

GW - 032

FINANCIAL ASSURANCE

2010 - Present



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone (505) 476-6000 Fax (505) 476-6030
www.nmenv.state.nm.us



DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 15, 2011

Leslie Ann Allen
Senior Vice President
Health, Safety, Environment and Regulatory Affairs
Western Refining
123 W. Mills Avenue, Suite 200
El Paso, TX 79901

**RE: NMED RESPONSE TO THE MARCH 31, 2011
FINANCIAL ASSURANCE SUBMITTAL FOR
GALLUP REFINERY EPA ID# NMD000333211 AND
BLOOMFIELD REFINERY EPA ID # NMD089416416
WESTERN REFINING SOUTHWEST, INC.
HWB-WRG-MISC AND HWB-WRB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed Western Refining, Southwest, Inc. (Western) March 31, 2011 financial assurance submittal. Western indicates the performance bonds currently held by NMED are subject to renewal May 24, 2011. Western requests a reduction of both performance bonds to the amounts identified in the 2011 cost estimate submittals (Bloomfield cost estimate-January 28, 2011 and Gallup cost estimate-March 30, 2011). NMED hereby approves the cost reduction of the Gallup performance bond from \$2,874,786 to \$1,394,252. NMED does not approve the reduction of the Bloomfield performance bond to \$1,045,191. The cost estimate of the January 28, 2011 submittal does not account for the cost estimate for closure and post-closure care of the North and South Aeration Lagoons. As previously stated by NMED, Western must either add an addition \$1,100,000 to the closure and post closure cost estimate for the Aeration Lagoons or demonstrate that the additional financial assurance necessary for closure is different from the estimate provided by NMED (a detailed cost estimate must be included). The performance bond for Bloomfield may

Western Refining Southwest, Inc.

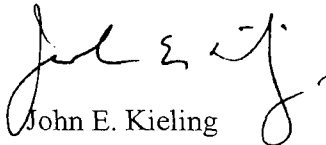
April 15, 2011

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be reduced to \$2,145,191 (January 28, 2011 cost estimate \$1,045,191 plus the \$1,100,000 NMED's April 5, 2011 response to Westerns March 15, 2010 Financial Assurance submittal). At this time there were no noted deficiencies with the Hazardous Waste Facility Certificate of Liability Insurance.

The updated financial assurance documents are due to NMED on or before May 24, 2011. If you have any questions, please contact Hope Petrie of my staff at 505-476-6045.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Kieling', is written over the printed name.

John E. Kieling
Program Manager
Permits Management Program
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
H. Monzeglio, NMED HWB
K. VanHorn, NMED HWB
L. King EPA Region 6 (6PD-N)
C. Chavez, OCD
A. Hains, Western
WRB & WRG 2011 Reading File
HWB-WRG-MISC, HWB-WRB-MISC



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RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 15, 2011

Mr. Randy Schmaltz
Environmental Manager
Western Refining Southwest, Inc.
Bloomfield Refinery
P.O. Box 159
Bloomfield, New Mexico 87413

**RE: FINANCIAL ASSURANCE COST ESTIMATE – JANUARY 2011
PER ORDER NO. HWB 07-34 (CO)
WESTERN REFINING SOUTHWEST, INC., BLOOMFIELD REFINERY
EPA ID # NMD089416416
HWB-WRB-MISC**

Dear Mr. Schmaltz

The New Mexico Environment Department (NMED) has completed its review of the Western Refining Southwest, Inc., Bloomfield Refinery (Western) January 28, 2011 financial assurance cost estimate. The cost estimate was submitted pursuant to Section III.P.2 (Adjustments to Cost Estimates) of the July 27, 2007 Order NO. HWB 07-34 (Order).

Pursuant to Section III.P.2 of the Order, Western must continue to adjust the cost estimates annually and submit the adjusted cost estimates to NMED by January 31 of each year. In accordance with Section III.P.4, within 90 days of this approval, Western shall establish and continuously maintain financial assurance for corrective action in the amount equivalent to the current estimated cost of work. Western shall use one or more of the mechanisms set forth in 40 CFR 264.143 and 264.145 to establish financial assurance. Western shall establish and maintain such financial assurance substantially in compliance with 40 CFR 264.143, 264.145, and 264.151, except that there shall be no "pay-in period" unless a required change in the cost estimate will result in an increase of at least one million dollars and Western proposes a pay-in-period that NMED approves in writing. Any changes to the financial assurance mechanisms

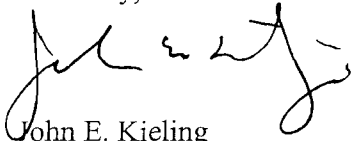
Mr. Schmaltz
April 15, 2011
Page 2

must be approved by NMED. Western shall submit a signed copy of each financial assurance document to NMED within thirty days after the document is executed.

The cost estimate does not include a cost estimate for final closure of the North and South Aeration Lagoons. The *Final Closure Plan North and South Aeration Lagoons* (Closure Plan), dated January 2011 is not yet approved. Within 90 days of NMED's approval of the Closure Plan, Western must submit a cost estimate for final closure (40 CFR 264.112(b)(8)) that assumes complete removal of the lagoons and all underlying contaminated soils. The estimate must include all costs for removal of equipment, structures, and contaminated soils, sampling and chemical analyses, monitoring, reporting, transport and disposal of removed materials, backfilling and any engineering or other related costs. The cost estimate must include complete descriptions of the assumptions made for each activity (e.g., volumes, unit costs).

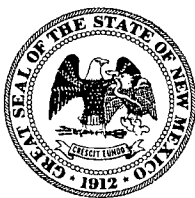
If you have questions regarding this letter please contact Hope Petrie of my staff at 505-476-6045.

Sincerely,



John E. Kieling
Program Manager
Permits Management Program
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
H. Monzeglio, NMED HWB
C. Chavez, OCD
A. Hains, Western
File: HWB-WRB-MISC and Reading File 2011



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Governor

JOHN A. SANCHEZ
Lieutenant Governor

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DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 8, 2011

Leslie Ann Allen
Senior Vice President
Health, Safety, Environment and Regulatory Affairs
Western Refining
123 W. Mills Avenue, Suite 200
El Paso, TX 79901

**RE: SECOND NOTICE OF DISAPPROVAL
FINANCIAL ASSURANCE
GALLUP REFINERY EPA ID# NMD000333211
BLOOMFIELD REFINERY EPA ID # NMD089416416
WESTERN REFINING SOUTHWEST, INC.
HWB-WRG-MISC AND HWB-WRB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed the Western Refining, Southwest, Inc. (Western) January 21, 2011 financial assurance submittal and hereby issues this Second Notice of Disapproval (NOD). Western must address the deficiencies identified below in the next financial assurance submittal due March 31, 2011.

1. In the cover letter, Western cites regulations that refer to a surety bond. Western is using a performance bond as provided at 40 CFR 264.143(c) and 264.145(c) for Gallup and 265.143 (c) for Bloomfield. Ensure the next submittal references the correct regulatory citations.

2. Hazardous Waste Facility Certification of Liability Insurance:

The wording of the Hazardous Waste Facility Certification of Liability Insurance (HWFCLI) does not contain the same wording found at 40 CFR 264.151(j). Western must revise the HWFCLI as indicated below in the March 2011 submittal.

- a. Number 2, item (b) of the HWFCLI states “[t]he Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for such payment made by the Insurer.” The term “any” is missing from the sentence. In accordance with 40 CFR 264.151(j), the sentence must state “[t]he Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for **any** such payment made by the Insurer.” Revise the HWFCLI to include the word any in the sentence.
- b. Number 2, Item (c) of the HWFCLI states “[w]henever requested by the U.S. EPA, the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.” The term “a Regional Administrator of the” is missing from the sentence. In accordance with 40 CFR 265.151(j), this sentence must state “[w]henever requested by **a Regional Administrator of the** U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.” Revise the HWFCLI accordingly.
- c. Number 2, item (d) of the HWFCLI states “[c]ancellation of the insurance, whether by the Insurer **or** the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Secretary of the New Mexico Environment Department.” This sentence included the word or and is missing the term “a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility.” In accordance with 40 CFR 265.151(j), this sentence must state “[c]ancellation of the insurance, whether by the insurer, the insured, **a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility**, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Secretary of the New Mexico Environment Department.” Revise the HWFCLI accordingly.

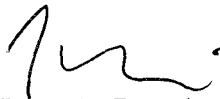
Western Refining Southwest, Inc.
March 8, 2011
Page 3 of 3

3. Cost Estimates for the Land Treatment Unit:

In the March 2011 submittal, include updated detailed written cost estimates, in current dollars, of the cost for post-closure care of the Land Treatment Unit. Refer and comply with the cost estimate for post-closure found at 40 CFR 264.144.

All comments must be addressed in the March 31, 2011 financial assurance submittal. If you have any questions, please contact Hope Petrie of my staff at 505-476-6045.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

BRZ:hp

cc: R. Solomon, Acting Director, NMED WWMD
J. Kieling, NMED HWB
D. Cobrain, NMED HWB
H. Monzeglio, NMED HWB
K. VanHorn, NMED HWB
L. King EPA Region 6 (6PD-N)
C. Chavez, OCD
A. Hains, Western
WRB & WRG 2010 Reading File
HWB-WRG-MISC, HWB-WRB-MISC



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Governor

DIANE DENISH
Lieutenant Governor

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Santa Fe, New Mexico 87505-6303
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RON CURRY
Secretary

SARAH COTTRELL
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 13, 2010

Leslie Ann Allen
Senior Vice President
Health, Safety, Environment and Regulatory Affairs
Western Refining
123 W. Mills Avenue, Suite 200
El Paso, TX 79901

RE: **NOTICE OF DISAPPROVAL
FINANCIAL ASSURANCE
GALLUP REFINERY EPA ID# NMD000333211 AND THE
BLOOMFIELD REFINERY EPA ID # NMD089416416
WESTERN REFINING SOUTHWEST, INC.
HWB-WRG-MISC AND HWB-WRB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed Western Refining, Southwest, Inc. (Western) May 26, 2010 financial assurance submittal and hereby issues this Notice of Disapproval (NOD). Western must address the deficiencies identified below.

Comment 1

Western states in the cover letter that "[t]his letter and attachments provide financial assurance for facilities at Western Refining Southwest, Inc. (Western), Gallup and Bloomfield Refineries in the form of two surety bonds guaranteeing payment...[f]inancial assurance for the Gallup refinery and Bloomfield refinery facilities are provided under 40 CFR 264.143(f) for closure and for post closure care pursuant to 40 CFR 264.145(f)." Reference to 40 CFR 264.143(f) and 40 CFR 264.145(f) for closure and post closure care refer to the financial test and corporate guarantee mechanisms. The financial assurance mechanism for this submittal is a surety bond

guaranteeing payment into a closure trust fund in accordance with 40 CFR 264.143(b) and 264.145(b) for Gallup and 265.143(b) for Bloomfield. Western must ensure the response letter references the correct regulations.

Comment 2

The Financial Guarantee Bond (FGB) wording, for both the Bloomfield and Gallup Refineries, does not comply with the wording requirements found in 40 CFR 264.151(b). The following discrepancies have been identified for each refinery:

- a. The wording in 40 CFR 264.151(b) states "Principal: [legal name and business address of the owner and operator]." Page 1 of the FGB for the Bloomfield Refinery has the Principal as "San Juan Refining Company, as the owner, and Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc., as operator." However, the cover letter does not mention the San Juan Refining Company and recent submittals from Bloomfield list the owner as Western Refining, Inc. and the operator as Western Refining Southwest, Inc. Further, Western provided the physical and mailing addresses of the Bloomfield Refinery. Western must clarify the business address of the owner and operator. Western must revise Bloomfield's FGB to cite the correct owner/operator, as well as include the associated business address(es) required by the regulations.
- b. The wording of 40 CFR 264.151(b) states "Principal: [legal name and business address of the owner and operator]." Page 1 of the FGB for the Gallup Refinery has the Principal as "Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc. and formerly doing business as Giant Refining Company Ciniza Refinery." This statement does not identify the owner or the operator. The FGB also does not reference the Gallup Refinery as provided in the cover letter and recent submittals from Gallup indicating the owner as Western Refining, Inc. and the operator as Western Refining Southwest, Inc. Further, Western provided the physical and mailing addresses for the Gallup Refinery. Western must revise Gallup's FGB to cite the correct owner/operator and include the associated business address(es) required by the regulations.
- c. The last page of the FGB for Bloomfield, under the "Principal," Western lists "San Juan Refining Company, as owner." Western must revise the FGB to cite the correct Principal; see item a above.
- d. The last page of the FGB for the Gallup Refinery, under the "Principal," Western lists "Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc. and formerly doing business as Giant Refining Company Ciniza Refinery." Western must revise the FGB to cite the correct Principal; see item b above.

- e. The last pages of the FGBs for the Bloomfield and Gallup Refineries are missing the signature section under Principal. The regulations for the FGB in 40 CFR 264.151(b) states “**Principal** [Signature(s), [Name(s)], [Title(s)], and [Corporate Seal].” The FGBs are missing the [Name(s)] and [Title(s)]. Western must revise the FGBs to comply with 40 CFR 264.151(b).
- f. Western is missing information on the last pages of the FGBs for the Bloomfield and Gallup Refineries under the “**Corporate Surety(ies)**.” The FBGs state **Corporate Surety**, whereas, the regulations state **Corporate Surety(ies)**. Further, Western is missing the State of incorporation, Liability Limit:\$, co-surety, if any, and the Bond premium:\$. Western must revise the FGBs to include this information in accordance with 40 CFR 264.151(b).
- g. The FGBs for the Bloomfield and Gallup Refineries list the surety as being issued by Bond Safeguard Insurance Company with an address in Tennessee. However, the Circular 570 provides a different address (10002 Shelbyville Road, Suite 100, Louisville, KY 40223) in Kentucky. If both addresses are correct, Western must provide an explanation for this in the response letter or revise the FGB to provide the correct address.

Comment 3

The following items refer to the actual bonds from Bond Safeguard Insurance Company for the Gallup and Bloomfield refineries (Ciniza AO 28580 and San Juan Refining Company AO 28579).

- a. The official notary seal for Maureen K. Aye states “[m]y Commission Expires 9/21/2009.” These bonds were issued on May 24, 2010, therefore, the notaries of these bonds are not valid. Western must submit the bond with a current notary seal.
- b. The bond numbers on each bond (AO 28579 and AO 28580) do not match the bond numbers on page 1 of the FGB (i.e., San Juan Refining Company Surety’s Bond number 5036638 and Ciniza Surety’s Bond number 5036639). Western must correct this discrepancy or, if the Bond numbers are correct, explain how the bond numbers were derived.

Comment 4

The Trust Agreement wording for the Bloomfield and Gallup Refineries do not comply with the wording requirements found in 40 CFR 264.151(a)(1). The following discrepancies have been identified for each refinery

- a. In 40 CFR 264.151(a)(1) under the Trust Agreement, the last sentence of the first paragraph, the following is stated: “[insert “incorporated in the State of ____” or “a national bank”], the “Trustee.” The Trust Agreements for the Bloomfield and Gallup refineries state “a national banking association” instead of “a national bank.”

Western must revise these paragraphs to include the wording as stated in the regulations.

- b. In the Trust Agreements, the Refineries are referred to as the Ciniza and San Juan Refining Company. However, the cover letter lists the refineries as the Gallup and Bloomfield. Western must correct these discrepancies throughout the submittal and use the current name(s) of the refineries. Western must revise the Trust Agreements accordingly.
- c. The last portion of the Trust Agreement in 40 CFR 264.151(a)(1) requires the [Signature of the Grantor] and [Title]; Attest: [Title], [Seal], and [Signature of the Trustee]; and Attest: [title] and [Seal]. However, the Trust Agreements for both Refineries are missing information for the "Attest". Western must revise the Bloomfield and Gallup Trust Agreements to include all information for the Attest, clarify that US Bank, N.A. is the trustee, and ensure all information for this portion of the Trust Agreement complies with the information required in the regulations.
- d. The Trust Agreements for Bloomfield and Gallup refineries are missing the certification of acknowledgement, required under 40 CFR 264.151(a)(2), which must accompany the Trust Agreement for a trust fund. Western must revise the Trust Agreement to include the certification of acknowledgement.
- e. Western must revise the language in Exhibit A, which is addressed in **Section 14. Instruction to the Trustee** found in 40 CFR 264.151(a)(1) to state "Attached to Trust Agreement between _____[Bound Holder] And _____[Bond Issuer] Persons designated to sign orders, requests, and instructions to the trustee: [provide the names, titles, and signatures]."
- f. Schedule B of the Trust Agreements for the Bloomfield and Gallup Refineries must be revised to state "This trust is currently unfunded (i.e., standby trust). Under the terms of an established Surety Bond, all payments made there under will be deposited by the surety directly into the standby trust fund in accordance with instructions from the New Mexico Environment Department."

Comment 5

The Penal sum of FGB for the Gallup Refinery is \$2,874,786 and the Bond Safeguard Insurance Company's (the Surety) underwriting limitation is \$2,362,000. The underwriting limitation of the Surety cannot be a lower monetary value than the closure/post-closure costs. In addition, the combined penal sum for the Gallup and Bloomfield Refineries is \$5,059,002 and the combined value of the closure/post-closure costs is greater than the underwriting limitation of Bond Safeguard Insurance Company as well. Western must either acquire a new or additional surety bond for both facilities in which the underwriting limitation is greater than the combined value of the closure/post-closure costs or acquire a new or additional surety bond for the Gallup Refinery.

Western Refining Southwest, Inc.
October 13, 2010
Page 5 of 5

Comment 6

Western must submit updated cost estimates for closure and post-closure at the Gallup (Ciniza) Refinery for the Bloomfield (San Juan Refining) Refinery as they were derived for the financial assurance submittal (see 40 CFR 264.142(b) and (c), 264.144(b) and (c), and 265.142(b) and (c)).

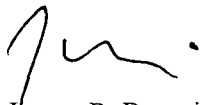
Comment 7

The information required by 40 CFR 264.147 (Liability Requirements) was not provided in the submittal. Western must comply with 40 CFR 264.147 (Liability Requirements) and submit the appropriate documentation.

The Permittee must address all comments contained in this NOD and submit the revised financial assurance submittal to NMED on or before January 17, 2010. The revised financial assurance must be submitted with a response letter that details where all revisions have been made, cross-referencing NMED's numbered comments. In addition, an electronic version of the revised financial assurance must be submitted that identifies where all changes have been made in redline strikeout format.

If you have any questions, please contact Hope Monzeglio of my staff at 505-476-6045.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:hm

cc: J. Kieling, NMED HWB
D. Cobrain, NMED HWB
H. Monzeglio, NMED HWB
K. VanHorn, NMED HWB
L. King EPA Region 6 (6PD-N)
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