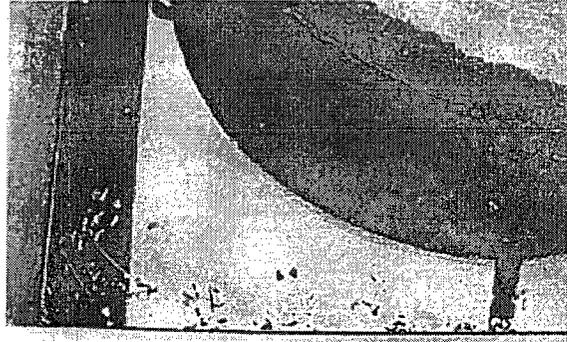
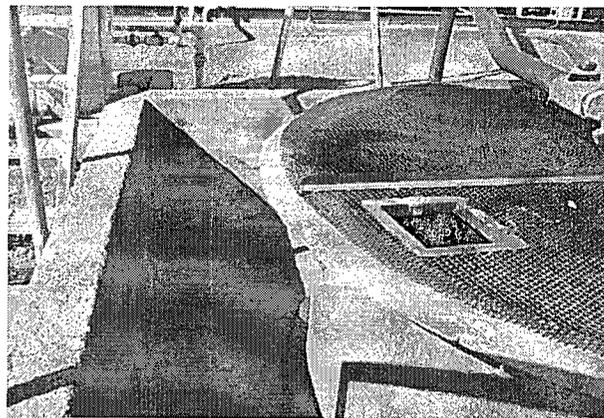
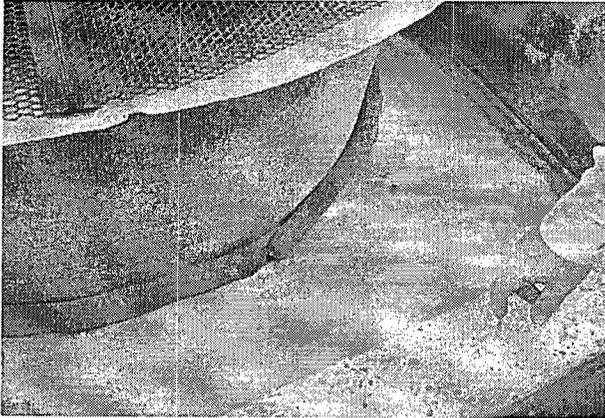


Photo 13: Fluids in secondary containment.



Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

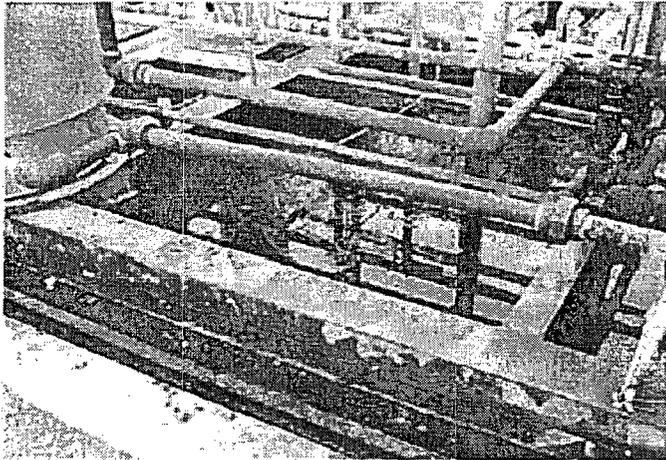
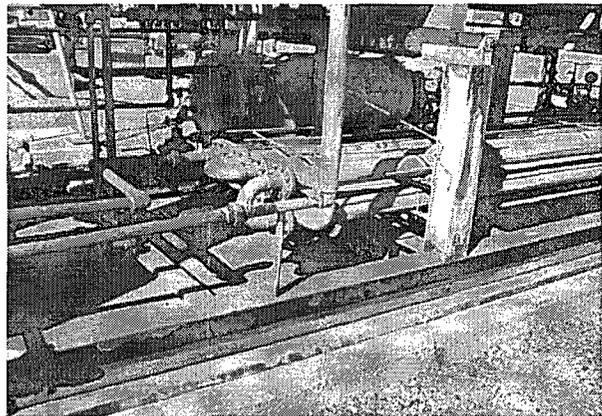
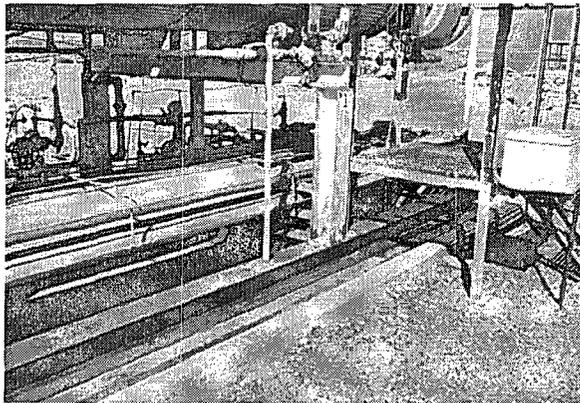


Photo 12: Standing fluids on skid.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections



Photo 9: Dirty secondary containment.

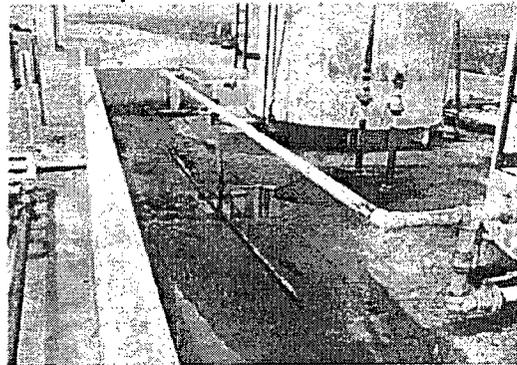
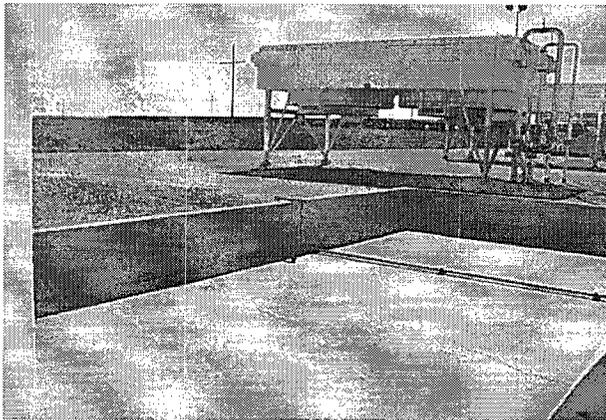
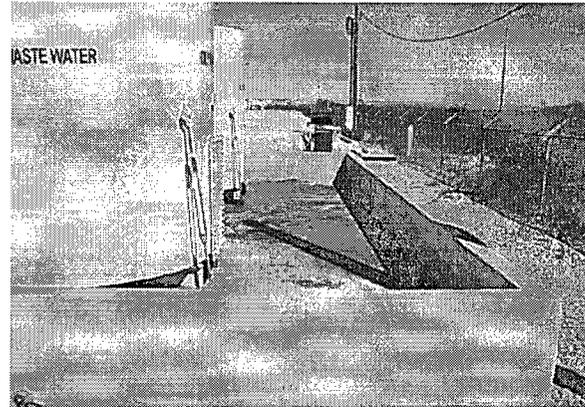
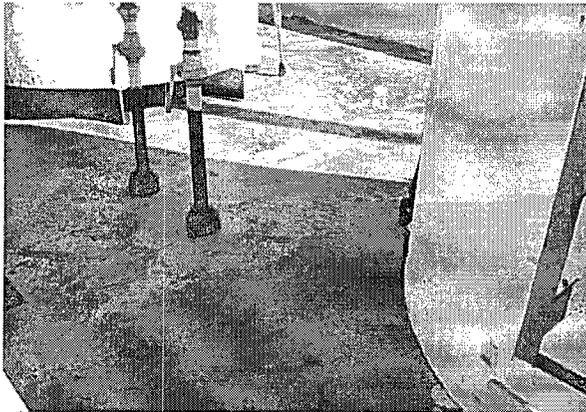


Photo 15: Fluids in secondary containment area.

Agave Photos from June 25 and September 18 Site Visits



STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,)	
Complainant)	
)	Case No. 09-09 (CO)
v.)	
)	
AGAVE ENERGY COMPANY,)	
Respondent)	
)	

**JOINT STATUS REPORT AND SECOND
UNOPPOSED MOTION TO STAY DEADLINES
SET FORTH IN ADMINISTRATIVE COMPLIANCE
ORDER PERTAINING TO PERMIT RENEWAL GW-050-5**

Come now the Respondent, Agave Energy Company (Agave) and the Oil Conservation Division (OCD), pursuant to the Order Granting Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order and Granting Request to Waive the 90-Day Hearing Deadline, dated November 13, 2009 and Water Quality Control Commission (WQCC) regulation 20.1.3.113(B) NMAC, and hereby file this Joint Status Report and Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 (the Administrative Compliance Order). Agave states to the WQCC the following:

1. The Respondent timely filed a Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 on or about November 2, 2009.
2. By letter dated November 2, 2009, Respondent asked the Oil Conservation Division to meet with it to discuss and possibly resolve the issues raised by the Administrative Compliance Order.
3. Respondent and the Oil Conservation Division are engaged in ongoing settlement negotiations and an extension of the compliance deadline would facilitate those negotiations.
4. Attorneys for Respondent and the Oil Conservation Division have conferred and agree that an extension of the November 16, 2009 and the January 16, 2010 extension of the deadline set forth in the Administrative Compliance Order is warranted and both concur that the deadline should be extended to April 16, 2010.

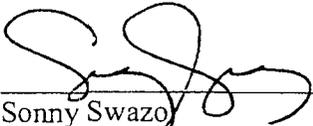
Joint Status Report and Second Unopposed Motion to Stay Deadlines Set Forth in
Administrative Compliance Order
January 13, 2010
Page 2 of 2

5. Respondent and the Oil Conservation Division shall file a joint Status Report on or before April 16, 2010.
6. Respondent and the OCD are the only parties to this hearing.

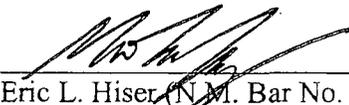
WHEREFORE, Respondent and the Oil Conservation Division respectfully request that the WQCC grant the following:

1. Grant Respondent an extension to the November 16, 2009 deadline set forth in the Administrative Compliance Order and the January 16, 2010 extension of the deadline to April 16, 2010.

Respectfully submitted this 13TH day of January, 2010.



Sonny Swazo
Attorney for Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505
Tel: (505) 476- 3463
Fax: (505) 476-3462



FOR
Eric L. Hiser (N.M. Bar No. 21786)
Matthew Joy
Jordan Bischoff & Hiser, P.L.C.
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251
Tel: (480) 505-3900
Fax: (480) 505-3901
Attorneys for Agave Energy Company

CERTIFICATE OF SERVICE

I certify that on this th13th day of January, 2010, service of the foregoing Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 was made as follows:

Via electronic mail to the following parties:

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

With a copy of the same via overnight delivery, signature required, to:

New Mexico Energy, Minerals and Natural Resources Department
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505

New Mexico Attorney General's Office
408 Galisteo Street
Villagra Building
Santa Fe, New Mexico 87501

Sharon E. Baker

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,)	
Complainant)	
)	Case No. 09-09 (CO)
v.)	
)	
AGAVE ENERGY COMPANY,)	
Respondent)	
)	

**Order Granting Second Unopposed Motion to Stay Deadlines
Set Forth in Administrative Compliance Order**

Respondent, Agave Energy Company (Agave), after conferring with the Oil Conservation Division (OCD), the only Parties to this Request for Order Hearing, filed a Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 on or about January 15, 2009, requesting that the Water Quality Control Commission (WQCC) stay the deadline set forth in the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 until April 16, 2010 in order to facilitate settlement discussions. Having considered the Unopposed Motion and, in reliance thereon, finding good cause for the requested stay and waiver,

IT IS HEREBY ORDERED that the Second Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 is granted, and not later than April 16, 2010, the Parties shall file a Status Report with the WQCC.

DATED this ____ day of January, 2010.

LAW OFFICES
JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

MATTHEW JOY

DIRECT LINE: 480-505-3928
e-mail: mjoy@jordenbischoff.com

January 7, 2010

Via E-Mail & U.S. Mail

Mr. Sonny Swazo
Attorney for Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505

Re: Appeal of Administrative Compliance Orders
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station
Discharge Permit Renewal GW-125 – Penasco Compressor Station
Rule 11-408 Settlement Document

Dear Sonny:

The purpose of this letter is to provide you with the status and/or proposed resolutions to issues raised in the three Requests for Hearing filed by Agave Energy Company (Agave) concerning the above-captioned Administrative Compliance Orders. Essentially, Agave is proposing solutions to resolve the secondary containment issues raised in the Administrative Consent Orders for the Bitter Lakes and Red Bluff #1 Compressor Stations. The Division should be extremely pleased with the proposed resolutions. In addition, a status report on the Administrative Compliance Order for the Penasco Compressor station is below.

Administrative Compliance Order - Permit Renewal GW-050-1 (Bitter Lakes Compressor Station)

The Administrative Compliance Order for permit renewal GW-050-1 provides that:

Agave shall properly contain the above ground tank filled with liquid methanol with an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. Agave shall complete this requirement by November 16, 2009.

Agave has identified one 2500 to 3000 gallon tote at the Bitter Lakes facility. Although Agave disagrees that secondary containment requirements are applicable to totes and other containers, in order to resolve this issue as expeditiously as possible, Agave will design and

Mr. Sonny Swazo, Esq.
Appeal of Administrative Compliance Orders
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station
Discharge Permit Renewal GW-125 – Penasco Compressor Station

January 7, 2010
Page 2 of 3

install secondary containment for the tote. The secondary containment will be large enough to contain the volume of the tote plus one-third. Because of possible delays due to weather and other factors, **Agave requests an extension of ninety (90) days (from the January 16, 2010 deadline) to install the secondary containment.**

If this is agreeable to the Division, I suggest we file a status report with the Water Quality Control Commission stating that a resolution has been reached, pending installation of the containment, and that the compliance deadline has been extended an additional ninety (90) days to allow for installation of the containment.

Administrative Compliance Order - Permit Renewal GW-050-5 (Red Bluff #1 Compressor Station)

The Administrative Compliance Order for permit renewal GW-050-5 provides that:

Agave shall properly contain the above ground tank filled with liquid methanol with an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. Agave shall complete this requirement by November 16, 2009.

Based on our review of the inspection report, it appears the tank in question is the large yellow tote pictured in the inspection report. Although Agave disagrees that secondary containment requirements are applicable to totes and other containers, Agave will remove the large yellow tote from service. Hence, no secondary containment is necessary. **Agave requests that it be given an additional thirty (30) days (from the January 16, 2010 deadline) to remove the tote from service.**

If this is acceptable, I propose that we submit a status report with the Water Quality Control Commission stating that the matter is resolved, pending removal from service of the tote, and that the compliance deadline has been extended to February 16, 2010

Administrative Compliance Order - Permit Renewal GW-125 (Penasco Compressor Station)

The Administrative Compliance Order for permit renewal GW-125 provides that:

Respondents shall immediately close the below-grade tanks in accordance with OCD Rule 19.15.17.13.E NMAC. In lieu of closure, Respondents may submit a

Mr. Sonny Swazo, Esq.
Appeal of Administrative Compliance Orders
Discharge Permit Renewal GW-050-1 – Bitter Lakes Compressor Station
Discharge Permit Renewal GW-050-5 – Red Bluff #1 Compressor Station
Discharge Permit Renewal GW-125 – Penasco Compressor Station

January 7, 2010
Page 3 of 3

workplan to retrofit the below-grade tanks to meet the standards specified at OCD Rule 19.15.17.11 NMAC. Respondents shall complete this by November 16, 2009.

As you know, Agave submitted an initial workplan to the Division for removal of the “tanks” in November, 2009. Agave removed two tanks and back-filled the excavation. Agave sought confirmation of the final closure of these two tanks twice in November, 2009. No response was received and, for safety reasons, Agave back-filled the excavation areas.

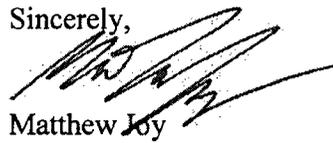
On or around January 5, 2010, Agave submitted a Supplemental Work Plan to the Division setting forth the final closure plan for the remaining tanks (that Work Plan is attached). Agave is awaiting approval of the Supplemental Work Plan. Agave is concerned that approval may be delayed past the January 16, 2010 deadline. Hence, **Agave requests an additional extension to the compliance deadline of thirty (30) days (from the January 16, 2010 deadline).**

In light of the above, I suggest we submit a status report to the Water Quality Control Commission providing a status of the closure plan and requesting an additional thirty day extension to the compliance deadline. If the Division does not comment on the Supplemental Work Plan within the 30 day deadline, the Supplemental Work Plan will be approved. If the Supplemental Plan is not approved, an additional status report will be submitted.

Finally, Agave received *draft* renewal discharge plans for the Penasco, Red Bluff #1 and Bitter Lakes Compressor Stations (in addition to draft discharge plans for the Red Bluff #2 and Red Bluff #3 Compressor stations) on or about September 15, 2009. Agave timely provided comments on those draft discharge plans and asked for revisions to several conditions. To date, no response has been received from the Division. Agave respectfully requests that the Division respond to those comments prior to issuing the final permits.

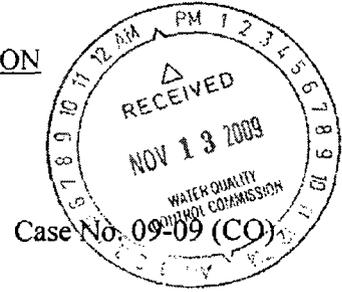
Agave trusts that the proposed resolutions to the Administrative Compliance Orders are satisfactory as they resolve the primary concerns raised by the Division (i.e., minimizing the possibility of “discharges” to the ground). Please give me a call at your earliest convenience to discuss this proposal or if you have any questions. I can be reached at 480-505-3928.

Sincerely,



Matthew Joy
Attorney for Agave Energy Company

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



NEW MEXICO OIL CONSERVATION DIVISION,)
Complainant)
)
v.)
)
AGAVE ENERGY COMPANY,)
Respondent)
)

Order Granting Unopposed Motion to Stay Deadlines Set forth in Administrative Compliance Order and Granting Request to Waive the 90-Day Hearing Deadline

Respondent, Agave Energy Company (Agave), after conferring with the Oil Conservation Division (OCD), the only Parties to this Request for Order Hearing, filed an Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline (the Unopposed Motion) on or about November 13, 2009, requesting that the Water Quality Control Commission (WQCC) stay the deadline set forth in the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 until January 16, 2010 in order to facilitate settlement discussions. In addition, the Motion requested that the Commission waive the ninety day hearing deadline and schedule any hearing, if necessary, in this matter after the Parties file their joint Status Report. WQCC regulation 20.1.3.400(B)(1) allows the ninety day deadline to be waived by stipulation or unopposed motion. Having considered the Unopposed Motion and, in reliance thereon, finding good cause for the requested stay and waiver,

IT IS HEREBY ORDERED that the Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline is granted, and not later than January 16, 2010, the Parties shall file a Status Report with the WQCC.

DATED this 13 day of November, 2009.

LAW OFFICES
JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

MATTHEW JOY

DIRECT LINE: 480-505-3928
e-mail: mjoy@jordenbischoff.com

November 12, 2009

Via overnight delivery

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

Re: Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline
Case No. 09-09

Dear Ms. Medina:

Please find enclosed an original and sixteen copies of the above-referenced Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline. We have also included an additional copy to be conformed and returned to us.

Thank you and please contact Matthew Joy if you have any questions at (480) 505-3928.

Sincerely,


Matthew Joy
Eric L. Hiser

Cc: New Mexico Oil Conservation Division
New Mexico Attorney General's Office

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,)	
Complainant)	
)	Case No. 09-09 (CO)
v.)	
)	
AGAVE ENERGY COMPANY,)	
Respondent)	
)	

**UNOPPOSED MOTION TO STAY DEADLINES
SET FORTH IN ADMINISTRATIVE COMPLIANCE
ORDER PERTAINING TO PERMIT RENEWAL GW-050-5 AND
REQUEST FOR WAIVER OF 90-DAY HEARING DEADLINE**

Comes now the Respondent, Agave Energy Company (Agave), pursuant to Water Quality Control Commission (WQCC) regulation 20.1.3.400(B)(1) NMAC, and hereby files this Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline. Agave states to the WQCC the following:

1. The Respondent timely filed a Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 on or about November 2, 2009.
2. By letter dated November 2, 2009, Respondent asked the Oil Conservation Division to meet with it to discuss and possibly resolve the issues raised by the Administrative Compliance Order.
3. Respondent and the Oil Conservation Division believe that settlement discussions are appropriate with respect to the management of the methanol containers at issue in the Administrative Compliance Order.
4. Attorneys for Respondent and the Oil Conservation Division have conferred and agree that an extension of the November 16, 2009 deadline set forth in the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 is warranted.
5. Because Respondent and the Oil Conservation Division believe that meaningful settlement discussions are likely and agree that an extension of the deadline is warranted, no hearing needs to be scheduled at this time.

Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order
Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing
Deadline

November 13, 2009

Page 2 of 2

6. NMSA 1978, Section 74-6-10(G) requires the WQCC to conduct a public hearing on any compliance order issued by a constituent agency pursuant to Section 74-6-10 within ninety days after receipt of a request for a hearing on the compliance order.
7. WQCC regulation 20.1.3.400(B)(1) NMAC provides that an Order Hearing must be scheduled to begin no later than ninety days after a Request for Order Hearing is received unless an unopposed motion is filed requesting that the ninety day deadline be waived.
8. Respondent and the OCD are the only parties to this hearing and request a waiver to the ninety day hearing deadline and request that any hearing, if necessary, be scheduled after the Parties submit their joint Status Report.
9. Respondent and the Oil Conservation Division shall file a joint Status Report on or before January 16, 2010.

WHEREFORE, Respondent and the Oil Conservation Division respectfully request that the WQCC grant the following:

1. Grant Respondent an extension to the November 16, 2009 deadline set forth in the Administrative Compliance Order until January 16, 2010; and
2. Waive the ninety day hearing deadline and schedule the hearing in this matter, if necessary, after the Parties file their joint Status Report.

Respectfully submitted this 12th day of November, 2009.



Eric L. Hiser (N.M. Bar No. 21786)

Matthew Joy

Jorden Bischoff & Hiser, P.L.C.

7272 E. Indian School Road

Suite 360

Scottsdale, AZ 85251

Tel: (480) 505-3900

Fax: (480) 505-3901

Attorneys for Agave Energy Company

CERTIFICATE OF SERVICE

I certify that on this 12th day of November, 2009, service of the original and sixteen true and complete copies of the foregoing Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline were mailed via overnight delivery, signature required, to the following parties:

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

With a copy of the same via overnight delivery, signature required, to:

New Mexico Energy, Minerals and Natural Resources Department
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505

New Mexico Attorney General's Office
408 Galisteo Street
Villagra Building
Santa Fe, New Mexico 87501



STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

NEW MEXICO OIL CONSERVATION DIVISION,)	
Complainant)	
)	Case No. 09-09 (CO)
v.)	
)	
AGAVE ENERGY COMPANY,)	
Respondent)	
)	

Order Granting Unopposed Motion to Stay Deadlines Set forth in Administrative Compliance Order and Granting Request to Waive the 90-Day Hearing Deadline

Respondent, Agave Energy Company (Agave), after conferring with the Oil Conservation Division (OCD), the only Parties to this Request for Order Hearing, filed an Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline (the Unopposed Motion) on or about November 13, 2009, requesting that the Water Quality Control Commission (WQCC) stay the deadline set forth in the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 until January 16, 2010 in order to facilitate settlement discussions. In addition, the Motion requested that the Commission waive the ninety day hearing deadline and schedule any hearing, if necessary, in this matter after the Parties file their joint Status Report. WQCC regulation 20.1.3.400(B)(1) allows the ninety day deadline to be waived by stipulation or unopposed motion. Having considered the Unopposed Motion and, in reliance thereon, finding good cause for the requested stay and waiver,

IT IS HEREBY ORDERED that the Unopposed Motion to Stay Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 and Request for Waiver of 90-Day Hearing Deadline is granted, and not later than January 16, 2010, the Parties shall file a Status Report with the WQCC.

DATED this ____ day of November, 2009.

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

COPY



NEW MEXICO OIL CONSERVATION DIVISION,
Complainant

v.

WQCC #09-09 (CO)

AGAVE ENERGY COMPANY,
Respondent

ENTRY OF APPEARANCE

COMES NOW, Sonny Swazo, Assistant General Counsel for the Oil Conservation Division, and hereby enters his appearance in the above-entitled matter on behalf of the Oil Conservation Division.

Respectfully submitted,

Sonny Swazo
Attorney for Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505
(505) 476-3463
Fax: (505) 476-3462
Email: sonny.swazo@state.nm.us

CERTIFICATE OF SERVICE

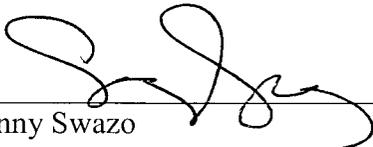
I hereby certify that a true and correct copy of the foregoing Entry of Appearance was mailed first class to the following parties on November 4, 2009.

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

Attorneys for Agave Energy Company

Zachary Shandler
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Attorney for Water Quality Control Commission



Sonny Swazo

AGAVE ENERGY COMPANY

105 South Fourth Street

Artesia, New Mexico 88210

(575) 748-4555

Fax (575) 748-4275

Via U.S. Mail Return Receipt Requested 7006 2150 0000 3855 3814

November 2, 2009

Mr. Glenn von Gonten
Environmental Bureau
New Mexico Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, New Mexico

RECEIVED OCD
NOV - 4 - 2009
P 2:18

Re: Administrative Compliance Orders
Bitter Lakes Compressor Station, GW-050-1
Red Bluff #1 Compressor Station, GW-050-5
Red Bluff #2 Compressor Station, GW-050-7
Penasco Compressor Station, GW-125

Dear Mr. von Gonten

Agave Energy Company (Agave) would like to take this opportunity to respond to the allegations set forth in four Administrative Compliance Orders (ACOs) and request that the Oil Conservation Division (OCD) meet with Agave to discuss and resolve certain issues raised by the ACOs. Agave's concerns arise from the issuance of ACOs issued to Agave for alleged violations at the Bitter Lakes Compressor Station (Permit No. GW-050-1), the Red Bluff #1 Compressor Station (Permit No. GW-050-5), the Red Bluff #2 Compressor Station (Permit No. GW-050-7) and the Penasco Compressor Station (Permit No. GW-125).

Agave's primary concerns revolve around the provisions requiring that Agave install secondary containment for methanol containers at the Bitter Lakes Compressor Station and the Red Bluff #1 Compressor Station. In addition, Agave is concerned that the ACOs for the Red Bluff #2 Compressor Station and the Penasco Compressor Station impose an overly burdensome response when spills of de minimis amounts of material occur.

Agave would also like to take this opportunity to provide a status report concerning steps it has undertaken to resolve issues that arose during the inspections of April 23 and 24, 2009. Finally, Agave would like to request an extension of time for completing the closure of below-grade tanks and sumps at the Penasco Compressor Station.

Methanol Containers

The ACOs for the Bitter Lakes Compressor Station and the Red Bluff #1 Compressor Station provide:

Condition 9 of GW-050-1 [issued May 8, 2006] states:

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.

ACOs, ¶ 6. The ACO then states that, during an inspection on April 23, 2009, the inspector "observed an unbermed above ground storage tank filled with liquid methanol." ACOs, ¶ 7. Essentially, the Division alleges that the methanol "tank" violates the secondary containment provision of Condition 9. Agave respectfully disagrees for the following reasons.

First, the methanol container is not a tank, as that term is defined under the regulations; it is a container. The only regulatory definition under the Environmental Improvement Act of a "tank" provides that a tank is "a *stationary device* designed to contain an accumulation of regulated substances which is constructed of non-earthen materials..." 20.5.1.7(FA) NMAC (italics added) (*see also*, 20.5.1.7(B) NMAC defining aboveground storage tanks as "permanently installed"). In other words, in order for a container to be a tank, it must be stationary or permanently installed.¹ That is not the case here. The methanol containers at issue are not stationary or permanently installed. The containers are transported around each facility to areas where the methanol is needed. Agave uses methanol as a hydrator inhibitor in the wintertime. Methanol is injected into the pipeline to prevent the formation of hydrates or "ice". The hydrates can plug a pipeline causing numerous problems. The containers are usually transported by fork lift or truck to areas where they are needed on a frequent basis. Imposing secondary containment requirements equal to the tank capacity plus one-third would eliminate the ability of the facility to move the container to areas where it is needed. In fact, the likely result of requiring secondary containment for such a container would be that additional, smaller containers, such as mobile totes would have to be used, replacing one large container and, potentially, increasing the likelihood of unintentional mishaps.

Second, the methanol container is exempt from permitting requirements under the Water Quality Control Commission regulations. An effluent stream or leachate is exempt if the effluent or leachate conforms to all listed numerical standards of section 20.6.2.3103 and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant. 20.6.2.3105(A) NMAC. Methanol is not a contaminant listed under 20.6.2.3103 NMAC, it is not

¹ Agave's interpretation of the definition of "tank" versus the definition of "container" is supported by the federal definitions of both. Under EPA regulation, a "tank" is a "stationary device." 40 C.F.R. § 260.10. A "container," according to federal regulation, is "any portable device." *Id.*

a toxic pollutant listed under 20.6.2.7(WW) NMAC and it does not contain 10 mg/l or more total nitrogen. Therefore, methanol containers are not subject to the discharge permitting requirements of 20.6.2.3104 NMAC.

Finally, the methanol from the tank is not intended to be "discharged." Even if some methanol in the container is spilled during use, it is unlikely that it would directly or indirectly reach any groundwater. See 20.6.2.3104 NMAC. Given that the methanol is a product which is being used (or is stored in a portable container between uses), and the methanol is exempt from permitting as there are no applicable groundwater quality or human health groundwater standards, Agave respectfully requests that the secondary containment provision in the ACOs be removed with respect to the methanol containers:

Agave respectfully requests that the secondary containment requirements in Administrative Compliance Order, GW-050-5, Section IV, ¶ 1 and Administrative Compliance Order, GW-050-1 be deleted from the order.

Below-Grade Tanks – Penasco

The ACO for the Penasco Compressor Station (GW-125) requires that Agave close several below-grade tanks by November 16, 2009. Administrative Compliance Order, GW-125, Section IV, ¶ 2. Agave is in the process of closing the below-grade tanks at issue. Agave submitted a Work Plan for the removal of three below-grade tanks to the OCD on September 30, 2009, and has engaged a contractor to perform the work. The work commenced on October 19, 2009. Agave is concerned that all three tanks may not be closed by the November 16, 2009 deadline and respectfully requests an extension for completion of the work until January 16, 2009.

Due to the engineering necessary to remove the tanks, the actual time it will take to conduct the work and the fact that it will take several weeks to obtain lab analyses of the soil samples (and potentially an additional round of confirmation sampling), it is extremely unlikely that the work can be completed by the deadline set forth in the Compliance Order.

Completed Actions

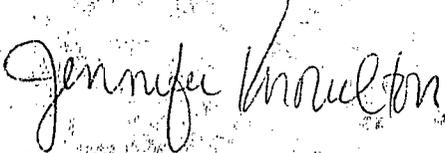
Administrative Compliance Order, GW-050-7, ¶ 1 requires Agave to "place bungs in all drums and properly store drums in accordance with Condition 7." Agave has completed this action.

Although Agave disagrees with the Division's characterization of the vast majority of the "spills" identified at the Red Bluff #2 Compressor Station (GW-050-7) and the Penasco Compressor Station (GW-125), it has cleaned up the majority of spills identified during the inspections and managed all cleanup materials appropriately.

Mr. Glenn von Gonten
New Mexico Oil Conservation Division
Administrative Orders
Agave Energy Company
November 2, 2009
Page 4 of 4

As always, Agave appreciates this opportunity to comment on the Administrative Compliance Orders for GW-050-1, GW-050-5, GW-050-7 and GW-125. Agave looks forward to resolving the outstanding issues expeditiously. Please give me a call at (575) 748-4471 if you have any questions.

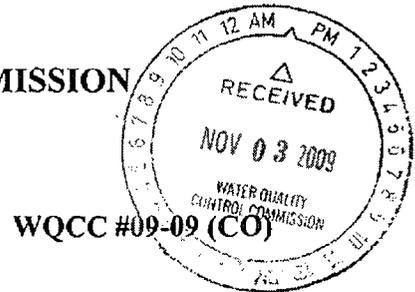
Sincerely,

A handwritten signature in cursive script that reads "Jennifer Knowlton". The signature is written in black ink and is positioned above the printed name and title.

Jennifer Knowlton
Environmental Engineer

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

Request for Hearing and Request for Stay
of Deadlines Set Forth in Administrative
Compliance Order Pertaining to Permit
Renewal GW-050-5, Agave Energy Company



NOTICE OF DOCKETING

The above-captioned case is hereby docketed pursuant to the New Mexico Water Quality Control Act, NMSA 1978, §§74-6-1 through 74-6-17, and the Adjudicatory Procedures for the Water Quality Control Commission, §20.1.3.200 NMAC. The Administrator received the Request for Order Hearing and Request for Stay of Deadlines in Administrative Compliance Order relating to Permit Renewal GW-050-5, November 2, 2009.

Joyce Medina, Administrator
Water Quality Control Commission
P. O. Box 5469
Santa Fe, New Mexico 87502
(505) 827-2425 (P)
(505) 827-0310 (F)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Docketing was sent electronically to Sonny Swazo, Office of General Counsel, Oil Conservation Division, New Mexico Energy, Minerals and Natural Resources Department, at sonny.swazo@state.nm.us and was sent by first class mail to Zachary Shandler, Board Counsel, NM Attorney General's Office, P. O. Drawer 1508, Santa Fe, NM 87504-1508, and to Matt Joy, Esq., Jordan Bischoff Law Firm, 7272 E. Indian School Road, Suite 360, Scottsdale, Arizona 85251, this 3rd day of November, 2009.

Joyce Medina, Administrator

LAW OFFICES

JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

MATTHEW JOY

DIRECT LINE: 480-505-3928
e-mail: mjoy@jordenbischoff.com

October 30, 2009

Via overnight delivery

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

Re: **Request for Order Hearing and Request for Stay of Deadlines Set Forth in
Administrative Compliance Order Pertaining to Permit Renewal GW-050,5**

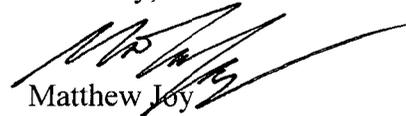
2009 NOV -2 AM 11:11
RECEIVED
WQCC

Dear Ms. Medina:

Please find enclosed an original and sixteen copies of the above-referenced Request for Order Hearing and Request for Stay of Deadlines. The Request concerns the issuance of an Administrative Compliance Orders issued to Agave Energy Company. We have also included an additional copy to be conformed and returned to us.

Thank you and please contact Matthew Joy if you have any questions at (480) 505-3928.

Sincerely,



Matthew Joy
Eric L. Hiser

Cc: New Mexico Oil Conservation Division
New Mexico Attorney General's Office

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF REQUEST FOR)
HEARING ON ADMINISTRATIVE)
COMPLIANCE ORDERS FOR DISCHARGE)
PERMIT RENEWALS GW-050-5) Case No. _____
)
Agave Energy Company)
)

**REQUEST FOR ORDER HEARING AND REQUEST
FOR STAY OF DEADLINES SET FORTH IN
ADMINISTRATIVE COMPLIANCE ORDER
PERTAINING TO PERMIT RENEWAL
GW-050-5**

2009 NOV - 2 A 11: 10
RECEIVED OGD

Comes now the Petitioner, Agave Energy Company (Agave), pursuant to Water Quality Control Commission (WGCC) regulation 20.1.3.400 NMAC and Section VI of the Administrative Compliance Order (ACO), and hereby files this Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5 (the Request). Agave States to the Water Quality Control Commission (WQCC) the following:

I. Information About the Petitioner

1. The Petitioner filing this Request is Agave Energy Company, located at 105 South 4th Street, Artesia, NM, 88210 and is qualified to do business in New Mexico.
2. Petitioner in this matter is represented by Eric L. Hiser (New Mexico Bar Number 21786) and Matthew Joy, of Jordan Bischoff & Hiser, P.L.C., 7272 East Indian School Road, Suite 360, Scottsdale, Arizona, 85251. Correspondence and information related to this appeal should be served on Agave attorneys and on the company, c/o Jennifer Knowlton, at the address above.

II. Admissions and Denials of Factual Assertions

1. Agave admits the allegations set forth in Section I, paragraph 1 of the Administrative Compliance Order.
2. Agave admits the allegations set forth in Section I, paragraph 2 of the Administrative Compliance Order.

Request for Order Hearing and Request for Stay of Deadlines

GW-050-5

Agave Energy Company

October 30, 2009

Page 2 of 4

3. Agave admits the allegations set forth in Section I, paragraph 3 of the Administrative Compliance Order.
4. Agave admits the allegations set forth in Section I, paragraph 4 of the Administrative Compliance Order.
5. Agave admits the allegations set forth in Section I, paragraph 5 of the Administrative Compliance Order.
6. Agave admits the allegations set forth in Section I, paragraph 6 of the Administrative Compliance Order.
7. Agave denies the allegations set forth in Section I, paragraph 7 of the Administrative Compliance Order. The methanol "tank" identified during the inspection is not a tank as that term is defined under the regulations. A tank is defined as "a *stationary device* designed to contain an accumulation of regulated substances which is constructed of non-earthen materials..." 20.5.1.7(FA) NMAC (italics added) (*see also*, 20.5.1.7(B) NMAC defining aboveground storage tanks as "permanently installed"). In other words, in order for a container to be a tank, it must be stationary or permanently installed. The methanol container is not stationary or permanent and is frequently moved around the facility to areas where it is needed.

In addition, methanol containers are exempt from permitting requirements under the Water Quality Control Commission regulations. An effluent stream or leachate is exempt if the effluent or leachate "conforms to all listed numerical standards of section 20.6.2.3103 and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant." 20.6.2.3105(A) NMAC. Methanol is not a contaminant listed under 20.6.2.3103 NMAC, it is not a toxic pollutant listed under 20.6.2.7(WW) NMAC and it does not contain 10 mg/l or more total nitrogen. Therefore, methanol containers are not subject to the discharge permitting requirements of 20.6.2.3104 NMAC.

Finally, the methanol from the tank is not intended to be "discharged." Even if some methanol in the container is spilled during use, it is unlikely that it would directly or indirectly reach any groundwater. *See* 20.6.2.3104 NMAC.

8. Agave admits the allegations set forth in Section I, paragraph 8 of the Administrative Compliance Order.
9. To the extent that Sections II (Applicable Statutes and Rules) and III (Conclusions of Law) of the Administrative Compliance Order contain "factual assertions," Agave denies those assertions.

III. Administrative Compliance Order is Attached

1. A copy of the Administrative Compliance Order for Discharge Permit Renewal GW-050-5 is attached as Exhibit "A".

IV. Settlement Discussions

1. Contemporaneously with this Request for Order Hearing, Agave has submitted a letter to the Oil Conservation Division outlining its position that Condition 9 of GW-050-5 is not applicable to the methanol container.
2. In that letter, Agave also asked the Division to meet to discuss its position in furtherance of reaching settlement.

V. Request for Stay of Permit Conditions

1. The Administrative Compliance Order requires Agave to install secondary containment by November 16, 2009.
2. If the Division's interpretation of Permit Condition 9 is upheld, Agave will be required to construct secondary containment at all its facilities that have methanol in portable containers.
3. Secondary containment would no longer allow the use of the portable methanol containers and would result in undue interference with operations at the facility.
4. If the corrective action in the compliance order is not completed by the November 16, 2009 deadline, Agave could be subject to penalties up to \$25,000 per day despite the fact that the alleged violation is not valid.
5. Agave would suffer irreparable harm if the Compliance Order deadline is enforced as written in the Administrative Compliance Order.

WHEREFORE, Agave respectfully requests the WQCC grant the following relief:

1. Grant Agave an Order Hearing pursuant to the Water Quality Act, and the New Mexico Administrative Code;

2. Stay the effective deadline of November 16, 2009 until settlement discussions have concluded and the matter is resolved or a hearing is set;

Request for Order Hearing and Request for Stay of Deadlines
GW-050-5
Agave Energy Company
October 30, 2009
Page 4 of 4

3. In the alternative, Agave requests that the WQCC find that the methanol container is not a tank and, therefore, is not subject to GW-050-5, Condition 9; and

4. Provide such other relief as the WQCC determines just and reasonable under the circumstances.

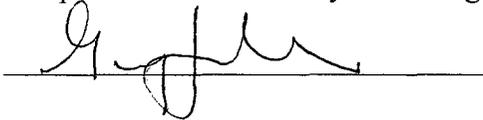
Respectfully submitted this 30th day of October, 2009.



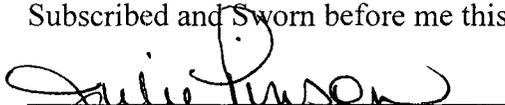
Eric L. Hiser (N.M. Bar No. 21786)
Matthew Joy
Jorden Bischoff & Hiser, P.L.C.
7272 E. Indian School Road
Suite 360
Scottsdale, AZ 85251
Tel: (480) 505-3900
Fax: (480) 505-3901
Attorneys for Agave Energy Company

STATE OF NEW MEXICO)
County of Eddy) ss.

I swear under oath, that I have read this Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-1 and all the information contained therein is true and correct and complete to the best of my knowledge and belief.



Subscribed and Sworn before me this 29th day of October, 2009.



Notary Public

My Commission Expires:



OFFICIAL SEAL
Julie Pierson
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: October 21, 2012

CERTIFICATE OF SERVICE

I certify that on this 30th day of October, 2009, service of the original and sixteen true and complete copies of the foregoing **Request for Order Hearing and Request for Stay of Deadlines Set Forth in Administrative Compliance Order Pertaining to Permit Renewal GW-050-5** were mailed via overnight delivery, signature required, to the following parties:

Ms. Joyce Medina
WQCC Administrator
Water Quality Control Commission
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

With a copy of the same via overnight delivery, signature required, to:

New Mexico Energy, Minerals and Natural Resources Department
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505

New Mexico Attorney General's Office
408 Galisteo Street
Villagra Building
Santa Fe, New Mexico 87501

A handwritten signature in cursive script that reads "Joanne Maiden". The signature is written in black ink and is positioned at the bottom right of the page.

EXHIBIT

A



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



October 7, 2009

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

Attorneys for Agave Energy Company

Certified Mail No. 7009 0960 0001 0919 5747

**Re: Administrative Compliance Order—Agave Energy Company
Discharge Permit Renewal GW-050-5
Red Bluff #1 Compressor Station**

Dear Mr. Joy:

The Oil Conservation Commission has issued the enclosed Administrative Compliance Order to Agave Energy Company (Agave) for violations of Discharge Permit Renewal GW-050-5 dated May 8, 2006.

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

During the Division's inspection of the Red Bluff #1 Compressor Station on April 24, 2009, the inspector observed several sumps within secondary containments being used as below-grade tanks. Sumps and secondary containment systems are intended to catch releases and must be predominantly dry and clean. Sumps and secondary containment systems must be cleaned out frequently so that no fluids are being stored in them. If sumps are not predominately dry then they must be retrofitted with a secondary containment with a leak detection system. A work plan for retrofit must be submitted to and approved by the Division prior to implementing modification.

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF
AGAVE ENERGY COMPANY,

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Water Quality Act (“WQA”), Chapter 74, Article 6 NMSA 1978, the Oil Conservation Division (“OCD”) issues this Administrative Compliance Order (“Order”) to Respondent Agave Energy Company (“Agave” or “Respondent”) for the Red Bluff #1 Compressor Station.

I. FINDINGS OF FACT

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

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

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

4. Agave operates the Red Bluff #1 Compressor Station. The Red Bluff #1 Compressor Station is a natural gas compressor station. The Red Bluff #1 Compressor Station is located in the SE/4 SE/4 of Section 34, Township 7 South, Range 25 East, Chaves County, New Mexico.

5. On May 8, 2006, the OCD issued Discharge Permit Renewal GW-050-5 ("GW-050-5") to Agave for the Red Bluff #1 Compressor Station pursuant to the WQA and the Water Quality Control Commission ("WQCC") rules.

6. Condition 9 of GW-050-5 states:

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.

7. During an inspection of the Red Bluff #1 Compressor Station on April 24, 2009, OCD inspector Leonard Lowe observed an unbermed above ground storage tank filled with liquid methanol.

8. The OCD identified the violation to Agave in the initial discharge permit renewal that the OCD sent Agave on May 20, 2009.

II. APPLICABLE STATUTES AND RULES

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

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

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

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

III. CONCLUSIONS OF LAW

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

2. Agave is a "person" for purposes of the WQA.

3. Agave is subject to GW-050-5.

4. Agave violated Condition 9 of GW-050-5 by not properly containing an above ground tank filled with liquid methanol. Condition 9 requires all tanks not containing fresh water or fluids that are gases at atmospheric temperature and pressure to have impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the largest tank.

IV. COMPLIANCE ORDER

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

1. Agave shall properly contain the above ground tank filled with liquid methanol within an impermeable secondary containment which will contain a volume of at least one-third greater than the total volume of the tank. Agave shall complete this requirement by November 16, 2009.

V. CIVIL PENALTY

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

2. If Respondent fails to timely comply with the foregoing Compliance Order requirements, the OCC may seek to assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate the permit violated by the person.

VI. RIGHT TO ANSWER AND REQUEST A HEARING

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

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

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

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

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

VII. FINALITY OF ORDER

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

VIII. SETTLEMENT CONFERENCE

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

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

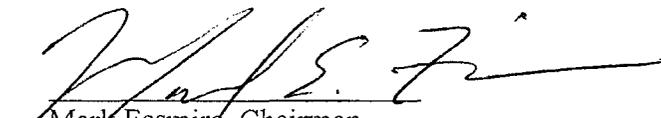
3. To explore the possibility of settlement in this matter, contact Glenn Von Gonten, Environmental Bureau, New Mexico Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, NM 87505 or (505) 476-3488.

IX. COMPLIANCE WITH OTHER LAWS AND WAIVER

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

X. TERMINATION

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


Mark Fesmire, Chairman
Oil Conservation Commission



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



October 7, 2009

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

Attorneys for Agave Energy Company

Certified Mail No. 7009 0960 0001 0919 5747

**Re: Administrative Compliance Order—Agave Energy Company
Discharge Permit Renewal GW-050-5
Red Bluff #1 Compressor Station**

Dear Mr. Joy:

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

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Matthew Joy, Esq.
Agave Energy Company
Administrative Compliance Order
GW-050-5
Red Bluff #1 Compressor Station
October 7, 2009
Page 2

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

If you have any questions please feel free to contact me at sonny.swazo@state.nm.us or (505) 476-3463.

Sincerely,



Sonny Swazo
Assistant General Counsel, OCD

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

STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF
AGAVE ENERGY COMPANY,

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

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X. TERMINATION

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Mark Fesmire, Chairman
Oil Conservation Commission

SS

SENDER: COMPLETE THIS SECTION

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

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
John Maiden Addressee

B. Received by (Printed Name) C. Date of Delivery
John Maiden 10-13-09

D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7009 0960 0001 0919 5747

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540