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ENFORCEMENT

2016



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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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BUTCH TONGATE
Cabinet Secretary - Designate

J. C. BORREGO
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

February 14, 2017

Mr. Ed Riege
Remediation Manager
Western Refining, Southwest Inc., Gallup Refinery
92 Giant Crossing Road
Gallup, New Mexico 87301

**RE: REQUIREMENT FOR SUBMITTAL OF
WASTEWATER TREATMENT PLANT DESIGN DRAWINGS
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211
HWB-WRG-17-MISC**

Dear Mr. Riege:

Western Refining Southwest, Inc. Gallup Refinery has modified its wastewater treatment system since the installation of the approved Macro Porous Polymer Extraction (MPPE) wastewater treatment system in 2012. The New Mexico Environment Department (NMED) requires an updated block flow diagram and as-built drawings of the current wastewater treatment system at the Gallup Refinery.

The diagram and figures must show the system beginning with piping entering Tanks 27/28 and 35 to the Granulated Active Carbon (GAC) canisters and treatment pond STP-1. The drawings must identify all features and components of the wastewater treatment system including, but not limited to: tanks, piping, ancillary equipment, sampling points for effluent and air sampling, and the locations of filters in addition to the the GAC. The Environmental Protection Agency (EPA) Complaint and Consent Agreement and Final Order (CAFO), dated August 26, 2009 and modified September 1, 2010, with Western Refining Southwest, Inc. Gallup Refinery (Western) requires that the tanks and ancillary equipment downstream of the API Separator be compliant with 40 CFR § 262.34(a) [Modification, Paragraph F]. The requirement in that section includes

Ed Riege
Gallup Refinery
February 14, 2017
Page 2

compliance with Subpart J, AA, BB, and CC of 40 CFR Part 265 (except §§265.197(c) and 265.200) for tanks. The drawings and any submittal letter must identify whether the system is in compliance with 40 CFR § 262.34(a). Western must submit the information on or before **April 3, 2017**.

If you have questions regarding this correspondence, please contact Kristen Van Horn of my staff at 505-476-6046.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain NMED HWB
K. Van Horn NMED HWB
J. Griswold, OCD
C. Chavez OCD
A. Hains WRG
G. Tidmore, EPA Region 6
J. Clay, EPA Region 6
L. King EPA Region 6

File: Reading File and WRG 2017 File
HWB-WRG-17-MISC



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Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 31, 2017

Mr. Ed Riege
Remediation Manager
Western Refining, Southwest Inc., Gallup Refinery
92 Giant Crossing Road
Gallup, New Mexico 87301

**RE: REQUIREMENT FOR SUBMITTAL OF
WASTEWATER TREATMENT DATA
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211
HWB-WRG-17-MISC**

Dear Mr. Riege:

As part of the Environmental Protection Agency (EPA) Complaint and Consent Agreement and Final Order (CAFO), dated August 26, 2009 and modified September 1, 2010, with Western Refining Southwest, Inc. Gallup Refinery (Western) there are requirements for sampling and reporting to the New Mexico Environment Department (NMED) and the New Mexico Energy, Minerals and Natural Resource Department, Oil Conservation Division (OCD) regarding collection, sampling and reporting of data for effluent from the wastewater treatment plant, flow meter data, and air quality data.

The CAFO modification, paragraph C reads:

“Respondent shall design, construct, properly permit, and commence operation of an upgraded wastewater treatment system according to the Process Design Report for Wastewater Treatment Plant Workplan as approved by NMED and the New Mexico Energy, Minerals and Natural Resource Department, Oil Conservation Division ("OCD") and that is capable of treating all wastewater in accordance with

the startup milestone established in Paragraph 100.I below. Upon NMED and OCD approval, all deadlines, unless otherwise specified in Paragraph 100.1 below, work/design requirements, and sampling and monitoring requirements in the Process Design Report for Wastewater Treatment Plant Workplan shall become part of, and enforceable under, this Order.”

The May 24, 2010 *Approval with Modifications Process Design Report for the Wastewater Treatment Plant Work Plan (Alternative Design, Revision A)* includes system startup requirements in Comment 17. Because of startup issues and on-going issues with the Macro Porous Polymer Extraction (MPPE) system, NMED continued to require daily sampling of the wastewater effluent. The requirements include daily sampling for diesel-range organics (DRO)-extended, benzene, toluene, ethylbenzene, and xylenes (BTEX), general chemistry parameters, and pH with samples to be sent to an off-site laboratory as well as for on-site laboratory testing. Western is also required to collect and provide monthly flow meter data as well as collect air samples and report those results on a quarterly basis. The data are required to be submitted to NMED and OCD by the last Friday of every month with another requirement to report any exceedance of the benzene limit (0.5 mg/L) within a day. NMED has allowed for some flexibility in the monthly data submittal to allow for time for laboratory data to return and be compiled by Western.

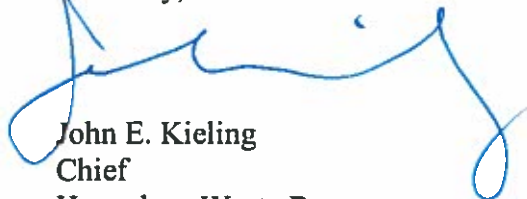
The last email received from Western, dated April 1, 2016, regarding the “Monthly Progress Report” for the waste water effluent sampling is for data collected in February 2016. Western was lax regarding reporting data prior to this, for example: data from December 2015 and January 2016 were received on March 9, 2016; data for October and November 2015 were received January 6, 2015; data for August and September 2015 were received October 23, 2015. NMED is aware of at least one instance of a benzene exceedance that occurred May 8, 2015 (0.72 mg/L) where there was no notification of the exceedance until the “Monthly Progress Report” for May 2015 was emailed on June 30, 2015. To date, the Agencies have exercised their enforcement discretion with regard to missed submittal dates.

In order to re-evaluate the effluent sampling requirements, NMED and OCD must have the data collected over the last year. Western must submit the laboratory data for wastewater effluent sampling collected since February 2016 as well as the recorded flow rate for each month and the results of the quarterly air sampling conducted over the past year. The data must be submitted to NMED and OCD on or before **February 15, 2017**. The data for January 2017 must be submitted no later than **February 24, 2017** which is the last Friday of the month. Subsequent reports must be submitted on the last Friday of each month as required by the above-referenced *Approval with Modifications*.

Ed Riege
Gallup Refinery
January 31, 2017
Page 3

If you have questions regarding this correspondence, please contact Kristen Van Horn of my staff at 505-476-6046.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain NMED HWB
K. Van Horn NMED HWB
J. Griswold, OCD
C. Chavez OCD
A. Hains WRG
G. Tidmore, EPA Region 6
J. Clay, EPA Region 6
L. King EPA Region 6

File: Reading File and WRG 2017 File
HWB-WRG-17-MISC



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Cabinet Secretary
J. C. BORREGO
Acting Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 11, 2016

Mr. Ed Riege
Remediation Manager
Western Refining Southwest Inc., Gallup Refinery
92 Giant Crossing Road
Gallup, New Mexico 87301

**RE: RESPONSE TO NOTICE OF VIOLATION
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) is in receipt of Western Refining Southwest, Inc. Gallup Refinery's (Western) submittal *Response to Notice of Violation* (Response) dated July 7, 2016 in response to the April 20, 2016 Notice of Violation (NOV). The NOV addressed several violations stemming from the failure to make a hazardous waste determination for excavated soil prior to off-site disposal based on the *Hydrocarbon Seep Interim Measures Report* (Interim Measures Report) dated July 2015. NMED has reviewed the Response and has determined that Western did not provide sufficient supporting documentation and information to determine whether or not the Response adequately addresses the violations listed in NMED's April 20, 2016 NOV.

Western asserts that "[i]t appears that NMED may have a basic factual misunderstanding about the contents of the portion of the pipeline at issue. The facts, summarized below, indicate that the contaminated media did not contain, and could not have contained, listed hazardous waste based on the actual source." NMED based the NOV on facts provided by Western in the Interim Measures Report. NMED agrees with some of the statements made regarding potential listed wastes. However, based on the information available, it still appears that F037 and K049 listed wastes were present in the excavated soils. Because Western did not provide figures or diagrams of Solid Waste Management Unit (SWMU) 12 with the Response, it is not possible to verify

Western's descriptions and statements. NMED requires further explanation in order to withdraw the NOV. Western must provide figures that support the assertions presented in the Response (i.e., provide figures that depict SWMU 12 and depict wastewater flow directions and piping connections). Additionally, the following comments are based on figures in NMED's administrative record (Figure 1 and Figure 2, attached). Western's responses to these comments may also provide more explanation regarding the potential violations.

- In Section A (No RCRA Waste Listing is Applicable), Western states, "[t]he particular pipeline at issue in the NOV, referred to herein as the 'truck rack line' (and sometimes described geographically by its proximity to above-ground units such as Crude Tank 102 or the bundle cleaning pad) carries an intermittent water flow originating from the truck rack, and is intersected by the instrument and electrical ('I&E') maintenance shop (described more fully in Section 11.C. below) and lab sink drains. The truck rack line, a portion of which was excavated and replaced, conveyed storm water and truck loading area wash water containing small quantities of gasoline and diesel drained from trucks and hoses into the sewer system. The I&E line contributed hand wash water and instrument testing water, and the lab sinks contributed bottle washings and unused or spent water samples and hydrocarbon samples. No process wastewater was discharged into the truck rack line from these sources, and no process wastewater would enter the refinery's sewer system until a point that was downstream of the replaced line. The sole sources of the contamination in the excavated media were associated with wastewater from the truck rack, the lab sinks, and the I&E maintenance shop." Based on a figure in a document titled "Stormwater Extension Project" dated October 2007 (Figure 2) and a figure from a RCRA Facility Investigation (RFI) conducted in the 1990s depicting the contact wastewater system (Figure 1), it appears that there is: 1) a stormwater drain pipe from the Process Area that connects to the Truck Rack Line south of the Heat Exchanger Bundle Cleaning Pad; and 2) there is a wastewater line from the Marketing Tanks, Transmix Loading Rack (which is not depicted on the figure, but is depicted on a Plant Layout map in the administrative record), and the Truck Loading Racks that connects to the Truck Rack Line. Therefore, it appears that process wastewater discharges into the Truck Rack Line, as well as wastewater containing slop oil.
- Western states that "[s]lop oil and solids are primarily produced at T-35, T-27, T-28, and the NAPIS, which are at least 1,056 feet downstream to the W/NW, and at least 200 feet lower elevation than the excavated truck rack line. The excavated truck rack line, thus, could not (and did not) contain slop oil or slop oil emulsion solids. Any materials associated with the subject truck rack line could not be K049." Based on the available figures, wastewater from the Transmix Loading Rack and Marketing Tanks appears to be conveyed to the Truck Rack Line. Transmix is slop oil, and therefore it appears the Truck Rack Line contained wastewater that carried slop oil and the excavated section of pipeline and associated soils contained K049 listed wastes.

- Western states that “[t]he F037 listing is specifically limited, and applicable only, to refinery primary oil/water/solids separation sludge generated from gravitational separation during storage or treatment of process wastewaters and oily cooling wastewaters. The excavated sewer line never contained process wastewaters or oily cooling wastewaters; therefore, no sludge from gravitational separation of such materials could be present in the line. Any materials associated with the subject truck rack line could not be F037. [FOOTNOTE: Western also notes that sludge meeting the regulatory F037 hazardous waste listing would not have been at issue even if the excavated line had received process wastewaters or oily cooling wastewaters. However, that legal point is not reached in this matter since no process wastewaters or oily cooling wastewaters were present in the line.]” A more complete definition of F037 listed waste found in 40 CFR Subpart D includes “petroleum refinery primary oil/water/solids separation sludge – Any sludge generated from the gravitational separation of oil/water/solids during storage or treatment of process wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow.” The contact wastewater and process sewer lines (SWMU 12) are connected and meet the definition of a stormwater unit receiving dry weather flow. Based on Figure 2, “Stormwater Extension Project,” it appears that a storm drain pipe from the Process Area connects to the Truck Rack Line. The waste conveyed through the excavated sewer line contained sludges with F037 listed waste. Therefore, by definition, the excavated soils carry that listing.

Western’s initial Response was insufficient and therefore Western must provide additional information in order to demonstrate that listed waste was not conveyed through the Truck Rack Line. The additional information required above may help to clarify these issues. Upon receipt of the additional information, NMED will consider whether a violation occurred during the excavation of the sewer line. NMED is also willing to meet with representatives from Western to discuss any figures or other documentation that demonstrates that the violations outlined in NMED’s NOV did not occur.

Mr. Riege
Gallup Refinery
October 11, 2016
Page 4

If you have questions regarding this letter, please contact Janine Kraemer at 505-476-4372 or by email at Janine.Kraemer@state.nm.us.

Sincerely,



John E. Kielling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
N. Dhawan, NMED HWB
K. Van Horn, NMED HWB
J. Kraemer, NMED HWB
J. Griswold, EMNRD OCD
C. Chavez, EMNRD OCD
A. Hains, WRG
L. King, EPA
G. Tidmore, EPA
J. Dougherty, EPA

File: Reading File and WRG 2016 and File 2401

Mr. Riege
Gallup Refinery
October 11, 2016
Page 5

FIGURES

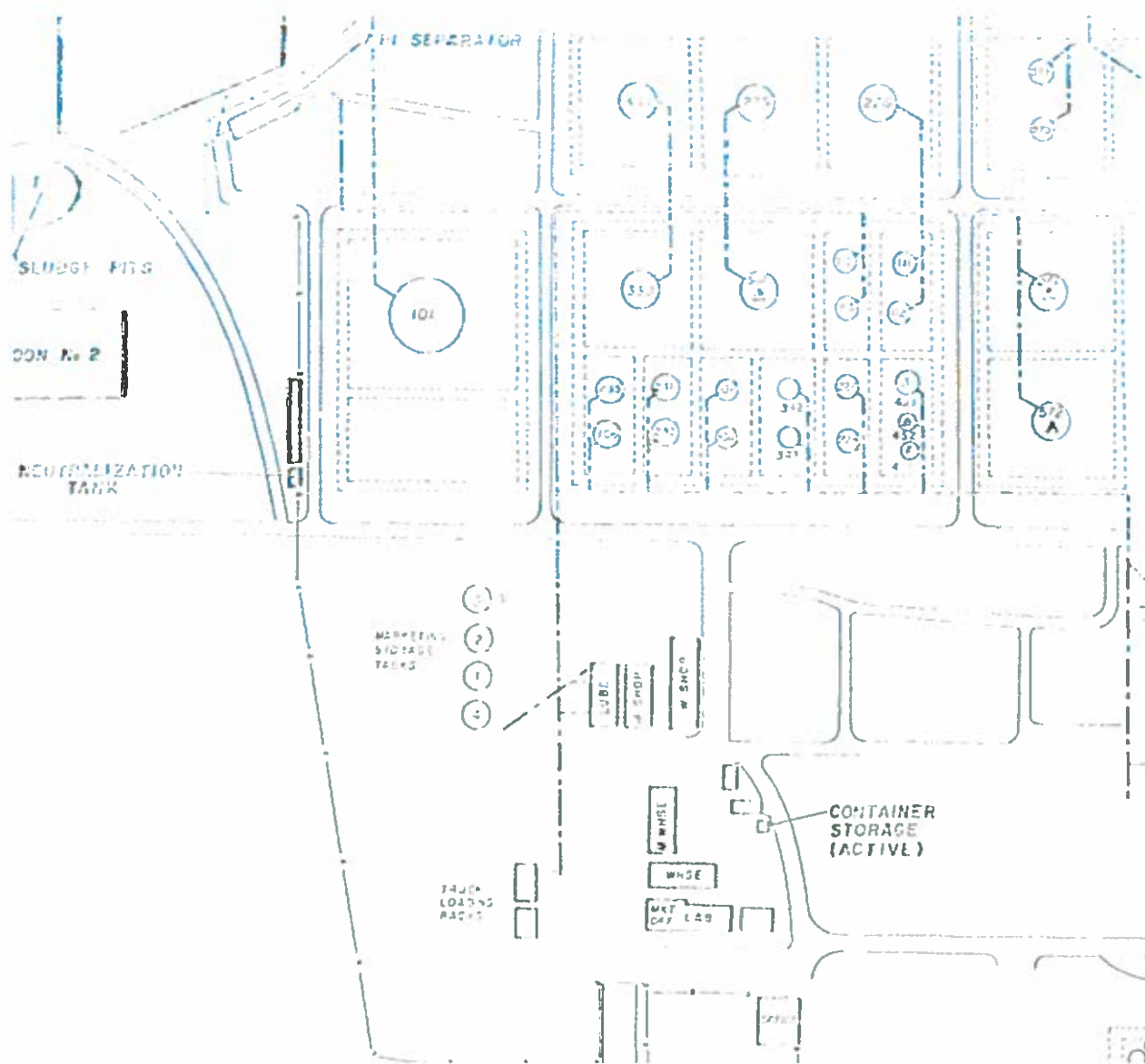


Figure 1. Section of Figure from 1990s RFI (Contact Wastewater System)

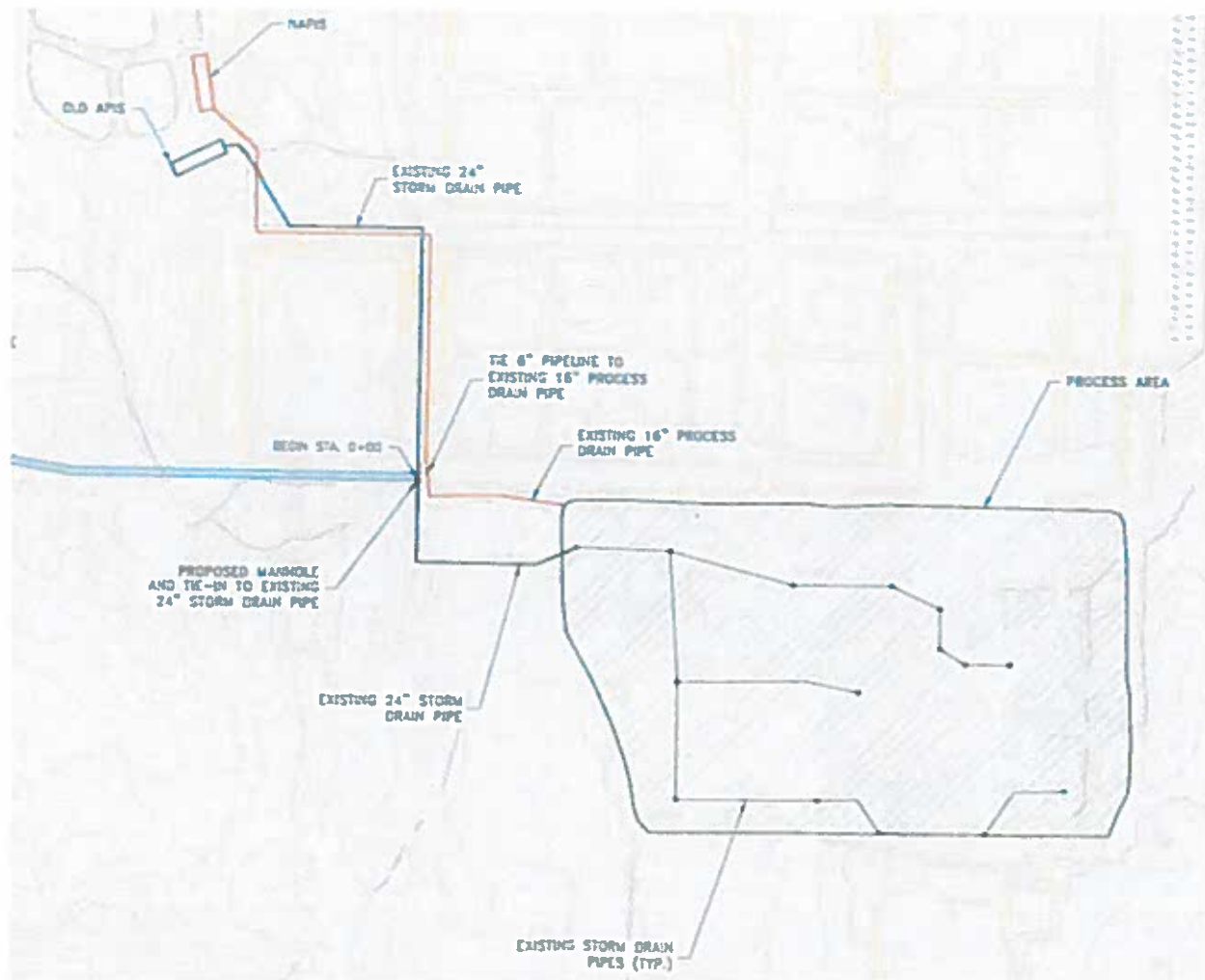


Figure 2. From "Stormwater Extension Project" document, 2007

July 07, 2016

Via Email and Certified Mail, Return Receipt Requested

Mr. John E. Kieling
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 2
Santa Fe, NM 87505-6303

**Re: Response to Notice of Violation
Western Refining Company Southwest, Inc., Gallup Refinery
EPA ID #NMD000333211**

Dear Mr. Kieling:

Western Refining Southwest, Gallup Refinery ("Western") submits this letter in response to the New Mexico Environment Department Hazardous Waste Bureau's (the "Bureau") April 20, 2016 Notice of Violation ("NOV") relating to a soils excavation described in the July 2015 *Western Refining Hydrocarbon Seep Interim Measures Report* (the "Report").¹ Pursuant to an April 20, 2016 email from Kathryn Roberts, NMED Resource Protection Division Director, to Ann Allen of Western, the deadline for completing the "Compliance" actions outlined in the NOV is August 5, 2016. Western is providing this response letter well in advance of that deadline to allow ample time for a meeting between Western and NMED, if needed, to discuss any differences in perspective on the points raised in the NOV and below.

I. The NOV's Assertions

As noted in the NOV, on October 23, 2013, Western excavated a corroded portion of an underground pipeline. As also noted in the NOV, the impacted media (soils) associated with that work were sampled and the Hall Environmental Laboratories' analytical results demonstrated that the contaminated media did not require management as characteristic hazardous wastes. Additionally, based on the known source of the release, the contaminated media did not contain listed hazardous wastes. As a result, the impacted soils were handled and disposed as non-hazardous waste. However, the NOV makes two general and summary assertions: (i) that Western failed to consider the source

¹ Note that Western also received an April 26, 2016 "Disapproval" letter from the Bureau concerning the Report. That letter repeats some of the allegations that are contained in the NOV. Accordingly, Western expects that today's letter, in part, will inform Western's response to the "Disapproval" letter on overlapping issues.

of the release, and (ii) that the impacted soils contained listed RCRA hazardous waste and should have been disposed as hazardous. The NOV asserts that “the soils contained listed hazardous waste (F037 at a minimum and potential others; e.g., D049, K050, K169, and K170) **because of the types of waste conveyed in the sewer system.**”

II. Western’s Response

Western specifically denies that it did not consider the source of the release. It appears that NMED may have a basic factual misunderstanding about the contents of the portion of the pipeline at issue. The facts, summarized below, indicate that the contaminated media did not contain, and could not have contained, listed hazardous waste based on the actual source.

A. No RCRA Waste Listing is Applicable

In previous correspondence, and the Report, the subject portion of the truck rack line is generally described at various times as being part of the “process sewer system,” also sometimes referred to as the contact wastewater system or the wastewater collection pipeline. The particular pipeline at issue in the NOV, referred to herein as the “truck rack line” (and sometimes described geographically by its proximity to above-ground units such as Crude Tank 102 or the bundle cleaning pad) carries an intermittent water flow originating from the truck rack, and is intersected by the instrument and electrical (“I&E”) maintenance shop (described more fully in Section II.C. below) and lab sink drains. The truck rack line, a portion of which was excavated and replaced, conveyed storm water and truck loading area wash water containing small quantities of gasoline and diesel drained from trucks and hoses into the sewer system. The I&E line contributed hand wash water and instrument testing water, and the lab sinks contributed bottle washings and unused or spent water samples and hydrocarbon samples. No process wastewater was discharged into the truck rack line from these sources, and no process wastewater would enter the refinery’s sewer system until a point that was downstream of the replaced line. The sole sources of the contamination in the excavated media were associated with wastewater from the truck rack, the lab sinks, and the I&E maintenance shop. Consequently, based on the source, no F037, F038, or any other waste listed in 40 C.F.R. Part 261 was released from the truck rack line or contained in the contaminated media excavated with the line.

As you are aware, the regulatory RCRA listings for hazardous waste are very specific, and limited to precise materials generated in specifically defined ways in specifically designed processes and units:

F037: The F037 listing is specifically limited, and applicable only, to refinery primary oil/water/solids separation sludge generated from gravitational separation during storage or treatment of process wastewaters and oily cooling wastewaters. The excavated sewer line never contained process wastewaters or oily cooling

wastewaters; therefore, no sludge from gravitational separation of such materials could be present in the line. Any materials associated with the subject truck rack line could not be F037.²

F038: The F038 listing is specifically limited, and applicable only, to sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. The excavated truck rack line never contained process wastewaters or oily cooling wastewaters. (For your information, the refinery's dissolved gas flotation ("DGF") unit is located at the wastewater treatment plant ("WWTP"), which is approximately 1,056 feet to the NW at a lower elevation than the truck rack line.) Therefore, no sludge from physical or chemical separation of process wastewaters or oil cooling wastewaters could be present in the line. Any materials associated with the subject truck rack line could not be F038.

K048: This listing is specifically limited, and applicable only, to dissolved air flotation (DAF) float. The refinery does not have a DAF unit. The excavated truck rack line is not associated in any way with a DAF and, thus, could not (and did not) contain DAF float. Any materials associated with the subject truck rack line could not be F048.

K049: This listing is specifically limited, and applicable only, to slop oil emulsion solids. The excavated sewer line is not associated with the slop oil system. Slop oil and solids are primarily produced at T-35, T-27, T-28, and the NAPIS, which are at least 1,056 feet downstream to the W/NW, and at least 200 feet lower elevation than the excavated truck rack line. The excavated truck rack line, thus, could not (and did not) contain slop oil or slop oil emulsion solids. Any materials associated with the subject truck rack line could not be F049.

K050: This listing is specifically limited, and applicable only, to heat exchanger bundle cleaning sludge. Although there is a heat exchanger bundle cleaning pad on the surface in the vicinity of the subject truck rack line, bundle cleaning sludge is collected in a sump at the bundle cleaning pad, and this sump and connecting sewer line are geographically downgradient from the excavated truck rack line. The excavated soils are not associated with the heat exchanger bundle cleaning pad. References in the Report and on the manifests to the bundle cleaning pad and the cleanup were included solely as a geographical reference to the nearest surface unit to the soils, not as an indication of a source. The source of the soils

² Western also notes that sludge meeting the regulatory F037 hazardous waste listing would not have been at issue even if the excavated line had received process wastewaters or oily cooling wastewaters. However, that legal point is not reached in this matter since no process wastewaters or oily cooling wastewaters were present in the line.

contamination was the truck rack line and any material associated with that line could not be K050.

K051: This listing is specifically limited, and applicable only, to API separator sludge. The refinery's API separator is located at least 1,056 feet NW, and at 200 feet lower elevation, than the excavated truck rack line. The excavated truck rack line is not associated in any way with an API separator and, thus, could not (and did not) contain API separator sludge. Any materials associated with the subject truck rack line could not be K051.

K052: This listing is specifically limited, and applicable only, to leaded tank bottoms. Production of leaded gasoline ceased in the late 1980's and there are no storage tanks containing leaded gasoline at the refinery. All leaded gasoline tank drain lines, including the marketing tank, entered the line downstream of the excavated portion of the truck rack line. The portion of the truck rack line is not associated with leaded gasoline stored in a tank and, thus, could not (and did not) contain leaded tank bottoms. Any materials associated with the subject truck rack line could not be K052.

K169: This listing is specifically limited, and applicable only, to crude oil storage tank sediment. The excavated sewer line is not associated in any way with a crude oil storage tank. The crude tanks process sewer line joins the truck rack line approximately 100 yards to the north, and at a lower elevation (i.e. downstream) of the excavated truck rack line. The excavated material could not (and did not) contain crude oil storage tank sediment. The crude tank T-102 referenced in the Report as being in the general vicinity of the removed truck rack line (280 feet southwest), as well as crude tank T-102, were also eliminated by distillation analysis results as the source[s] of the contamination of the soils excavated with the line. Any materials associated with the subject truck rack line cannot be K169.

K170: This listing is specifically limited, and applicable only, to clarified slurry oil tank sediment and/or in-line filter/separation solids only. The excavated sewer line is not associated in any way with a clarified slurry oil tank. Slurry oil is associated with the FCC unit. The process sewer line from this unit does not join the truck rack line until approximately 15 yards downstream to the north. Thus, the excavated material could not (and did not) contain clarified slurry oil tank sediment. Any materials associated with the subject truck rack line cannot be K170.

K171: This listing is specifically limited, and applicable only, to spent hydrotreating catalyst. The excavated sewer line is not associated in any way with hydrotreating catalyst. Hydrotreating catalyst is associated with the diesel hydrotreater, kerosene hydrotreater, and naphtha hydrotreater units.

(Additionally, we note that K171 hydrotreating catalyst is a solid, not a liquid that might be discharged to a sewer.) The process sewer lines from these units do not join the truck rack line until approximately 15 yards downstream to the north of the excavated area. Thus, the excavated material could not (and did not) contain spent hydrotreating catalyst. Any materials associated with the subject truck rack line cannot be K171.

K172: This listing is specifically limited, and applicable only, to spent hydrorefining catalyst. The refinery does not have any processes that use hydrorefining catalyst. The excavated sewer line is not associated in any way with hydrorefining catalyst and, thus, could not (and did not) contain spent hydrorefining catalyst. Any materials associated with the subject truck rack line cannot be K172.

B. The Contaminated Media Was Properly Managed and Disposed

Based on the above, the facts and relevant regulations do not support NMED's assertions that the excavated contaminated media contained listed hazardous waste, and that regulatory violations resulted. Western, therefore, disputes all of the alleged violations in the NOV, including:

- 20.4.1.300 NMAC referencing 40 CFR § 262.11. As noted above, Western made a proper waste determination on the excavated contaminated soil;
- 20.4.1.300 NMAC referencing 40 CFR § 262.12 and § 262.20: The waste at issue was properly characterized as non-hazardous. Western did not offer listed hazardous waste to a facility without an EPA ID number for disposal, and was not required to prepare a hazardous waste manifest for the excavated contaminated soil.
- 20.4.1.300 NMAC referencing 40 CFR § 262.34(b): The waste at issue was properly characterized as non-hazardous. Western was not subject to the 90-day storage accumulation time in 40 CFR § 262.34(b), and did not need an extension of time to store the material.
- 20.4.1.800 NMAC referencing 40 CFR § 268.7(a)(1) and § 268.35: The waste at issue was properly characterized as non-hazardous. Western properly disposed of the waste and is not subject to the referenced LDR requirements applicable to listed hazardous waste.

C. The "Compliance" Actions

Western does not agree that any violations have occurred and, therefore, does not agree that any actions are required to "resolve" the alleged violations. In particular, Western believes that providing the notification to Gandy Marley, Inc. described in the first bullet of the "Compliance" section of NOV not only would be grossly inaccurate but would imply permit violations of Gandy Marley, Inc. that Western has no reason to

believe have occurred.

Western is glad to provide, on a voluntary basis and not as corrective measures, the additional information that NMED seeks in the "Compliance" section of the NOV. (Of course, to the extent that the NOV seeks information about excavated contaminated media that is "listed hazardous waste," there is no relevant information since there was no listed waste managed in connection with the subject excavation.) In response to the second, third, and fourth bullet items in the "Compliance" section of the NOV:

Waste Management: Soil was removed from the trench and placed into a dump truck. The soil was then hauled to a staging yard and placed onto 10 mil plastic surrounded by an earthen berm. A composite sample was taken from selected locations on the pile using a hand auger. Samples were sent to Hall Environmental Laboratories. After our receipt of the laboratory analysis from Hall Environmental Laboratories indicating that the soil was non-hazardous, the soil was placed into 20 cubic yard bins for offsite shipment. Manifests indicate soil was sent off for non-hazardous disposal beginning August 10, 2014 and ending December 16, 2014. The excavated pipe was power washed at the bundle cleaning pad and placed in a 40 cubic yard container prior to being sent offsite to Valley Scrap Metal as scrap metal.

Quantity of Excavated Soil. The Report's reference to 278 cubic yards of soil originally appeared in Western's October 2014 Update-Hydrocarbon Seep/SWMU 12 letter dated October 2014 that was calculated at the time of the letter. Although that October 2014 number appeared in subsequent reports, Western's non-hazardous waste manifests indicate a total quantity of 830 cubic yards was sent for off-site disposal.

The I/E Shop. The I/E shop is a building where instrumentation and electrical technicians perform maintenance and calibration on control valves, transmitters and level indicators. Repair of electrical components and other forms of instrumentation also takes place in this building. Western previously has provided the Bureau detail about this shop, including photos, in connection with AOC 28.

We hope that the preceding discussion will clarify the activities described in the Report. Although Western firmly believes that the violations alleged in the NOV have not occurred, Western would appreciate the opportunity to meet with the Bureau and further discuss the Bureau's perspectives after it has reviewed this letter response, particularly if the Bureau intends to take further enforcement or requires additional clarification. Ann Allen will plan to contact your office in the near future to discuss available dates to meet. Please note that the preceding response is a good-faith effort on the part of Western to resolve differences with NMED over the relevant issues, and

nothing herein should be construed as an admission of any kind. Western reserves all applicable rights and defenses in this matter.

Sincerely,



Dan Statile, VP of Refining

cc: Kathryn Roberts, NMED (via email)
C. Chavez, EMNRD OCD (via email)
Ann Allen (via email)
Allen Hains (via email)



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

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RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 20, 2016

Mr. Ed Riege
Environmental Manager
Western Refining Southwest Inc., Gallup Refinery
92 Giant Crossing Road
Gallup, New Mexico 87301

**RE: NOTICE OF VIOLATION
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) hereby issues this Notice of Violation (NOV) to Western Refining Southwest, Inc. (Western) for violations related to its Gallup Refinery, located at 92 Giant Crossing Road, Gallup, New Mexico (Facility). This NOV addresses several violations stemming from the failure to make a hazardous waste determination for excavated soil prior to off-site disposal. These violations are based on the *Western Refining Hydrocarbon Seep Interim Measures Report* (Report), dated July 2015, which indicated the improper disposal of soil contaminated with listed hazardous waste.

The violations are as follows:

- 1. Failure to make a proper hazardous waste determination on excavated contaminated soil. This is violation of 20.4.1.300 NMAC referencing 40 CFR § 262.11.**

Western notified NMED of a hydrocarbon seep at the Facility discovered on the ground surface approximately 280 feet west southwest of the crude oil storage tank T-102 on June 26, 2013. The Permittee identified a source of the hydrocarbon seep as the Contact Wastewater/Stormwater Collection System (Solid Waste Management Unit (SWMU) 12). Western conducted dye tests in the process sewer system which resulted in dye reaching the seep area in July and August 2013.

A camera survey of the sewer line was conducted on August 27 and 28, 2013. A hole was identified approximately 20 feet south of the sewer box on the west side of the Heat Exchanger Bundle Cleaning Pad.

On October 23, 2013 Western excavated the wastewater pipeline and plugged the pipeline upstream of the corroded portion of the pipeline at the sewer box located west of the "I/E shop" to replace a corroded section of the line. Additional excavation of the wastewater pipeline extended approximately 140 feet south of the Heat Exchanger Bundle Cleaning Pad. The final excavation was 180 feet long, 20 feet wide, and up to 12 feet deep. NMED has determined that the excavation resulted in approximately 1,200 cubic yards (CY) of displaced soil (not accounting for dimensions of the pipe).

Western collected soil samples from the excavated soil and sent samples to an off-site laboratory for analytical testing and waste characterization. The Report did not describe the methods used to collect the soil samples and did not describe how the excavated soil was stored or managed. The soil analytical methods and results are as follows:

- A soil sample (collected June 26, 2013) related to excavation for installation of a sump west of Tanks 101 and 102 was analyzed for DRO, GRO, Toxicity Characteristic Leaching Procedure (TCLP) Metals, TCLP Semi-Volatile Organic Compounds (SVOCs), Volatile Organic Compounds (VOCs), the (ignitability, corrosivity, and reactivity) hazardous characteristics, and gasoline- and diesel- range organics (GRO and DRO respectively). DRO (9,200 mg/kg) and GRO (2,900 mg/kg) were detected in the sample.
- A soil sample (collected July 10, 2013) from the soil related to excavation for installation of a sump west of Tanks 101 and 102 was analyzed for DRO, GRO, TCLP Metals, SVOCs, VOCs and hazardous characteristics. DRO (40,000 mg/kg) and GRO at (230 mg/kg) were detected in the sample.
- A third sample (collected September 26, 2013) from the same location as specified above. DRO (1,600 mg/kg) and GRO (87 mg/kg) were detected in the sample.
- A waste characterization sample (collected November 8, 2013) from material excavated near the heat exchanger bundle cleaning pad was also analyzed for the compounds listed above with the exception of SVOCs. DRO (380 mg/kg) and GRO (640 mg/kg) were detected in the sample.
- Twelve additional waste characterization samples (collected June 26, 2014) from material excavated near the heat exchanger bundle cleaning pad were analyzed for TCLP metals TCLP for benzene. Metals and benzene were not detected in the samples.

The laboratory analytical results for soil samples of excavated soil demonstrated that the soils were not characteristic hazardous waste. However, a generator must include the process that generated the waste when making a hazardous waste determination, not just laboratory analytical results. When making a hazardous waste determination, a generator must determine if a waste is "characteristic" and/or "listed" hazardous waste 40 CFR § 262.11. A letter from NMED regarding the hydrocarbon seep, dated July 31, 2013, stated, "Western Refining must manage any gasoline-tainted soil removed from the site as hazardous waste unless and until analytical results confirm that the soil is not toxic hazardous waste for benzene (D018) or listed hazardous waste based on the source of the release." Western failed to consider the source of the release.

One of the sources of the hydrocarbon seep is the Contact Wastewater/Stormwater Collection System, which handles process wastewater, among other types of fluid. In addition to the traditional use of the sewer system, Western uses vacuum trucks for initial cleanup of spilled material and disposes of these fluids back into the sewer system upstream from the API Separator; these fluids potentially include listed hazardous waste. Once process wastewater ceased lateral flow (for example, when process water from the Contact Wastewater/Storm water Collection System leaked from the corroded pipe and contaminated the surrounding soil), hazardous waste (F037) was generated.

While Western's soil analytical sampling results demonstrate that the excavated soils from the pipe excavation are not characteristic hazardous waste, the soils contained listed hazardous waste (F037 at a minimum and potentially others; e.g., K049, K050, K051, K169, and K170) because of the types of waste conveyed in the sewer system. Mixtures of solid waste and listed hazardous waste must be regulated as hazardous waste. Additionally, environmental media that contain a F- or K-listed waste also must be managed as if they are F- or K-listed waste (USEPA Contained-in Policy, RO 11195, 11434, and 11593).

2. Offering listed hazardous waste to a facility without an EPA identification number for disposal and failure to prepare a hazardous waste manifest. This is a violation of 20.4.1.300 NMAC referencing 40 CFR § 262.12 and 40 CFR § 262.20.

The New Mexico Hazardous Waste Management Regulations at 20.4.1.300 NMAC referencing 40 CFR § 262, establishes standards for generators of hazardous waste. These standards include the hazardous waste determination, accumulation of hazardous waste, and record keeping. The Report indicates that listed hazardous waste was transported and disposed of at the Gandy Marley, Inc. land treatment facility in Chaves County, New Mexico, which is not permitted to accept hazardous waste. The Report indicates that the listed hazardous waste was transported and disposed as non-hazardous waste. This is a violation of 40 CFR § 262 Subpart A and Subpart B.

3. Failure to request an extension to store hazardous waste over the 90-day storage accumulation time. This is a violation of 20.4.1.300 NMAC referencing 40 CFR § 262.34(b).

Pursuant to 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(b), a generator must request an extension to store listed hazardous waste on-site for more than 90 days without a permit or without acquiring interim status. The testing schedule included in the Interim Report indicates that the waste was generated on or before June 26, 2013 (initial soil sampling), 14 soil excavation actions were conducted (dates of excavations were omitted), and on October 23, 2013 the wastewater pipeline area was excavated. Excavated waste analytical sampling was conducted as late as June 26, 2014, indicating that at least some of the generated wastes were stored for at least one year which violates the 90-day hazardous waste accumulation time limit. If the generator of 1,000 kilograms or greater of hazardous waste in a calendar month cannot dispose of wastes within the 90-day timeframe, the generator must request an extension. NMED did not receive a request for such an extension.

4. Failure to properly dispose of listed hazardous waste is a violation of 20.4.1.800 NMAC referencing 40 CFR § 268.7(a)(1) and § 268.35.

Given the size of the excavation, approximately 1,200 CY of listed hazardous waste would have been excavated. The methods of management for this 1,200 CY of contaminated soil was not discussed in the Report, with the exception of 278 CY sent to Gandy Marley, Inc., which is not permitted to accept hazardous waste. The transport and disposal of 278 CY of listed hazardous waste appears to have been conducted after the last soil sampling event on June 26, 2014. The exact date of disposal was not provided in the Report.

As previously stated, the Gandy Marley, Inc. land treatment facility is not permitted to accept hazardous waste. The 278 CY of listed hazardous waste was land-applied at the Gandy Marley facility; this is a violation of 20.4.1.800 NMAC incorporating 40 CFR § 268.7(a)(1). Depending on the listed hazardous wastes present, it is also a violation of 20.4.1.800 NMAC referencing 40 CFR § 268.35, Waste Prohibitions for Petroleum Refining wastes (K169, K170, K171, and K172) to land dispose these listed hazardous wastes. The management and disposal of the remaining estimated 922 cubic yards of listed hazardous wastes is not discussed in the Report.

COMPLIANCE:

Western must resolve these violations by completing the following actions:

- Contact the Oil Conservation Division (OCD) and Gandy Marley, Inc. within 15 days of receipt of this NOV to report that listed hazardous waste was disposed at the land farm, including the volume and proper waste designation. Provide copies of these communications (both initial contacts and responses) to NMED. The copies must include the dates of communication and the Western and Gandy Marley, Inc. personnel involved.

- Provide NMED detailed information regarding the designation of the excavated soil, management (including sampling) of the excavated soil, types of containers utilized, the start/end dates of waste accumulation and date(s) of disposal, and the management and disposition of the removed wastewater piping. Also provide an explanation of why this listed hazardous waste was stored on-site for greater than 90 days.
- The Permittee disposed of 278 CY of excavated soil at Gandy Marley, Inc.; however based on the dimensions of the pipeline excavation a greater amount of soils were removed. Provide NMED a detailed explanation of the management and disposition of the remaining excavated soils contaminated with listed hazardous wastes.
- Provide a summary of what the "I/E shop" (Page 2, paragraph 2 of this NOV) is and its functions.

In addition to the actions listed above, NMED recommends that Western conduct integrity testing on the underground pipelines at the Facility every five years.

Western must complete the actions listed above no later than **June 6, 2016**. Failure to adhere to the specified actions above may result in further enforcement actions.

Mr. Riege
Gallup Refinery
April 20, 2016
Page 6

If you have questions regarding this NOV, please contact Acting Compliance and Technical Assistance Program Manager Janine Kraemer at 505-476-4372 or by email at Janine.Kraemer@state.nm.us.

NMED is available to meet with Western regarding this NOV as well.

Sincerely,

A handwritten signature in blue ink, appearing to read 'John E. Kielling', is written over the typed name and title.

John E. Kielling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
N. Dhawan, NMED HWB
K. Van Horn, NMED HWB
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File: Reading File and WRG 2016 and File 2401