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RON CURRY
Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 4, 2010

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

**RE: NOTICE OF DISAPPROVAL
FINANCIAL ASSURANCE FOR THE
GALLUP REFINERY EPA ID# NMD000333211 AND THE
BLOOMFIELD REFINERY EPA ID # NMD 089416416
WESTERN REFINING SOUTHWEST, INC.
HWB-GRCC-MISC AND HWB-GRCB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed Western Refining, Southwest, Inc. (Western)'s December 30, 2009 letter concerning Western's annual financial assurance submittal for RCRA closure and post-closure. NMED, in consultation with the U.S. Environmental Protection Agency (EPA), has determined that Western may not apply the non-cash charge of \$61,005,000.00 when calculating Alternative 1 of the financial test per 20.4.1.500 NMAC (incorporating 40 C.F.R. §§ 264.143(f)(1)(i) & 264.145(f)(1)(i)). Because Western is unable to use Alternative 2 of the financial test, as its bond rating with both Moody's and Standard and Poor's does not meet the minimum required ratings threshold required under 40 C.F.R. §§ 264.143(f)(1)(ii) & 264.145(f)(1)(ii), Western does not pass either alternative of the financial test.

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Western states in its December 30, 2009 letter that "EPA Region 3 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 of net income. The amount is clearly not related to depreciation or amortization, but has been in this adjustment as there are no other appropriate points within the prescribed financial test format to include such an adjustment."

NMED has determined that Region 3's allowance of the \$61,005,000.00 lower-of-cost or market write-down of inventory when calculating the financial test was a specific circumstance related to the specific corrective action at the Yorktown. NMED does not agree that it is appropriate to allow the \$61,005,000.00 to be used when calculating Ratio 2 (net income divided by total liabilities) of Alternative 1 of the financial test, 40 C.F.R. § 264.143(f)(1)(i)(A), for the Gallup and Bloomfield refineries because the application is not appropriate and does not comply with the regulations for RCRA closure and post closure. As discussed in NMED's December 4, 2009 letter, 40 C.F.R. § 264.143(f)(1)(i)(A) allows a company to add back the sum of depreciation, depletion, and amortization to net income when calculating Ratio 2, but the regulations do not allow for the adding back of other non-cash accounting line items, including inventory write-downs, which also do not fall within the accounting definitions. Specifically, depreciation, depletion, and amortization are defined in terms of financial accounting as "the accounting procedure used to allocate the cost of an asset, which will benefit a business enterprise for more than a year, over the asset's service life; the accounting procedure used to allocate the cost of acquiring and developing natural resources; and the process of expense allocation applied to the cost expiration of intangible assets," respectively. These definitions do not include inventory write-downs (LYN FRASER & AILEEN ORMISTON, UNDERSTANDING FINANCIAL STATEMENTS 261-63 (8th ed. 2007)).

Notwithstanding, in light of Western's current financial standing (Quarter 1 – Quarter 3), Western will not be able to utilize the financial test for its 2010 RCRA financial assurance submission. Accordingly, Western must submit financial assurance submission under a mechanism other than the financial test and corporate guarantee found in 40 C.F.R. §§ 264.143 & 264.145.

Finally, upon Western's indefinite suspension of the refining operations at the Bloomfield Refinery, NMED has reevaluated the closure and post-closure cost estimate for the surface impoundments of \$1,264,704 and determined that Western must add an additional one million one hundred thousand dollars (\$1,100,000) to the total cost estimate for closure and post closure activities to \$2,364,704. The additional cost is based on complete removal of the surface impoundments for clean closure (e.g., cost to remove the surface impoundments, characterization of soil and groundwater beneath the impoundments, soil removal costs, transportation costs, waste profiling and disposal costs and the costs for reporting and record keeping, and long term monitoring).

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Western must submit a new financial assurance mechanism to NMED on or before March 4, 2010. If you have any questions regarding this letter, please contact Hope Monzeglio of my staff at 505-476-6045.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Kieling, NMED HWB
D. Cobrain, NMED HWB
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L. King EPA Region 6 (6PD-N)
A. Hains, Western
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E. Riege, Western Gallup
Reading File and GRCB 2010 and GRCC 2010

