UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

In the Matter of:	(	
	(	DOCKET NO's.
Giant Industries Arizona, Inc.	(	BLOOMFIELD PETROLEUM REFINERY
and	(	CAA-06-2004-3309
San Juan Refining Company	(	CINIZA PETROLEUM REFINERY
	(	CAA-06-2004-3310
	(	
Bloomfield, New Mexico	(	COMPLAINT AND
Ciniza, New Mexico	(	CONSENT AGREEMENT
	(	AND
Respondent	(	FINAL ORDER
	(	

COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Giant Industries Arizona, Inc. and San Juan Refining Company, with refineries located in Bloomfield, New Mexico and Ciniza, New Mexico (hereinafter "Respondent") in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order ("Complaint" and "CAFO").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Consent Agreement and Final Order.

I. PRELIMINARY STATEMENT

1. This enforcement proceeding is instituted by EPA pursuant to Section 113(d) of the Clean Air Act, ("CAA") as amended, 42 U.S.C. § 7413 (d), and 40 C.F.R. §§ 22.13, 22.18 and 22.34(b). This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (hereinafter "Complaint") incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the Act.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

4. Respondent waives its right to request a hearing on any issue of law or fact set forth herein and waives all defenses which have been raised or could have been raised to the claims set out in the Complaint for purposes of this proceeding only.

5. Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A), authorizes EPA enforcement of other requirements of the CAA (including violations of regulations promulgated under Sections 111, 112, and 114 of the CAA) by issuance of an administrative penalty order in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

9. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), 40 C.F.R. §§ 22.13 and 22.34(b), and 40 C.F.R. Part 19, authorizes the Administrator to issue a civil administrative

penalty of up to $27,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any rule promulgated under Sections 111, 112, and 114 of the Act.

10. Section 113(d)(1) of the CAA, also authorizes EPA to bring an administrative penalty action where the cited violations exceed $220,000 or the first alleged date of violation occurred more than 12 months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that a matter is appropriate for administrative action.

11. The U.S. Department of Justice and EPA have jointly determined that an administrative action is appropriate for the violations alleged herein and have, therefore, waived the limit on the age of the violations and dollar amount of the penalty pursuant to Section 113(d) of the CAA, 42 U.S. C. § 7413.

II. STATUTORY AND REGULATORY BACKGROUND

12. Pursuant to Section 111(b) of the Act, as amended November 15, 1990, 42 U.S.C. § 7411(b), EPA promulgated New Source Performance Standards (NSPS) regulations found at 40 C.F.R. Part 60 and National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations found at 40 C.F.R. Part 63. Included among the NSPS regulations are: (1) Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Petroleum Refinery Industry's Wastewater System found at 40 C.F.R. Part 60, Subpart QQQ; and (2) Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry found at 40 C.F.R. Part 60, Subpart VV. Included among the NESHAP regulations are (1) the General Provisions found at 40 C.F.R. Part 63, Subpart A applicable to owners and

operators of facilities subject to a specific NESHAP standard; and (2) National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) found at 40 C.F.R. Part 63, Subpart R.

13. Pursuant to 40 C.F.R. Part 63, Subpart CC [§ 63.640(o)(1)] (overlap of Subpart CC with other regulations for wastewater), a Group 1 wastewater stream managed in a piece of equipment that is also subject to the provisions of 40 C.F.R. Part 60, Subpart QQQ is required to comply only with this subpart.

14. Respondent's facilities each have a Group 2 wastewater stream as defined in 40 C.F.R. Part 63, Subpart CC (§ 63.641) and therefore are subject to the NSPS Standards for the wastewater systems for the "petroleum refinery industry" located at 40 C.F.R. Part 60, Subpart QQQ (§ 60.690).

15. The Respondent's facilities produce petroleum as defined in 40 C.F.R. Part 60, Subpart QQQ (§ 60.691).

16. According to 40 C.F.R. Part 60, Subpart QQQ [§ 60.690 (a)(1)], the provisions of 40 C.F.R. Part 60, Subpart QQQ are applicable to affected facilities located in petroleum refineries for which construction, modification, or reconstruction is commenced after May 4, 1987.

17. General Provisions which are applicable to any source that is subject to a Part 63 NESHAP are found at 40 C.F.R. Part 63, Subpart A.

18. Pursuant to 40 C.F.R. Part 63, Subpart A [§ 63.1(b)(1)], the provisions of this part apply to the owner or operator of any stationary source that emits or has the potential to emit any hazardous air pollutant listed in or pursuant to Section 112(b) of the CAA; and is subject to any

standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

19. Respondent's facilities emit (or have the potential to emit) one or more hazardous air pollutants identified in paragraph 54 and therefore are subject to the general provision requirements of the NESHAP Standards.

20. The Respondent's facilities each have a bulk gasoline terminal as defined in 40 C.F.R. Part 60, Subpart A (§ 60.421) and are thus subject to the NESHAP Standards for the Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) at 40 C.F.R. Part 60 Subpart R.

21. Pursuant to 40 C.F.R. Part 63, Subpart A [§ 63.7(b)], the owner/operator of an affected facility shall provide the Administrator at least 60 days prior notice of performance test of the vapor recovery unit at the gas loading rack so as to have opportunity to have an observer present.

22. Pursuant to 40 C.F.R. Part 63, Subpart R [§ 63.428(g)(1)], each owner or operator of a bulk gasoline terminal shall include in a semiannual report each loading of a gasoline cargo tank for which vapor tightness documentation had not been previously obtained by the facility.

23. Pursuant to 40 C.F.R. Part 63, Subpart R [§ 63.428(h)], each owner of a bulk gasoline terminal shall submit excess emission reports.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d), and as such is subject to regulation.

25. Respondent is incorporated in the State of Arizona and is authorized to do business in the State of New Mexico.

26. Respondent is an "owner" and "operator" as defined at Section 111(a)(5) of the Act and further defined at NSPS, 40 C.F.R., Part 60, Subpart A (60.2) and NESHAP, 40 C.F.R. Part 63, Subpart A (§ 63.2).

BLOOMFIELD PETROLEUM REFINERY

27. Respondent operates the Petroleum Refinery plant located on #50 Road 4990 in Bloomfield, New Mexico (hereinafter "Bloomfield facility"). The real property and fixed equipment at the Bloomfield facility is owned by San Juan Refining Company, a New Mexico corporation, which is a wholly owned subsidiary of Respondent.

28. Respondent's catalytic polymerization (CAT/POLY) petroleum refinery process unit is an affected facility as defined in 40 C.F.R., Part 60, Subpart QQQ (§ 60.691) and is therefore subject to 40 C.F.R. Part 60, Subpart QQQ requirements.

29. Pursuant to 40 C.F.R., Part 63, Subpart CC [§ 63.648(a)], each owner/operator subject to the provisions of this subpart shall comply with provisions of 40 C.F.R., Part 60, Subpart VV for any affected facility that commences construction or modification after January 5, 1981.

30. Respondent's facility is subject to the 40 C.F.R. Part 60, Subpart VV - NSPS Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (through NESHAP Subpart CC).

31. Section 112 of the CAA, 42 U.S.C. § 7412, as amended by the Clean Air Act Amendments of November 15, 1990, identifies and lists 189 air pollutants determined to be

hazardous and requires the Administrator to prescribe emission standards for categories of major sources that emit each such pollutant. These standards are known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), and rules promulgated under the above statutory authority are found at 40 C.F.R. Part 63.

32. On or about July 17-20, 2000, Respondent consented to the inspection of the facility by U.S. EPA, pursuant to Section 114 of the Act, 42 U.S.C. § 7414 (hereinafter "Bloomfield inspection").

33. Pursuant to 40 C.F.R. Part 60, Subpart QQQ [§ 60.692-2(a)(1)], each drain shall be equipped with water seal controls (so as to prevent emissions).

34. Pursuant to 40 C.F.R. Part 60, Subpart QQQ [§ 60.692-2(a)(2)], each drain in active service shall be checked by visual or physical inspection initially and monthly thereafter for indications of low water levels or other conditions that would reduce the effectiveness of the water seal controls.

35. Pursuant to 40 C.F.R. Part 60, Subpart QQQ [§ 60.692-2(a)(4)], whenever low water levels are identified, water shall be added as soon as practical, but not later than 24 hours after detection.

36. During the July 2000 Bloomfield inspection, it was noted that the refinery failed to maintain the required water seal control (dry water seal control devices) at two refinery wastewater drains (E7 and E9) located in the CAT/POLY petroleum refinery process unit.

37. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R. Part 60, Subpart QQQ (§ 60.692-2), and thereby violated Section 111 of the Act.

38. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.485(b)], the owner or operator shall determine compliance with 40 C.F.R. Part 60, Subpart VV (§§ 60.482, 60.483, and 60.484) by using Method 21 to determine presence of leaking resources. The instrument shall be calibrated before use each day of use, and calibration gases should be used (zero air and mixture of methane or hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane.

39. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.485(c)], owners or operators shall determine compliance with the no detectable emission standards by meeting requirements in Section 60.485 (b) and by using Method 21 to determine background level.

40. Pursuant to 40 C.F.R. Part 60, Appendix A, Method 21 (7.2) for Cylinder Gas, if cylinder calibration gas mixtures are used, they must be analyzed and certified by the manufacturer to be within 2 percent accuracy, and a shelf life must be specified. Cylinder standards must be either re-analyzed or replaced at the end of the specified shelf life.

41. During the July 2000 inspection at the facility, it was noted that the refinery's calibration gas, used for calibration of the LDAR program leak detection device, was expired. Because of this, the refinery used a leak detection device from at or about 2/04/2000 to 5/19/2000 that was not properly certified for use.

42. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R. Part 60, Appendix A, Method 21, 40 C.F.R. Part 60, Subpart VV [§§ 60.485(a) and 60.485(b)], and thereby violated Section 111 of the Act.

43. The Respondent initially conducted a performance test at the bulk gas loading terminal in December 1998 and again in May 2000, but failed to notify the EPA Region 6 Regional Administrator (the Administrator's delegatee or the State of New Mexico) prior to conducting this test.

44. Respondent, therefore, violated the NESHAP regulations found at 40 C.F.R. Part 63, Subpart A [§ 63.7(b)], and thereby violated Section 111 of the Act.

45. In reviewing the Facility's semi-annual reports (submitted 9/17/1999, 3/15/2000, 9/08/2000, 2/16/2001, and 9/11/2001), EPA identified that the cargo tank vapor tightness certifications and VRU excess emission reports were not included in the reports. Upon follow-up, Facility representatives stated that they were unable to provide any other documentation that identified the above required information from September of 1999 through 2002.

46. Respondent, therefore, violated the NESHAP regulations found at 40 C.F.R. Part 63, Subpart R [§§ 63.428(g)(1) and 63.428h(1)], and thereby violated Section 111 of the Act.

CINIZA PETROLEUM REFINERY

47. Respondent owns and operates the Petroleum Refinery plant located on Highway I-40 (at Exit 39) approximately 19 miles east of Gallup, New Mexico (hereinafter "Ciniza facility").

48. Respondent installed a Diesel Hydrodesulfurization Unit (DHU) in 1993 which discharges oily wastewater to the oil water separator through the wastewater system and is a new individual drain system as defined in 40 C.F.R. Part 60, Subpart QQQ (§ 60.691).

49. According to 40 C.F.R, Part 60, Subpart QQQ [§ 60.690 (b)] the construction or installation of a new individual drain system shall constitute a modification to an affected facility described in 40 C.F.R, Part 60, Subpart QQQ [§ 60.690(a)(4)] as an aggregate facility.

50. According to 40 C.F.R, Part 60, Subpart QQQ (§ 60.691), an aggregate facility means an individual drain system together with ancillary downstream sewer lines and oil-water

separators. Thus, the installation of the DHU constituted a modification of the oil water separator.

51. Pursuant to 40 C.F.R. Part 63, Subpart CC [§ 63.648(a)], each owner/operator subject to the provisions of this subpart shall comply with provisions of 40 C.F.R. Part 60, Subpart VV [§ 60.480(b)] for any affected facility that commences construction or modification after January 5, 1981.

52. According to 40 C.F.R. Part 60, Subpart VV [§ 60.480(a)(2)], an "affected facility" includes all "equipment" as that term is defined in 40 C.F.R. Part 60, Subpart VV (§ 60.481).

53. Respondent's ISOM unit is an "affected facility" which has valves as defined in 40 C.F.R. Part 60, Subpart VV (§ 60.481), which are "equipment" as defined above.

54. Section 112 of the CAA, 42 U.S.C. § 7412, as amended by the Clean Air Act Amendments of November 15, 1990, identifies and lists 189 air pollutants determined to be hazardous and requires the Administrator to prescribe emission standards for categories of major sources that emit each such pollutant. These standards are known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), and rules promulgated under the above statutory authority are found at 40 C.F.R. Part 63.

55. On or about April 23-26, 2001, Respondent consented to the inspection of the Ciniza facility by U.S. EPA, pursuant to Section 114 of the Act, 42 U.S.C. § 7414 (hereinafter "Ciniza inspection").

56. Pursuant to 40 C.F.R. Part 60, Subpart QQQ [§ 60.692-3(a)], each oil-water separator tank or auxiliary equipment shall be equipped and operated with a fixed roof, which meets the requirements of Section 60.693-2.

57. Pursuant to 40 C.F.R. Part 60, Subpart QQQ [§ 60.692-3(b)], each oil-water separator tank or auxiliary equipment with a design capacity to treat more than 16 liters per second [250 gallons per minute (gpm)] of refinery wastewater shall be equipped and operated with a closed vent system and control device.

58. During the inspection at the facility, it was noted that the oil-water separator had a design capacity of more than 250 gpm, but failed to be equipped and operated with a fixed roof or a closed vent system and control device.

59. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R, Part 60, Subpart QQQ (§ 60.692-3), and thereby violated Section 111 of the Act.

60. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.482-7(a)], each valve shall be monitored monthly to detect leaks.

61. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.482-7(b)], if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

62. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.482-7(d)], when a leak is detected it shall be repaired as soon as practical, but no later than 15 calendar days. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

63. During the inspection at the facility, EPA conducted comparative leak detection and repair monitoring at the Isomerization (ISOM) Unit. Comparative readings were taken on the same components using two leak detection devices: EPA's COSMOS XP-315 gas detector (Serial No. 000921) and the Respondent's OVA-108.

64. During the inspection, it was observed that the last time the ISOM unit was monitored prior to the inspection was on April 18, 2001. The following table represents a

comparison in the leak detection monitoring results that the Respondent recorded on April 18, 2001, and the EPA findings when its inspector monitored the same valves during the inspection:

		LEAK RATE DETECTED (ppm)	
Tag No.	**Facility (4/18/01)**	**COSMOS (4/25-26/01)**	**OVA-108 (4/25-26/01)**
4921	> 10,000 (leak)	> 10,000	> 10,000
4714	> 10,000 (leak)	> 10,000	> 10,000

65. As the table on paragraph 44 indicates, the Respondent had identified two leaking valves in its monitoring on April 18, 2001, which were still leaking on April 25, 2001. Respondent was unable to demonstrate that the first attempt at repair had been made on the leaking valves within five days.

66. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R, Part 60, Subpart VV (§ 60.482), and thereby violated Section 111 of the Act.

67. Pursuant to 40 C.F.R. Part 60, Subpart VV [§ 60.486(e)], the Respondent must have a list including all identification numbers for equipment subject to these requirements.

68. During the inspection, it was noted that six valves (located in the ISOM unit) were not tagged (marked with identification) and were not identified on the master LDAR equipment list. The following list represents the components not tagged/identified and their location in the Facility.

Component	Location (ISOM UNIT)
4" Valve	Located next to 3" valve tagged No. 4431
Valve	Located on west side 4" valve number 4434
Valve	Located on west side 4" valve number 4434
Valve	Located on west side 4" valve number 4434
Valve	Located on north side of 3/4" valve number 4019
Valve	Located on north side of 3/4" valve number 4019

69. During the inspection, it was noted that the un-identified valves described in paragraph 68 appeared to be in the same service as valves identified to be in VOC service during the inspection and included in the Facility's LDAR program. The 4" valve located next to the valve tagged as No. 4431 indicated a reading of 4000 ppm when monitored.

70. Respondent stated during an April 15, 2003 meeting, that the valves were new and the Facility had not had an opportunity to put tags on them to properly identify them.

71. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R, Part 60, Subpart VV [§ 60.486(e)], and thereby violated Section 111 of the Act.

72. Pursuant to 40 C.F.R. Part 60, Subpart VV (§ 60.482-1), each owner or operator shall demonstrate compliance with requirements 482-1 to 482-10 for all equipment within 180 days of initial startup.

73. During the inspection, it was noted that a strong odor emitted from approximately twenty-five mechanical and pneumatic actuators. Respondent admitted during an April 15, 2003 meeting, that packing glands in the actuator valves leak.

74. During the inspection, it was noted that EPA representatives could not utilize EPA's COSMOS XP-315 gas detector (Serial No. 000921) to obtain an air emission reading, due to physical interferences.

75. The respondent failed to prevent leaking from occurring by using equipment without necessary specifications to prevent leaking, thus failing to demonstrate compliance.

76. Respondent, therefore, violated the NSPS regulations found at 40 C.F.R. Part 60, Subpart VV (§ 60.482-1), and thereby violated Section 111 of the Act.

77. The Respondent initially conducted a performance test at the bulk gas loading terminal in May 1999, but failed to notify the EPA Region 6 Regional Administrator (the Administrator's delegatee) or the State of New Mexico prior to conducting this test.

78. Respondent, therefore, violated the NESHAP regulations found at 40 C.F.R. Part 63, Subpart A [§ 63.7(b)], and thereby violated Section 111 of the Act.

79. In reviewing the Facility's semi-annual reports (submitted 9/17/1999, 3/15/2000, 9/08/2000, 2/16/2001, and 9/11/2001), EPA identified that the cargo tank vapor tightness certifications and VRU excess emission reports were not included in the reports. Upon follow-up, Respondent stated that they were unable to provide any other documentation that identified the above required information from September of 1999 through 2002.

80. Respondent, therefore, violated the NESHAP regulations found at 40 C.F.R. Part 63, Subpart R [§§ 63.428(g)(1) and 63.428(h)(1)], and thereby violated Section 111 of the Act.

IV. COSTS

81. Each party shall bear its own costs and attorneys fees.

V. COMPLIANCE RESPONSIBILITY

82. Giant (Bloomfield Petroleum Refinery and Ciniza Petroleum Refinery) has returned to compliance with all alleged CAA violations as set out above. However, Giant (Bloomfield Petroleum Refinery and Ciniza Petroleum Refinery) shall continue to comply with all applicable provisions of the CAA and all amendments thereto, all regulations promulgated under the CAA, and all applicable federally authorized state analogs of the CAA and such regulations, including all notification, recordkeeping, monitoring, and emission limitation requirements applicable to the CAA.

83. Pursuant to the authority granted in Section 113(d) of the Act, 42 U.S.C. § 7413(d), together with 40 C.F.R. § 22.34(b), and 40 C.F.R. Part 19, which authorizes EPA to assess a civil administrative penalty, and upon consideration of the entire record herein, including the above Findings of Fact and Conclusions of Law (which are adopted and made a part hereof), and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payments by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and other factors as justice requires, and Respondent's agreement to perform two Supplemental Environmental Projects ("SEPs") ; EPA has determined that an appropriate civil penalty to settle this action is in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000).

84. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEPs.

85. Payment of the civil penalty shall be made no later than thirty (30) calendar days after the effective date of this CAFO. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk.

86. Respondent's payment shall be made by mailing a cashier's check or certified check payable to "Treasurer of the United States of America." The check shall be mailed to the following address:

Regional Hearing Clerk
U.S. EPA, Region 6
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The words "Docket No's. CAA-06-2004-3309 (for Bloomfield Petroleum Refinery) and CAA-06-2004-3310 (for Ciniza Petroleum Refinery)" should be clearly typed on the check to ensure proper credit.

87. Respondent may choose to pay the full assessed civil penalty via FedWire Electronic Funds Transfer ("EFT"). If Respondent chooses this option it shall submit the EFT to the following:

Mellon Bank
ABA 043000261
Account: 9109125
22 Morrow Drive
Pittsburgh, PA 15235
Telephone: 412-234-4381

At the time of the EFT payment Respondent shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the EPA docket number) in accordance with paragraph 88 of this CAFO.

88. Respondent shall send simultaneous notice of the payment, including a copy of the cashier's check or certified check to the following individuals:

Jan Gerro (RC-EA)
Enforcement Counsel
U.S. EPA, Region 6
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202-2733

Esteban Herrera (6EN-AA)
Air Enforcement Officer
U.S. EPA, Region 6
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202-2733

89. If EPA does not receive payment of the civil penalty on or before the due date, interest will accrue on the amount due from the effective date of the CAFO at the current annual rate prescribed and published by the Secretary of the Treasury in the federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment.

90. If payment is overdue, EPA will also impose a late payment handling charge of $15 pursuant to 31 U.S.C. § 3717, with an additional delinquent notice charge of $15 for each subsequent thirty (30) day period. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the due date.

91. Failure to pay the civil penalty in a timely manner pursuant to Section V of this CAFO may result in the forwarding of this action to the United States Department of Justice for collection of the amount due plus interest and stipulated penalties.

92. Finally, pursuant to 42 U.S.C. § 7413(d), should Respondent fail to pay on a timely basis the amount of the assessed penalty, Respondent shall pay - in addition to such assessed penalty, interest and handling charges - the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings.

93. The penalty specified in Paragraph 83 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

94. Respondent shall complete the following SEPs, which the parties agree are intended to secure significant environmental or public health protection and improvements. Not more than thirty (30) days after receiving a copy of the Consent Agreement signed by the Regional Administrator, Respondent shall identify one or more SEPs. One of the SEPs will be determined

in collaboration with local health care providers selected by Respondent and approved by EPA, designed to benefit the public health of the communities of McKinley County and San Juan County, New Mexico. A second SEP will be designed to reduce idling time in the Respondent's crude oil truck fleet, by the installation of lower emission auxiliary coolant heaters, circulating coolant with an electric motor.

95. Respondent shall complete the SEPs as more specifically described in the scope of work ("SOW"), attached hereto as Exhibit A and incorporated herein by reference.

96. The total expenditure for the SEP shall be not less than ONE HUNDRED THOUSAND DOLLARS ($100,000) in accordance with the specifications set forth in the SOW. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

97. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

98. Respondent shall submit a SEP Completion Report to EPA in accordance with Exhibit A. The SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented;
(ii) A description of any operating problems encountered and the solutions thereto;
(iii) Itemized costs;
(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and

(v) A description of the environment and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

99. Respondent shall submit any additional reports required by the SOW to EPA in accordance with the schedule and requirements recited therein.

100. Respondent shall submit all notices and reports required by the CAFO to Esteban Herrera (6EN-AA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733

101. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

102. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

103. Respondent shall continuously use or operate any systems installed as the SEP for not less than three (3) years subsequent to installation.

104. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA

not more than seven days afer a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

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

a. After receipt of the SEP Completion Report described in paragraph 98 above, EPA will notify the Respondent, in writing, regarding: i) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily: or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with this CAFO.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Order.

105. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was

undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the CAA."

106. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local permits, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

107. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA (Esteban Herrera) certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

108. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413 for the violations alleged in the Complaint (included herein), and areas of concern as set out in the inspection report relating to the July 17 through 20, 2000 inspection of the Bloomfield facility, and areas of concern as set out in the inspection report relating to the April 23 through 26, 2001 inspection of the Ciniza facility. Nothing in the CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and the responsibility of Respondent to comply with such laws and regulations.

109. The New Mexico Environment Department ("NMED") has issued an NMED Stipulated Final Order ("NMED Order") of even date herewith, alleging that the Respondent is and was in violation of the applicable Clean Air Act regulatory requirements, and other state statutory and regulatory requirements. The NMED Order requires the Respondent to complete the injunctive relief no later than December 31, 2012.

110. The Parties agree that: (a) settlement of the matters set forth in this Complaint and CAFO (filed herewith), and the NMED Order of even date herewith is in the best interest of the Parties and the public; and (b) entry of this CAFO without litigation is the most appropriate means of resolving this matter.

111. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of the Consent Agreement and to execute and legally bind that party to it.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: July 13, 2005

Leroy Crow
Executive Vice President
Giant Industries Arizona, Inc.
and San Juan Refining Company
Respondent

FOR THE COMPLAINANT:

Date: July 22/2005

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

This Consent Agreement and Final Order is hereby adopted and issued pursuant to Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint and areas of concern as set out in the inspection report relating to the July 17 through 20, 2000 inspection of the Bloomfield facility, and areas of concern as set out in the inspection report relating to the April 23 through 26, 2001 inspection of the Ciniza facility. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. 40 C.F.R.§ 22.31(b) provides that this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated July 28, 2005

Richard E. Greene
Regional Administrator

Exhibit A

Scope of Work

A. Respondent shall conduct one or more SEPs, which will be determined in collaboration with local health care providers selected by Respondent and approved by EPA, designed to benefit the public health of the communities of McKinley and San Juan County, New Mexico.

B. Respondent shall conduct one or more SEPs, which will be designed to reduce idling time in the Respondent's crude oil truck fleet, by the installation of lower emission auxiliary coolant heaters, circulating coolant with an electric motor.

C. Respondent shall submit for EPA's approval, a written proposal for each such SEP. Upon written approval, Respondent shall implement the submitted project(s) and submit the SEP Completion Report within thirty (30) days of completion of the SEP as provided in the schedule below.

D. Respondent at its option may complete such approved SEPs upon the following schedule (unless EPA approves in writing an extension of any of these deadlines):

a. $25,000 in SEPs within one year of the effective date of this CAFO;
b. an additional $25,000 in SEPs within two years of the effective date of this CAFO, for an aggregate to date of $50,000;
c. an additional $25,000 in SEPs within three years of the effective date of this CAFO, for an aggregate to date of $75,000; and
d. an additional $25,000 in SEPs within four years of the effective date of this CAFO, for a final total of $100,000.

E. If Respondent does not expend funds in accordance with the above schedule by the specified due date, or a later date approved by EPA as specified above, Respondent shall pay a stipulated penalty equal to the difference between the amount expended as demonstrated in the approved SEP Completion Report(s) and the amount due according to the above schedule. The stipulated penalty shall be paid to EPA in the manner specified in this CAFO. Respondent at its option may at any time complete SEPs in advance of the amounts and due dates specified above, with any excess dollar credits to be carried forward and applied to the amount due in future years.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2005, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (Complaint and CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct file-stamped copy of the fully executed Complaint and CAFO was addressed to the following by the service method listed:

CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7099 3220 0001 4431 9750

Mr. Kim H. Bullerdick
Senior Vice President
General Counsel and Secretary
23733 North Scottsdale Road
Scottsdale, Arizona 85255

Sandra Hardy
Sandra Hardy
Paralegal