

GW – 50-07

**Administrative
Compliance Order**

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

Daniel Sanchez
Acting Division Director
Oil Conservation Division



April 4, 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-05-7
Operator: Agave Energy Company, OGRID 147831
Facility: Red Bluff #2 Compressor Station

Dear Operator:

Provision X of the above Administrative Compliance Order ("Order") provides that the Order shall terminate when Respondent, Agave Energy Company ("Agave"), certifies that all requirements of the Order have been met and the Oil Conservation Division ("OCD") 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 OCD has reviewed Agave's letters of November 2, 2009, and January 15, 2010, describing and certifying Agave's completion of the corrective action for the violations alleged in the Order, specially, improperly stored drums and spill cleanup, and is persuaded that Agave has completed corrective action for the violations. The OCD hereby approves Agave's certification.

Please feel free to call me at (505) 476-3493 or OCD counsel Sonny Swazo at (505) 476-3463 if you have any questions.

Sincerely,



Daniel Sanchez
Acting Division Director



April 4, 2011

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Division Enforcement and Compliance Officer

Ec: Glen von Gonten, Acting OCD Environmental Bureau Chief
Leonard Lowe, OCD Environmental Bureau
Jim Griswold, OCD Environmental Bureau
Sonny Swazo, OCD Assistant General Counsel

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.

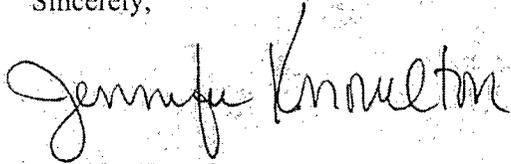
Photographs demonstrating corrective actions taken since notification of the alleged violations to present are attached to this letter.

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, prominent initial "J".

Jennifer Knowlton
Agave Energy Company

NON-HAZARDOUS WASTE MANIFEST

№ 41337

PART I: Generator AGAVE ENERGY
Address 105 South 4th St
City/State ROSELAND NM 88216
Telephone No. _____

ORIGINATION OF WASTE:

Operations Center Roswell Yard Permit No. _____
Property Name Roswell Copper Site
(Well, Tank Battery, Plant, Facility)
ROBERT CARTER

WASTE IDENTIFICATION AND AMOUNT (BARRELS, YARDS, TONS, CU.FT., LBS., UNITS, ETC.)			
Drilling Fluids _____	Tank Bottoms _____	Exempt Fluids _____	
Completion Fluids _____	Gas Plant Waste _____	C117 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.

[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 NM 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] 11/23/09
Signature of Facility Agent 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

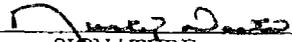
GENERATING PROCESS House keeping of small spills,
stains, etc

REMARKS "Oil Company Land Fill Site"

NMOCDF FACILITY CRI

TRUCKING COMPANY CAT 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

NAME Rusty Nasta
PRINTED

ADDRESS 105 South Fourth Street
Artesia, NM 88210

DATE 11-20-09

Please print or type. (Form designed for use on 8 1/2 (12-pitch) typewriter.)

Form Approved, OMB No. 2050-0039

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 108 S. 4th St Artesia, NM 88210 USA			Generator's Site Address (if different than mailing address) HONORE 6763 N Main St Roswell, NM 89201					
8. Transporter 1 Company Name HRVW 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 75623 USA			U.S. EPA ID Number TXD045844700					
Facility's Phone:								
GENERATOR	9a. HM	9b. U.S. DOT Description (Including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No. Type		11. Total Quantity	12. Unit (L/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	CUTS	603 H
	X	WASTE POTASSIUM PERMANGANATE, 5.1, 8, ERG 140, UN1490, PG II (D001)	2	DM	400	P	CUTS	315 H
		3.						
		4.						
14. Special Handling Instructions and Additional Information 1) 433551 2) 433540								
15. 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(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.								
Generator's/Offeror's Printed/Typed Name MELVIN KIER		Signature <i>Mevin Kier</i>		Month Day Year 12 7 09				
TRANSPORTER	16. 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 Dorsey Signature <i>Cory Dorsey</i> Month Day Year 12 7 09 Transporter 2 Printed/Typed Name Signature Month Day Year							
DESIGNATED FACILITY	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							
	Facility's Phone:							
	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

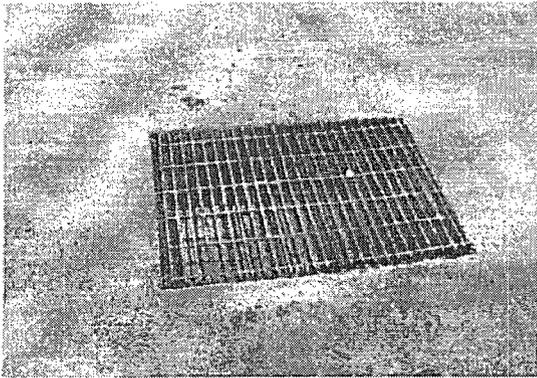


Photo 1: Sump full of fluids.

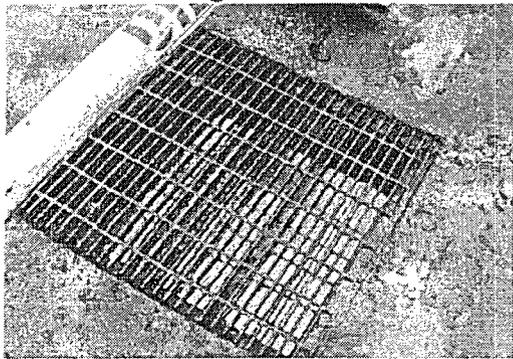


Photo 3: Sump full of fluids.

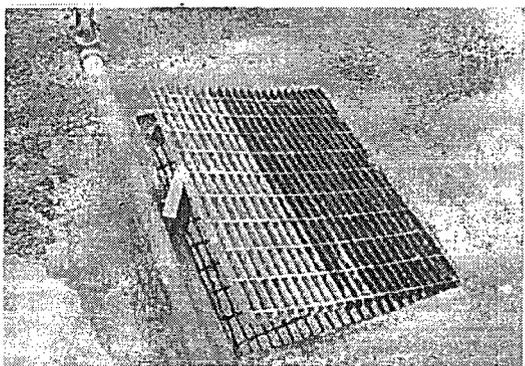
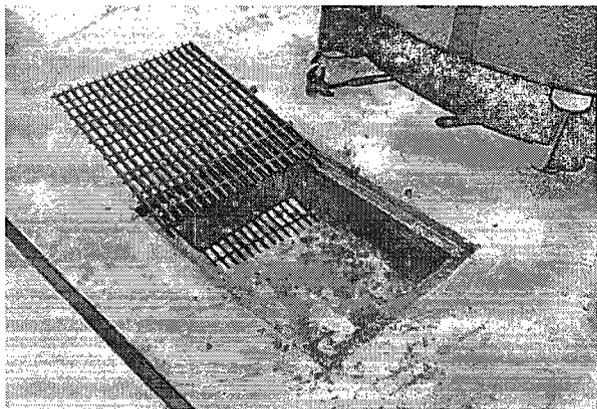
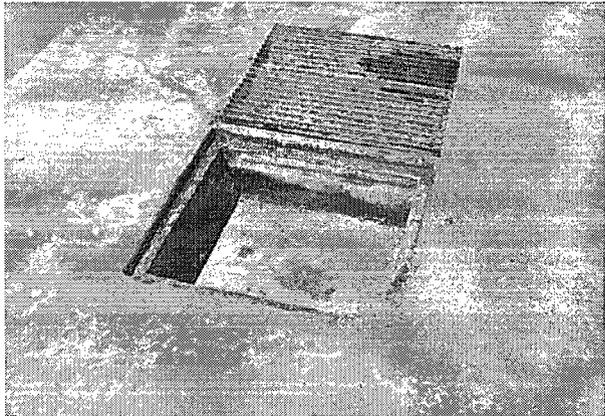
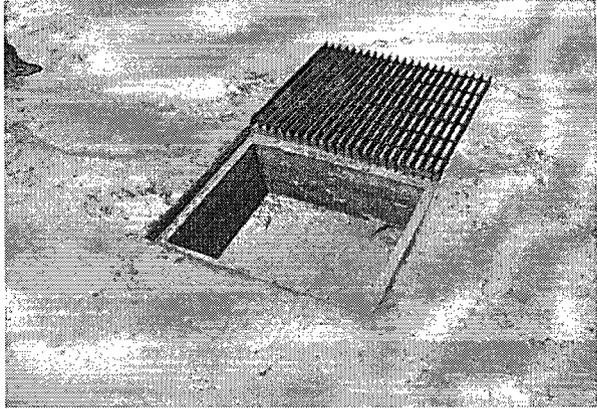


Photo 2: Sump in secondary containment used as a below grade tank.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

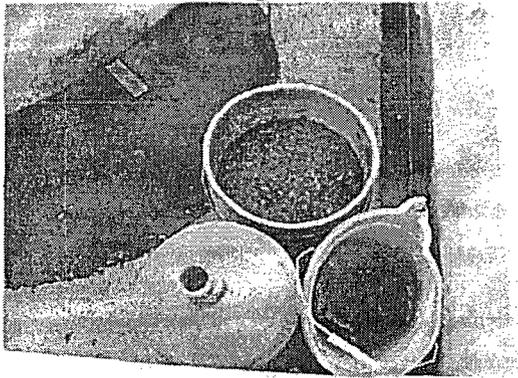


Photo 5: Waste in secondary containment.

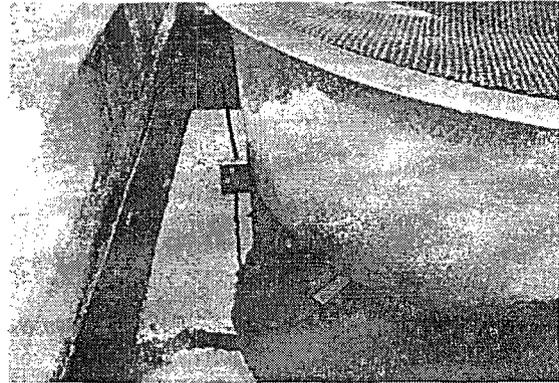
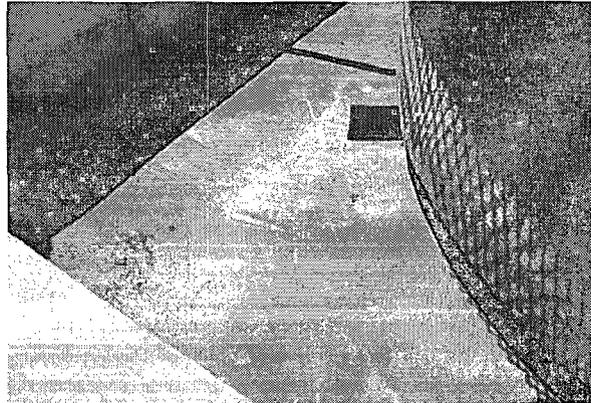
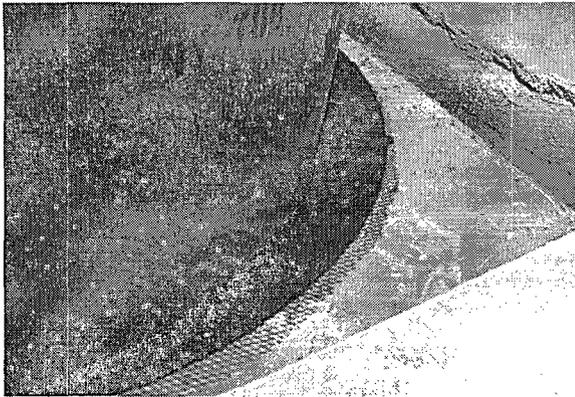


Photo 6: Standing fluids in a secondary containment.

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

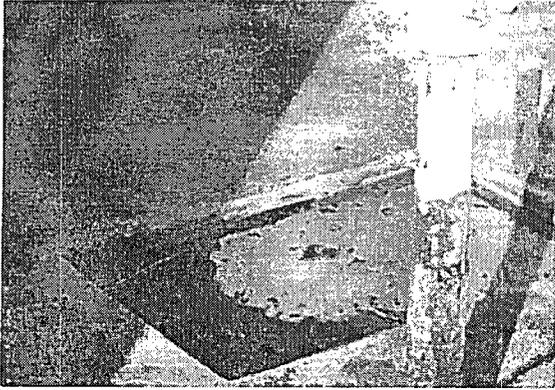


Photo 1: Sump being used as a below grade tank.

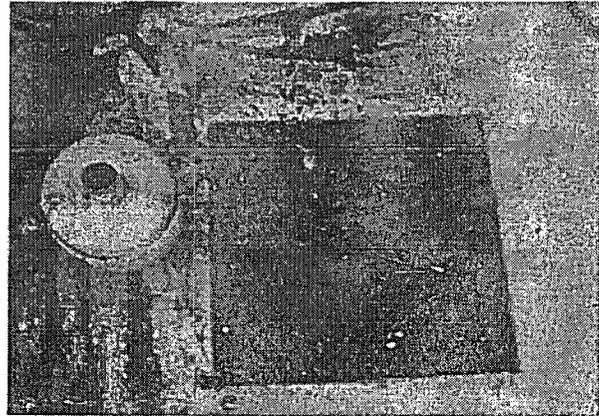


Photo 4: Sump being used as a below grade tank.

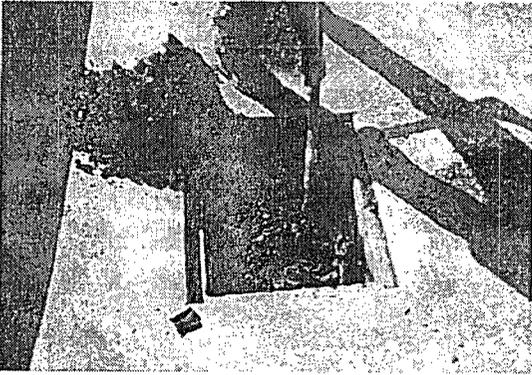
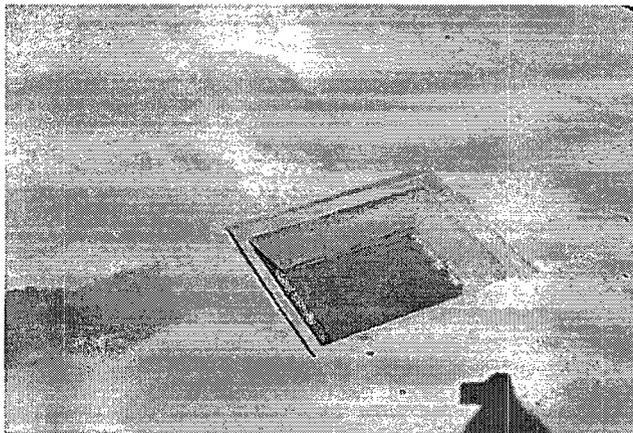
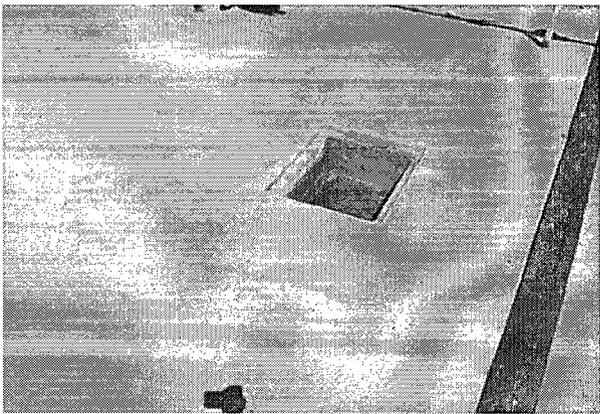
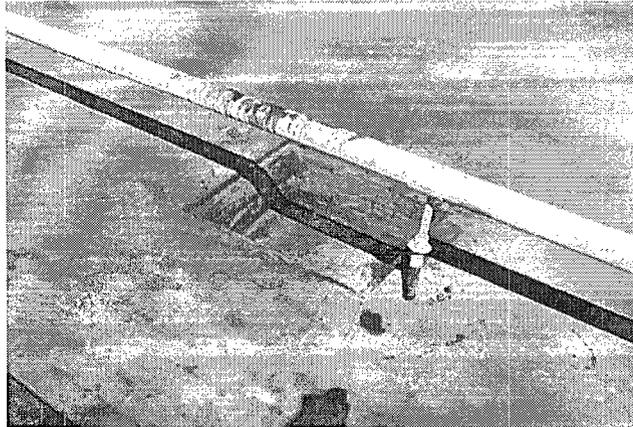


Photo 2: Dirty sump.



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

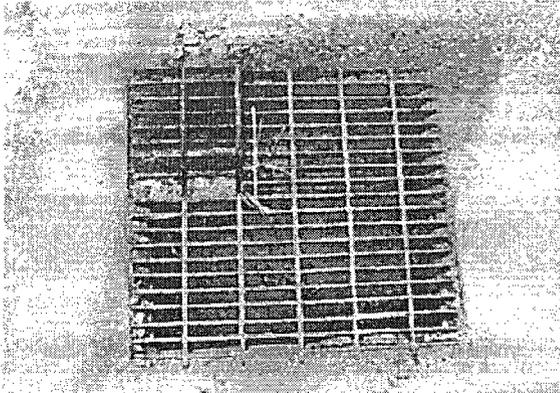


Photo 1: Sump holding fluids.

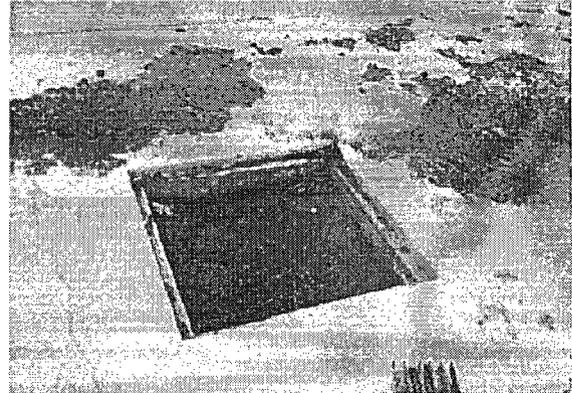


Photo 4: Sediment in sump.

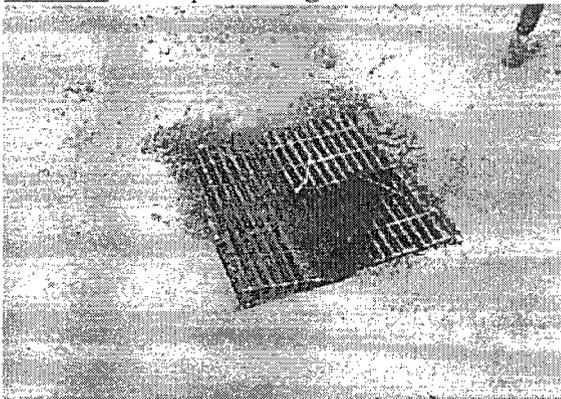


Photo 2: Dirty sump.

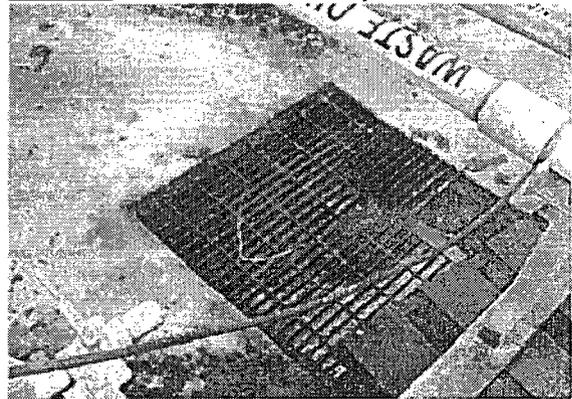
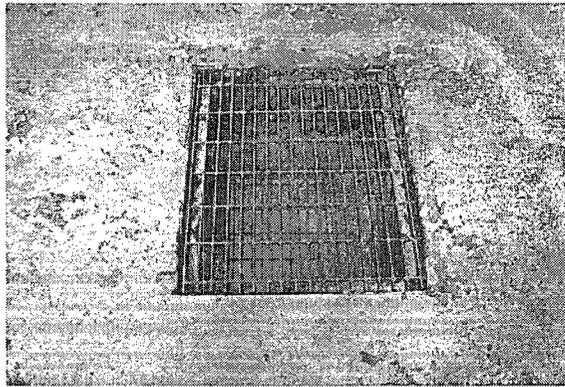
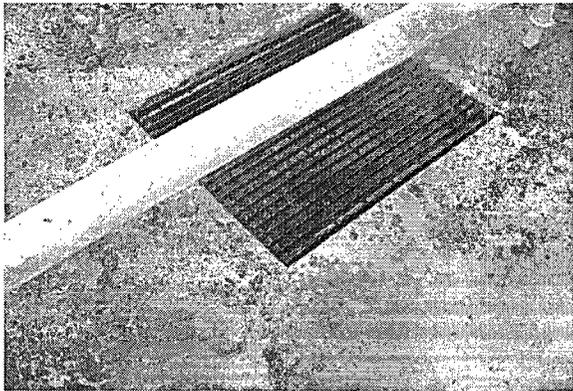
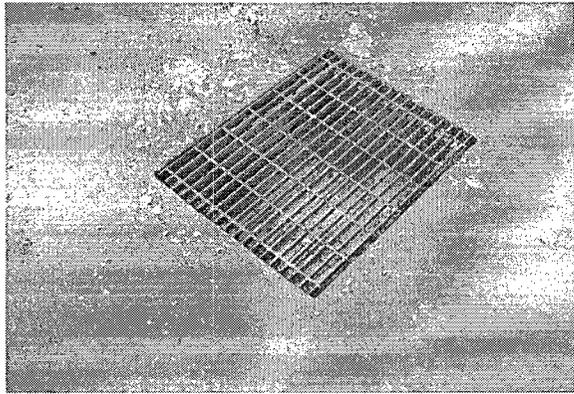
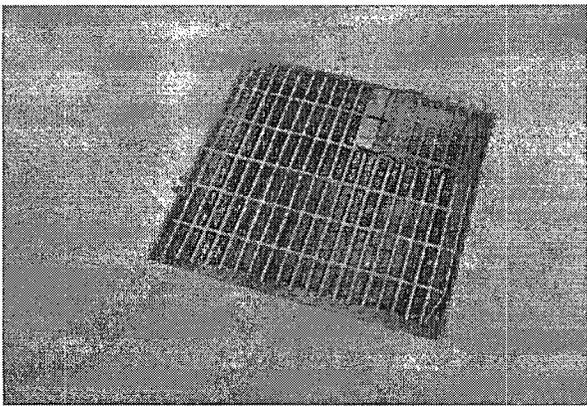
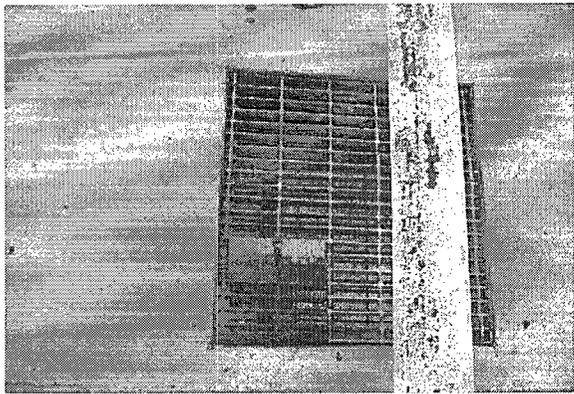
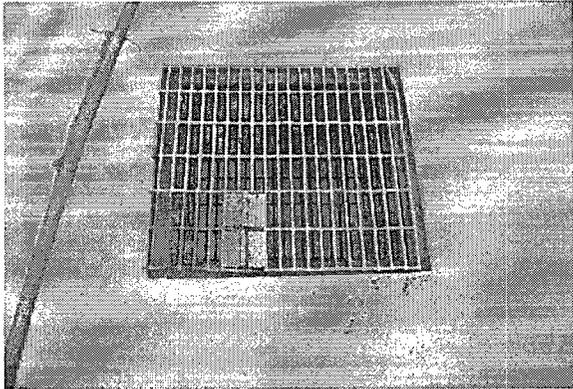


Photo 5: Fluids in sump.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

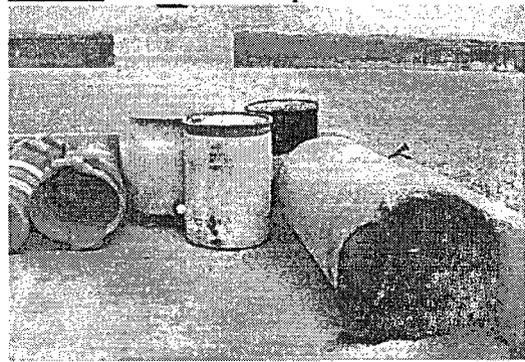
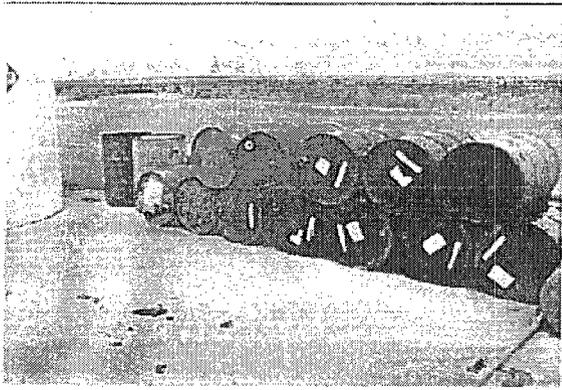


Photo 6: Containers within secondary containment.

Agave Photos from June 25 and September 18 Site Visits

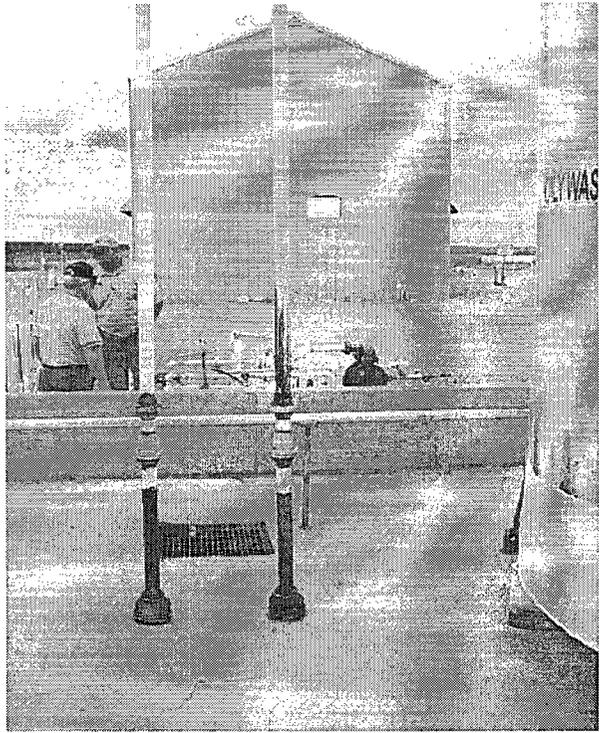


OCD Photos from April 23 Inspections



Photo 10: Fluids in secondary

Agave Photos from June 25 and September 18 Site Visits

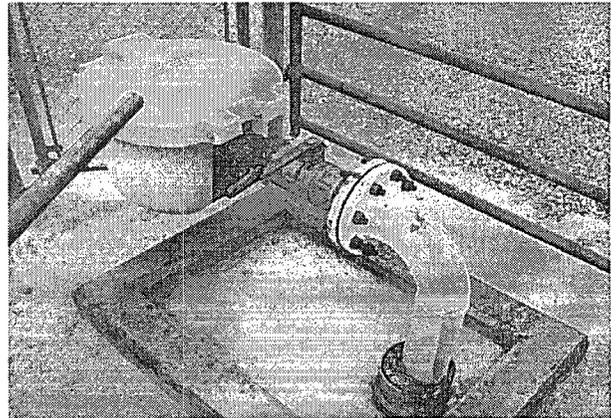


OCD Photos from April 23 Inspections



Photo 16: Dirty catch pan.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

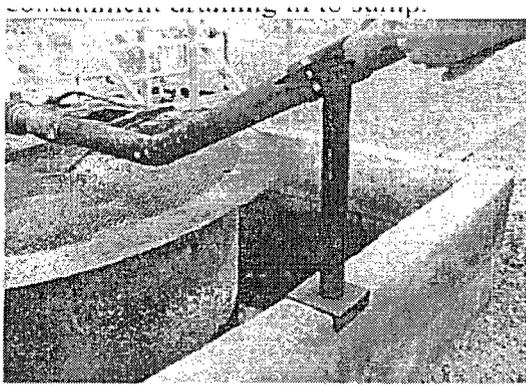


Photo 11: Fluids in secondary containment.

Date: 04.23.09

Time:

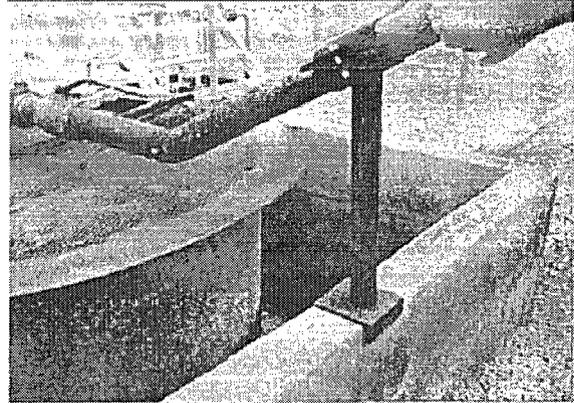
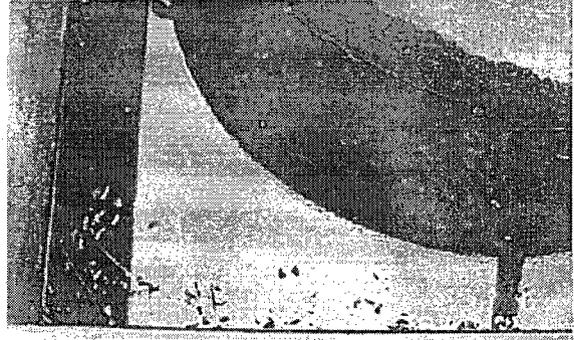
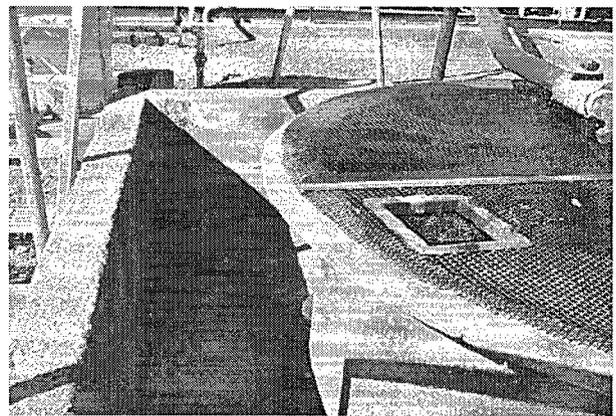
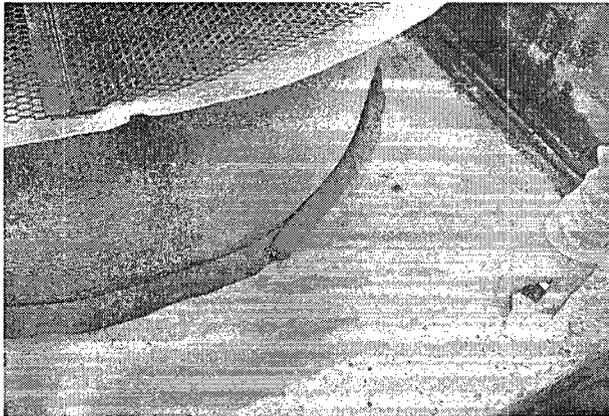


Photo 13: Fluids in secondary containment.



Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

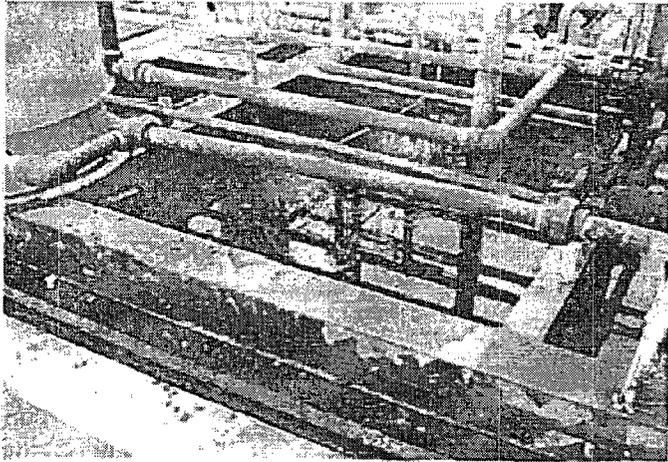
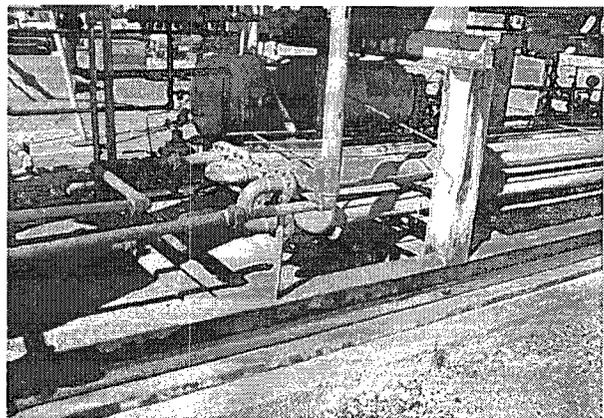
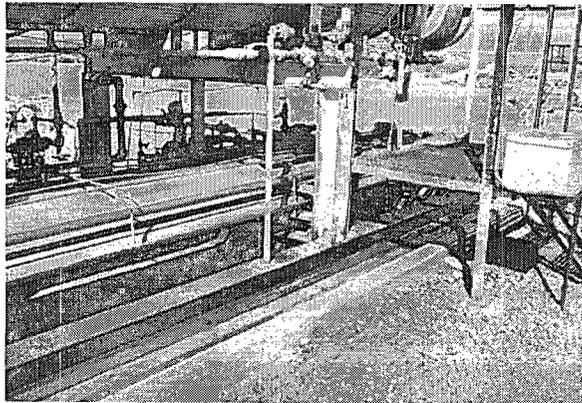


Photo 12: Standing fluids on skid.

Agave Photos from June 25 and September 18 Site Visits



OCD Photos from April 23 Inspections

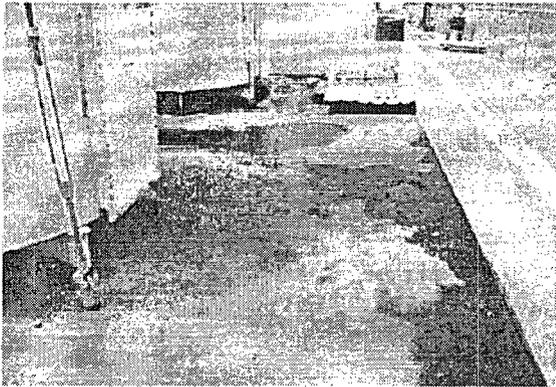


Photo 9: Dirty secondary containment.

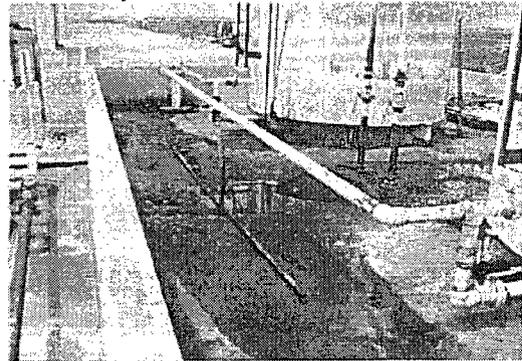
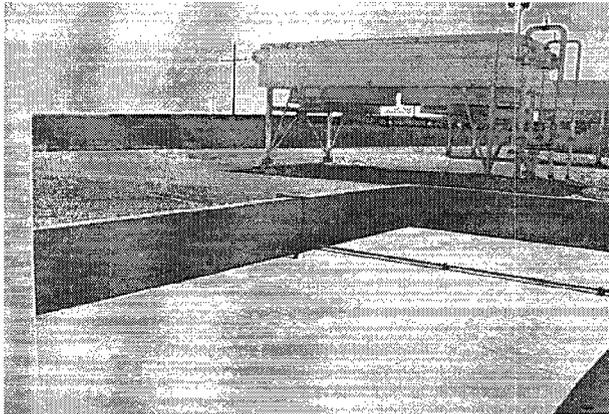
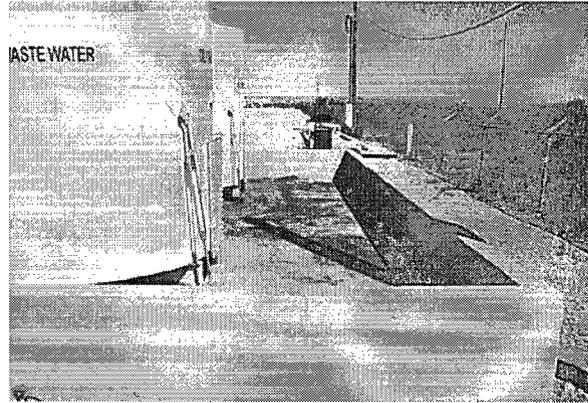
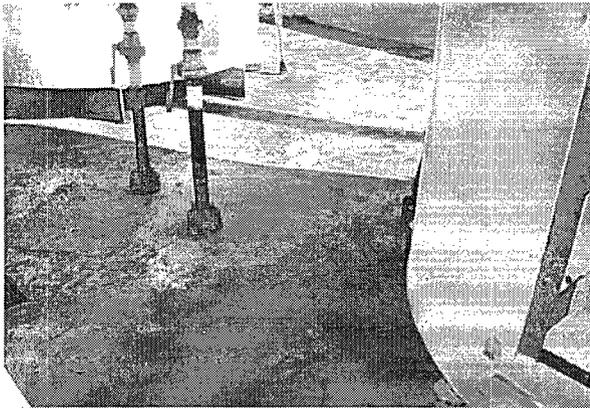


Photo 15: Fluids in secondary containment area.

Agave Photos from June 25 and September 18 Site Visits



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.*

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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.

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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 black ink that reads "Jennifer Knowlton". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jennifer Knowlton
Environmental Engineer



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 5761

**Re: Administrative Compliance Order—Agave Energy Company
Discharge Permit Renewal GW-050-7
Red Bluff #2 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-050-7 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 #2 Compressor Station on April 23, 2009, the inspector observed several secondary containment area sumps that were dirty and containing fluids. The Division inspector also observed standing fluids in a secondary containment area and an open top container almost at capacity. 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.

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Several areas of ground contamination were 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.

Waste was observed in secondary containment areas. Waste must not be staged on site for longer than 180 days unless approved by the Division.

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

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 #2 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 #2 Compressor Station. The Red Bluff #2 Compressor Station is a natural gas compressor station. The Red Bluff #2 Compressor Station is located in the NE/4 SE/4 of Section 2, Township 8 South, Range 25 East, Chaves County, New Mexico.

5. On May 8, 2006, the OCD issued Discharge Permit Renewal GW-050-7 (“GW-050-7”) to Agave for the Red Bluff #2 Compressor Station pursuant to the WQA and Water Quality Control Commission (“WQCC”) rules.

6. Condition 7 of GW-050-7 states:

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

7. During an inspection of the Red Bluff #2 Compressor Station on April 23, 2009, OCD inspector Leonard Lowe observed several drums without bungs. Additionally, several empty drums were not stored on their sides with the bungs in place and lined up on a horizontal plane.

8. Condition 4 of GW-050-7 states in relevant part:

The owner/operator shall abide by all commitments submitted in its March 2, 2006 discharge permit renewal application, including attachments and subsequent amendments and these conditions for approval.

9. In Agave’s Discharge Permit Renewal Application dated March 2, 2006, Agave gave the following Contingency Plan for reporting and cleanup of spills and releases:

a. Standard company policy is to immediately secure the area to insure the safety of personnel and the public.

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

10. During the April 23, 2009 inspection, OCD inspector Leonard Lowe observed several areas with ground contamination. Several releases had been covered up with clean soil.

11. OCD identified the violations to Agave in the initial discharge permit renewal that OCD sent Agave on May 21, 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-050-1.
4. Agave violated Condition 7 of GW-050-7 by not placing bungs in drums and not storing empty drums on their sides with the bungs in place and lined up on a horizontal plane.
5. Agave violated Condition 4 of GW-050-7 by not abiding by its commitment in its Discharge Permit Renewal Application dated March 2, 2006, to promptly and properly remediate spills and releases.

IV. COMPLIANCE ORDER

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

1. Agave shall place bungs in all drums and properly store drums in accordance with Condition 7. **Agave shall complete this by November 16, 2009.**
2. Agave shall immediately clean up the discharges as specified in its Contingency Plan attached to its Discharge Plan Application dated March 2, 2006 and shall dispose of the contaminated soil in accordance with OCD Rule 19.15.35.8 NMAC or at an OCD permitted surface waste management facility. **Agave shall complete this by November 16, 2009.**

V. CIVIL PENALTY

1. Section 74-6-10(F)(1) NMSA 1978 provides that if a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may

assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order, and suspend or terminate the permit violated by the person.

2. If 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

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

55

A. Signature

X *Matthew Joy*

Agent
 Addressee

B. Received by (Printed Name)

Jordan Biscoff

C. Date of Delivery

10-13-09

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

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

70009 09LN 0001 0919 57L1