



**Via Certified Mail**  
**No. 7004 1350 0003 7984 1093**

December 30, 2009

John Kieling  
Program Manager  
Permits Management Program  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Bldg. 1  
Santa Fe, New Mexico 87505-6303

**Re: Financial Assurance for Western Refining Southwest, Inc., Gallup Refinery,  
EPA ID #NMD000333211 and Bloomfield Refinery, EPA ID #NMD089416416**

Dear Mr. Kieling:

This letter and attachments provide financial assurance for facilities at Western Refining Southwest, Inc., Gallup and Bloomfield Refineries in the form of a financial test and corporate guarantee. Note that the Gallup Refinery closure cost estimate was revised to include the estimated cost for the Complaint, Consent Agreement and Final Order Docket No. RCRA-06-2009-0936. The estimate was approved by EPA Region 6 on December 3, 2009. Financial 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).

Enclosed are the following documents:

- Response to the NMED Letter dated December 4, 2009;
- CFO Letter;
- Corporate Guarantee;
- Deloitte & Touche LLP letter dated April 9, 2009; and
- Annual Report on Form 10-K dated March 13, 2009.

As discussed in Section III.P (Financial Assurance) of the NMED Order NO. HWB 07-34 (CO) for the Bloomfield Refinery, the estimated cost of work shall include the costs of the remedy for a solid waste management unit or area of concern if the NMED has selected the remedy of that unit or area. If the remedies have not been selected, the cost estimate does not include costs of remedy at this time.

EPA Region 3 (EPA) agreed and accepted Western's position that the lower-of-cost or market write-down of inventory was of such a nature that it was appropriate to include it as an adjustment to period net income. The amount is clearly not related to depreciation or

amortization, but has been included in this adjustment as there are no other appropriate points within the prescribed financial test format to include such an adjustment. Further discussion and supporting documentation is provided in the attached Response to the NMED Letter dated December 4, 2009.

If you have any questions, please call me at (915) 534-1480.

Sincerely,



Leslie Ann Allen  
Senior Vice President  
Health, Safety, Environment and Regulatory Affairs

## **Response to the NMED Letter dated December 4, 2009**

1. NMED Letter dated December 4, 2009: “Since Western’s submission of the financial test is non-compliant, in accordance with 40 CFR 264.143(f)(7); Western must submit a revised financial test within thirty days from receipt of this letter clearly demonstrating their ability to pass or submit a financial assurance mechanism other than the financial test because their bond rating with Moody’s and Standard and Poor’s (S&P).”

Response: EPA Region 3 (EPA) agreed and accepted Western’s position that the lower-of-cost or market write-down of inventory was of such a nature that it was appropriate to include it as an adjustment to period net income. The amount is clearly not related to depreciation or amortization, but has been included in this adjustment as there are no other appropriate points within the prescribed financial test format to include such an adjustment.

The discussions with EPA are documented in the following attached Email exchanges:

- March 27, 2009 Email - Documents conference call between Western financial officers and Leo Mullin of EPA Region 3 and submittal of a draft copy of our financial assurance.
- March 30, 2009 Email – Documents Leo Mullin’s agreement with Western’s position.
- March 31, 2009 Email - Electronic submission of financial assurance to EPA Region 3.

Conceptually, the intent of adding back depreciation, depletion and amortization is to get to the cash flows available to fund the estimated closure and post closure costs. The lower-of-cost or market write-down discussed above has no effect on free cash flows available to fund such costs and although not specifically allowed by governing regulations is consistent with the intent in adding back depreciation and amortization to net income in determining a firm’s financial strength for purposes of the financial test.

The financial test information included in item 8 under the caption Alternative I in the CFO letter referred to above were derived from the audited financial statements of this firm as of and for the year ended December 31, 2008. A non-cash charge of \$61,005,000 related to a lower-of-cost or market write-down of inventory was added when calculating the amount of net income plus depreciation and amortization reported in item 8. Such adjustment is related to estimated market prices at a point in time and is subject to change in future periods. The amount of any such adjustment has no impact on actual free cash flows available to fund estimated closing or post closing costs.

2. NMED Letter dated December 4, 2009: “In lieu of Western closing the Bloomfield refinery, ....”

Response: Western is not closing the Bloomfield Refinery. On November 5, 2009, management decided to consolidate the operations of its two Four Corners refineries into a single operation at the Gallup Refinery. The result is the indefinite suspension of only the refining operations at the Bloomfield Refinery. Western will continue to operate the Bloomfield Refinery products terminal and associated equipment and will supply the Four Corners area with refined products through the utilization of new pipeline connection and exchange supply agreements. The Company will also maintain its marketing assets, and through the long-term exchange agreement, will supply barrels to Bloomfield in exchange for barrels produced at the El Paso Refinery. Management is evaluating alternative uses for the Bloomfield Refinery including the possibility of biofuels production.

## **March 27, 2009 Email**

## Hains, Allen

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**From:** Allen, Ann  
**Sent:** Friday, March 27, 2009 6:42 PM  
**To:** 'mullin.leo@epamail.epa.gov'  
**Subject:** FW: Western Refining Yorktown RCRA Remediation Financial Assurance  
**Importance:** High  
**Attachments:** 2008 YT Financial AssuranceREV1.xls; CFO certification letter - 40 CFR.doc

Leo-- This did not reach you the first time although your e-mail address seems to be correct. I am resending following the format of Donna's address. Ann

Leslie Ann Allen  
Senior Vice-President  
Health, Safety, Environment and Regulatory Affairs

**Western Refining**  
123 W. Mills Ave., Suite 200  
El Paso, TX 79901  
915 534-1480  
915 534-2652(fax)  
915 491-1562 (cell)  
[www.wnr.com](http://www.wnr.com)

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**From:** Allen, Ann  
**Sent:** Friday, March 27, 2009 6:31 PM  
**To:** Leo Mullin (mullin.leo@epa.gov)  
**Cc:** Mccartney.Donna@epamail.epa.gov  
**Subject:** Western Refining Yorktown RCRA Remediation Financial Assurance  
**Importance:** High

Leo--

Thank you for your time this morning to discuss the annual financial assurance filing Western Refining will be submitting for the Yorktown refinery RCRA remediation project. Attached are advanced copies of our calculations and the CFO letter as promised. Note that the lower closure cost estimate is based on revisions the EPA has approved. Changes in the cost estimate were not made for revisions that are still pending EPA approval.

Let me know if you have questions or concerns. If you have none, we can proceed to file by the deadline of March 31.

Regards,  
Ann

Leslie Ann Allen  
Senior Vice-President  
Health, Safety, Environment and Regulatory Affairs

**Western Refining**

123 W. Mills Ave., Suite 200

El Paso, TX 79901

915 534-1480

915 534-2652(fax)

915 491-1562 (cell)

[www.wnr.com](http://www.wnr.com)



**Western Refining, Inc.**  
**2008 Yorktown Consent Order - Financial Assurance**  
**12-31-08**

Alternative I

1. Sum of current closure and post-closure cost estimates.			\$25,926,000
*2. Total liabilities (Total liabilities - \$25,926,000)	Total liabilities	\$2,265,303,000	\$2,239,377,000
*3. Tangible net worth (Tangible net worth + \$25,926,000)	Tangible net worth	\$411,957,000	\$437,883,000
*4. Net worth (Net worth + \$25,926,000)	Net worth	\$811,489,000	\$837,415,000
*5. Current assets			\$815,247,000
*6. Current liabilities			\$500,726,000
*7. Net working capital			\$314,521,000
*8. The sum of net income plus depreciation, depletion, and amortization.			\$254,492,000
*9. Total Assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)			N/A
10. Is line 3 at least \$10 million?	\$437,883,000	Yes	
11. Is line 3 at least 6 times Line 1?	16.9 Times	Yes	
12. Is line 7 at least 6 times line 1?	12.1 Times	Yes	
*13. Are at least 90% of firm's assets located in the U.S.?			Yes
14. Is line 9 at least 6 times line 1?	118.7 Times	N/A	
Any two of the next three			
15. Is line 2 divided by line 4 less than 2.0?	2.7	No	
16. Is line 8 divided by line 2 greater than 0.1?	0.114	Yes	
17. Is line 5 divided by line 6 greater than 1.5?	1.63	Yes	



Western Refining, Inc.  
 Financial assurance support  
 12-31-08

All amounts are stated in '000s and are included in the Company's Form 10-K as of and for the year ended 12-31-08. Page references relate to the Form 10-K as filed with the SEC and available at <http://www.sec.gov/Archives/edgar/data/1339048/000095013409005333/d66460e10vk.htm#115>

Yorktown related environmental liabilities	<u>\$ 25,926</u>	Pg 105, footnote 22
Current liabilities	\$ 500,726	Pg 69, face of balance sheet
Long-term liabilities	<u>1,764,577</u>	Pg 69, face of balance sheet
Total liabilities	<u>\$ 2,265,303</u>	
Current assets	\$ 815,247	Pg 69, face of balance sheet
Property, plant and equipment	1,851,048	Pg 69, face of balance sheet
Goodwill	299,552	Pg 69, face of balance sheet
Other assets, net	<u>110,945</u>	Pg 69, face of balance sheet
Total assets	3,076,792	Pg 69, face of balance sheet
Less		
Goodwill	(299,552)	Pg 69, face of balance sheet
Intangible assets, other than goodwill	(76,378)	Pg 91, footnote 12
Unamortized loan fees	<u>(23,602)</u>	Pg 91, footnote 12
Total tangible assets	<u>\$ 2,677,260</u>	
Net worth	\$ 811,489	Pg 69, face of balance sheet
Less		
Goodwill	(299,552)	Pg 69, face of balance sheet
Intangible assets, other than goodwill	(76,378)	Pg 91, footnote 12
Unamortized loan fees	<u>(23,602)</u>	Pg 91, footnote 12
Tangible net worth	<u>\$ 411,957</u>	
Current assets	\$ 815,247	Pg 69, face of balance sheet
Less current liabilities	<u>(500,726)</u>	Pg 69, face of balance sheet
Working capital	<u>\$ 314,521</u>	
Net income	\$ 64,197	Pg 70, face of statement of operations
Plus		
Depreciation and amortization	113,611	Pg 70, face of statement of operations
Amortization of loan fees	4,789	Pg 70, face of statement of operations
Write-off of unamortized loan fees	10,890	Pg 70, face of statement of operations
Non-cash lower of cost or market inventory adjustment	<u>61,005</u>	Pg 87, footnote 6 and Pg 33, Item 6
Net income plus non-cash items	<u>\$ 254,492</u>	

**Via Certified Mail  
No.**

March 31, 2009

Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Ladies and Gentlemen:

I am the chief financial officer of Western Refining, Inc., 123 W. Mills Avenue, Suite 200, El Paso, Texas 79901. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in subpart H of 40 CFR Parts 264 and 265.

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility.

None.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR Parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

EPA Identification Number VAD050990357

Western Refining Yorktown, Inc.

2201 Goodwin Neck Road

Grafton, VA 23692-4451

Closure Cost Estimate \$ 18,426,000

Post-Closure Cost Estimate \$ 7,500,000

Total Closure/Post-Closure Cost Estimate \$ 25,926,000

The firm identified above is the direct or higher-tier parent corporation of Western Refining Yorktown, Inc.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR Part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

None.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

None.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

None.

This firm is required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on December 31. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended December 31, 2008. A non-cash charge of \$61,005,000 related to a lower-of-cost or market write-down of inventory has been added back to net income in line 8.

#### Alternative I

1.	Sum of current closure and post-closure cost estimate	\$ 25,926,000
*2.	Total liabilities (\$2,265,303,000 - \$25,926,000)	\$ 2,239,377,000
*3.	Tangible net worth (\$411,957,000 + \$25,926,000)	\$ 437,883,000
*4.	Net worth (\$811,489,000 + \$25,926,000)	\$ 837,415,000
*5.	Current assets	\$ 815,247,000
*6.	Current liabilities	\$ 500,726,000
7.	Net working capital	\$ 314,521,000

- |      |  |                 |                |
|------|--|-----------------|----------------|
| *8.  | The sum of net income plus depreciation, depletion, and amortization                           | \$ 254,492,000  |                |
| *9.  | Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) | Not Applicable  |                |
| 10.  | Is line 3 at least \$10 million?   | Yes<br><u>X</u> | No<br>___      |
| 11.  | Is line 3 at least 6 times line 1?   | Yes<br><u>X</u> | No<br>___      |
| 12.  | Is line 7 at least 6 times line 1?   | Yes<br><u>X</u> | No<br>___      |
| *13. | Are at least 90% of firm's assets located in the U.S.?<br><br>If not, complete line 14.        | Yes<br><u>X</u> | No<br>___      |
| 14.  | Is line 9 at least 6 times line 1?   | Not Applicable  |                |
| 15.  | Is line 2 divided by line 4 less than 2.0?   | Yes<br>___      | No<br><u>X</u> |
| 16.  | Is line 8 divided by line 2 greater than 0.1?  | Yes<br><u>X</u> | No<br>___      |
| 17.  | Is line 5 divided by line 6 greater than 1.5?  | Yes<br><u>X</u> | No<br>___      |

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

\_\_\_\_\_  
 Gary R. Dalke  
 Chief Financial Officer

Date: March 31, 2009



## CORRECTED VERSION

### CORPORATE GUARANTEE

Guarantee made this 31st day of March, 2009 by Western Refining, Inc., a business corporation organized under the laws of the State of Delaware, herein referred to as guarantor. This guarantee is made on behalf of Western Refining Yorktown, Inc., 2201 Goodwin Neck Road, Grafton, Virginia 23692, which is our subsidiary, to the United States Environmental Protection Agency (EPA).

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. Western Refining Yorktown, Inc. owns or operates the following hazardous waste management facility(ies) covered by this guarantee:

EPA Identification Number VAD050990357  
Western Refining Yorktown, Inc.  
2201 Goodwin Neck Road  
Grafton, VA 23692-4451

This guarantee is for closure and post-closure care.

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.
4. For value received from Western Refining Yorktown, Inc., guarantor guarantees to EPA that in the event that Western Refining Yorktown, Inc. fails to perform "closure and post-closure care" of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc. in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR Parts 264 and 265.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to Western Refining Yorktown, Inc. that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless Western Refining Yorktown, Inc. has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc., unless Western Refining Yorktown, Inc. has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Part 264 or 265.
9. Guarantor agrees to remain bound under this guarantee for as long as Western Refining Yorktown, Inc. must comply with the applicable financial assurance requirements of subpart H of 40 CFR Parts 264 and 265 for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to Western Refining Yorktown, Inc., provided that this guarantee may not be terminated unless and until Western Refining Yorktown, Inc. obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post-closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.
11. Guarantor agrees that if Western Refining Yorktown, Inc. fails to provide alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of Western Refining Yorktown, Inc.
12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by Western Refining Yorktown, Inc. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective Date: March 31, 2009

WESTERN REFINING, INC.

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Gary R. Dalke  
Chief Financial Officer

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Signature of Witness or Notary

DRAFT



## **March 30, 2009 Email**

## Hains, Allen

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**From:** Allen, Ann  
**Sent:** Monday, March 30, 2009 12:55 PM  
**To:** 'Mullin.Leo@epamail.epa.gov'  
**Cc:** Mccartney.Donna@epamail.epa.gov  
**Subject:** RE: Western Refining Financial Assurance

Leo, Thanks for resending. I had not received your message Friday. We are ready to submit based on your review of the spreadsheet and CFO letter, if that works for you. Ann

Leslie Ann Allen  
Senior Vice-President  
Health, Safety, Environment and Regulatory Affairs

Western Refining  
123 W. Mills Ave., Suite 200  
El Paso, TX 79901  
915 534-1480  
915 534-2652 (fax)  
915 491-1562 (cell)  
www.wnr.com

-----Original Message-----

From: Mullin.Leo@epamail.epa.gov [mailto:Mullin.Leo@epamail.epa.gov]  
Sent: Monday, March 30, 2009 11:40 AM  
To: Allen, Ann  
Subject: Fw: Western Refining Financial Assurance

Ann,

I sent you this on Friday. Did you receive it? As to comments on the attachments on the spread sheet and the CFO letter, they both look fine.

Leo

----- Forwarded by Leo Mullin/R3/USEPA/US on 03/30/2009 01:38 PM -----

Leo	
Mullin/R3/USEPA/	
US	To
	ann.aln@wnr.com
03/27/2009 10:24	cc
AM	Donna McCartney/R3/USEPA/US@EPA
	Subject
	Western Refining Financial
	Assurance

Ann,

Thank you for setting up this call.

Item 6 of your 10-K filing for December 31, 2008 includes a non-cash expense of \$61,005,000. This adjustment relates to the write-down of inventory to fair market value. I agree with your position that this is one of Western Refining's non-cash expenses for that accounting period.

As soon as I see your draft submission, I will review it promptly. Until then, if you have any questions or if you need additional information, please let me know.

Leo

Leo J. Mullin  
Cost Recovery Expert  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103  
215 814-3172,  
fax 215 814-3005

## **March 31, 2009 Email**

## Hains, Allen

---

**From:** Allen, Ann  
**Sent:** Tuesday, March 31, 2009 5:13 PM  
**To:** Mccartney.Donna@epamail.epa.gov  
**Cc:** 'Mullin.Leo@epamail.epa.gov'; Kelley, Jane; Seibel, Timothy; Hains, Allen  
**Subject:** Western Refining Yorktown RCRA Remediation Project Financial Assurance  
**Importance:** High  
**Attachments:** Yorktown RCRA Remediation Project Financial Assurance (03-31-09).pdf; 2008 WesternRefining10K.pdf

Donna--

Attached is an electronic copy of the financial assurance for the Yorktown RCRA remediation project. My thanks to Leo Mullin for discussing the calculations with our financial officers and for reviewing the calculations prior to our submittal today. The original has been sent to your attention by certified mail today.

Regards,  
Ann

Leslie Ann Allen  
Senior Vice-President  
Health, Safety, Environment and Regulatory Affairs

**Western Refining**  
123 W. Mills Ave., Suite 200  
El Paso, TX 79901  
915 534-1480  
915 534-2652(fax)  
915 491-1562 (cell)  
[www.wnr.com](http://www.wnr.com)

**Via Certified Mail**  
**No. 7006 0810 0004 3770 8595**

March 31, 2009

Donna M. McCartney  
Project Manager  
U.S. Environmental Protection Agency  
Region III / 3LC20  
1650 Arch Street  
Philadelphia, PA 19103

**Re: Financial Assurance for RCRA Section 3008(h) Consent Order**  
**Western Refining, Inc. Yorktown Refinery, EPA ID No. VAD 050 990 357**

Dear Ms. McCartney:

Enclosed are the following financial assurance documents;

- CFO Letter;
- Corporate Guarantee;
- Deloitte Review Letter; and
- Western's 2008 Annual Report on Form 10-K.

Please contact me at (915) 534-1480.

Sincerely,



Leslie Ann Allen  
Senior Vice President  
Health, Safety, Environmental, and Regulatory Affairs

Via Certified Mail  
No. 7006 0810 0004 3770 8595

March 31, 2009

Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Ladies and Gentlemen:

I am the chief financial officer of Western Refining, Inc., 123 W. Mills Avenue, Suite 200, El Paso, Texas 79901. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in subpart H of 40 CFR Parts 264 and 265.

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility.

None.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR Parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

EPA Identification Number VAD050990357

Western Refining Yorktown, Inc.

2201 Goodwin Neck Road

Grafton, VA 23692-4451

Closure Cost Estimate	\$ 26,804,825
Post-Closure Cost Estimate	\$ 7,500,000
Total Closure/Post-Closure Cost Estimate	\$ 34,304,825 <sup>1</sup>

The firm identified above is the direct or higher-tier parent corporation of Western Refining Yorktown, Inc.

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<sup>1</sup> A deduction in the amount of \$1,605,380 (consisting of \$850,380 in expenditures from September 2006 through April 2007 and \$755,000 in the Request for Expenditures for the oily water sewer relocation) from the initial cost estimate of \$35,910,205 was made to give the cost estimate of \$34,304,825 submitted by Giant Industries, Inc. on May 24, 2007 to demonstrate financial assurance. For financial reporting purposes, the original cost estimate of \$35,910,205 has been revised to include deductions for project expenditures of \$4,744,000 and \$7,158,000 in 2007 and 2008, respectively and increases related primarily to accretion of \$1,918,000.



3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR Part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

None.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

None.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

None.

This firm is required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on December 31. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended December 31, 2008. A non-cash charge of \$61,005,000 related to a lower-of-cost or market write-down of inventory has been added back to net income in line 8.

#### Alternative I

1.	Sum of current closure and post-closure cost estimate	\$ 34,304,825
*2.	Total liabilities (\$2,265,303,000 - \$25,926,000)	\$ 2,239,377,000
*3.	Tangible net worth (\$411,957,000 + \$25,926,000)	\$ 437,883,000
*4.	Net worth (\$811,489,000 + \$25,926,000)	\$ 837,415,000
*5.	Current assets	\$ 815,247,000
*6.	Current liabilities	\$ 500,726,000
7.	Net working capital	\$ 314,521,000

- |      |  |                 |                |
|------|--|-----------------|----------------|
| *8.  | The sum of net income plus depreciation, depletion, and amortization                           | \$ 254,492,000  |                |
| *9.  | Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) | Not Applicable  |                |
| 10.  | Is line 3 at least \$10 million?   | Yes<br><u>X</u> | No<br>___      |
| 11.  | Is line 3 at least 6 times line 1?   | Yes<br><u>X</u> | No<br>___      |
| 12.  | Is line 7 at least 6 times line 1?   | Yes<br><u>X</u> | No<br>___      |
| *13. | Are at least 90% of firm's assets located in the U.S.?<br><br>If not, complete line 14.        | Yes<br><u>X</u> | No<br>___      |
| 14.  | Is line 9 at least 6 times line 1?   | Not Applicable  |                |
| 15.  | Is line 2 divided by line 4 less than 2.0?   | Yes<br>___      | No<br><u>X</u> |
| 16.  | Is line 8 divided by line 2 greater than 0.1?  | Yes<br><u>X</u> | No<br>___      |
| 17.  | Is line 5 divided by line 6 greater than 1.5?  | Yes<br><u>X</u> | No<br>___      |

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.



\_\_\_\_\_  
Gary R. Dalke  
Chief Financial Officer

Date: March 31, 2009

## CORPORATE GUARANTEE

Guarantee made this 31st day of March, 2009 by Western Refining, Inc., a business corporation organized under the laws of the State of Delaware, herein referred to as guarantor. This guarantee is made on behalf of Western Refining Yorktown, Inc., 2201 Goodwin Neck Road, Grafton, Virginia 23692, which is our subsidiary, to the United States Environmental Protection Agency (EPA).

### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. Western Refining Yorktown, Inc. owns or operates the following hazardous waste management facility(ies) covered by this guarantee:

EPA Identification Number VAD050990357  
Western Refining Yorktown, Inc.  
2201 Goodwin Neck Road  
Grafton, VA 23692-4451

This guarantee is for closure and post-closure care.

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.
4. For value received from Western Refining Yorktown, Inc., guarantor guarantees to EPA that in the event that Western Refining Yorktown, Inc. fails to perform "closure and post-closure care" of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc. in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR Parts 264 and 265.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to Western Refining Yorktown, Inc. that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless Western Refining Yorktown, Inc. has done so.

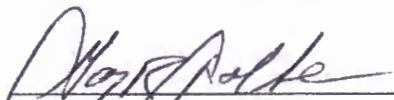


6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, in the name of Western Refining Yorktown, Inc., unless Western Refining Yorktown, Inc. has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Part 264 or 265.
9. Guarantor agrees to remain bound under this guarantee for as long as Western Refining Yorktown, Inc. must comply with the applicable financial assurance requirements of subpart H of 40 CFR Parts 264 and 265 for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to Western Refining Yorktown, Inc., provided that this guarantee may not be terminated unless and until Western Refining Yorktown, Inc. obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post-closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.
11. Guarantor agrees that if Western Refining Yorktown, Inc. fails to provide alternate financial assurance as specified in subpart H of 40 CFR Part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of Western Refining Yorktown, Inc.
12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by Western Refining Yorktown, Inc. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).


I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective Date: March 31, 2009

WESTERN REFINING, INC.



\_\_\_\_\_  
Gary R. Dalke  
Chief Financial Officer



\_\_\_\_\_  
Signature of Witness or Notary



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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON APPLYING AGREED-UPON PROCEDURES

To the Board of Directors  
Western Refining, Inc.  
El Paso, Texas

We have performed the procedures included in the Code of Federal Regulations (CFR) Title 40, Part 264, Section 143 (40 CFR 264.143), which were agreed to by the United States Environmental Protection Agency (EPA) and Western Refining, Inc. and its wholly owned subsidiary, Western Refining Yorktown, Inc. (together, the "Company"), solely to assist the specified parties in evaluating the Company's compliance with the financial test option as of December 31, 2008, included in the accompanying letter dated March 31, 2009, from Gary R. Dalke, Chief Financial Officer of Western Refining, Inc. Management is responsible for the Company's compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, as adopted by the Public Company Accounting Oversight Board (PCAOB). The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures that we performed and related findings are as follows:

1. We compared the amounts included in items 5 and 6, under the caption Alternative I — in the letter referred to above, with the corresponding amounts in the audited financial statements of Western Refining, Inc. and subsidiaries as of and for the year ended December 31, 2008, on which we have issued our report dated March 13, 2009, and noted that such amounts were in agreement.
2. We recomputed, from the financial statements referred to in procedure 1, the information included in items 2, 3, 4, 7, and 8 under the caption Alternative I in the letter referred to above, except we noted that the Company added back a \$61,005,000 non-cash charge related to a lower-of-cost or market write-down of inventory when calculating the amount of net income plus depreciation and amortization reported in item 8. Without adding back the \$61,005,000 write-down, the answer to item 16 would be no.

We were not engaged to, and did not perform an examination, the objective of which would be the expression of an opinion on the accompanying letter dated March 31, 2009. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and management of Western Refining, Inc. and the EPA, and is not intended to be and should not be used by anyone other than these specified parties.

*Deloitte & Touche LLP*

March 31, 2009